

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
REGION 4 - CENTRAL
1234 EAST SHAW AVENUE
FRESNO, CALIFORNIA, 93710

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HABITAT CONSERVATION
PLANNING BRANCH



AMENDMENT NO. 1
(A Major Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2018-051-04
California Department of Transportation
State Route 119-43/Enos Lane Intersection Improvement Project in Kern County

INTRODUCTION

On December 5, 2018, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2018-051-04 (ITP) to California Department of Transportation (Caltrans) District 6 (Permittee) authorizing take of Tipton kangaroo rat (*Dipodomys nitratoide nitratoide*) and San Joaquin kit fox (*Vulpes macrotis mutica*) (collectively, the Covered Species) associated with and incidental to the State Route 119-43/Enos Lane Intersection Improvement Project in Kern County, California (Project). The Project as described in the ITP originally issued by CDFW includes the demolition of the existing conventional intersection at State Route (SR) 119 and SR 43/Enos Lane and the construction of curved "chicane" approach lanes to a new roundabout traffic circle intersection. In issuing the ITP, CDFW found, among other things, that Permittee's compliance with the Conditions of Approval of the ITP would fully mitigate impacts to the Covered Species and would not jeopardize the continued existence of the Covered Species.

The Permittee has become aware that San Joaquin antelope squirrel (*Ammospermophilus nelsoni*) (SJAS), a species designated as threatened pursuant to the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.) (see Cal. Code Regs., tit. 14, § 670.5 subd. (b)(6)(B)) is present near the Project Area and has been documented in the parcel southwest of the Project Area as recently as January 2019. There is a possibility that one or more individuals may have moved into the Project Area or could do so at any time prior to the implementation of the Project. In addition, a change to the sequence of the approach for Covered Species exclusion fence installation to increase the effectiveness of excluding Covered Species from re-entering the Project Area is needed. Further, due to a variety of factors and after consultation with CDFW, the Permittee would like to implement an alternative non-keyed fence design.

In a letter dated February 22, 2019, the Permittee requested the ITP be amended to provide take authorization for San Joaquin antelope squirrel by including it as a Covered

Species; in addition the amendment removes the requirement that trapping activities be conducted prior to installation of the Covered Species exclusion fence; adds clarifying language regarding the Permittee's requirement to trap and hand excavate within the Project Area buffer; and allows for a design change in the Covered Species exclusion fence.

This Major Amendment No. 1 (Amendment), makes the following changes to the existing ITP:

First, this Amendment provides take authorization for San Joaquin antelope squirrel and adds it to the list of Covered Species.

Second, this Amendment removes the requirement that trapping activities be conducted prior to installation of the Covered Species exclusion fence.

Third, this Amendment clarifies the requirement to trap and hand excavate within the Project Area buffer.

Fourth, this Amendment modifies the Covered Species exclusion fence design requirement.

AMENDMENT

The ITP is amended as follows (amended language in ***bold italics***; deleted language in ~~strikethrough~~):

1. The list of Covered Species on page 3 shall be amended to read:

Tipton kangaroo rat (<i>Dipodomys nitratoides nitratoides</i>)	Endangered ³
<i>San Joaquin antelope squirrel (<i>Ammospermophilus nelsoni</i>)</i>	<i>Threatened⁴</i>
San Joaquin kit fox (<i>Vulpes macrotis mutica</i>) (SJKF)	Threatened ⁴⁵

³See Cal. Code Regs. tit. 14 § 670.5, subd. (a)(6)(D)

⁴See ***Cal. Code Regs. tit. 14 § 670.5, subd. (b)(6)(B)***

⁴⁵See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(6)(E)

2. The following measure shall be inserted following ITP Condition of Approval 6.3:

6.3.1 San Joaquin Antelope Squirrel (SJAS) Relocation Plan. The Permittee shall submit a SJAS Relocation Plan to CDFW for approval

at least 14 days prior to initiating Covered Activities. The Relocation Plan (Plan) shall include, but not be limited to, a specific plan for trapping, a map and number of acres of the proposed site for relocation/release, burrow excavation methods, release methods (i.e., soft release, hard release, or some other method), artificial burrow design and installation, and identification of a wildlife rehabilitation center or veterinary facility for injured animals. Relocation activities shall not proceed until the Plan has been approved in writing by CDFW's Regional Representative. The Plan shall include a minimum of six consecutive days of trapping and shall end with at least four consecutive days of trapping that results in no SJAS captures. Once the Relocation Plan is approved by CDFW, it may be used for all SJAS relocation activities for the duration of this ITP. Any proposed changes to the approved Relocation Plan shall be submitted in writing to CDFW and shall be approved by CDFW in writing prior to implementation of any proposed Relocation Plan modifications.

3. The last sentence of ITP Condition 6.4, page 9 shall be amended to read:

The plan shall indicate that the Designated Biologist will supervise fence-line grubbing, ~~trenching~~, construction, and installation to minimize potential impacts to TKR, **SJAS**, and SJKF.

4. ITP Condition 6.5, page 9 shall be amended to read:

Compliance Monitoring. The Designated Biologist(s) shall be at the Project Area daily and during all Covered Activities until: the Pre-construction Surveys (as required in accordance with Condition of Approval 7.1) are complete; the TKR **and SJAS** trapping (as required in accordance with Condition of Approval 7.2) is complete; the TKR **and SJAS** burrow excavation (as required in accordance with Condition of Approval 7.3) is complete; the required SJKF avoidance buffer zones (as required in accordance with Condition of Approval 7.4) are established; any SJKF den blockage or excavation work (as required in accordance with Conditions of Approval 7.5, and 7.6, respectively) is complete; the Covered Species exclusion fence installation (Condition of Approval 7.7) is complete; and the initial ground disturbance is complete. The Designated Biologist shall conduct these daily compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that

Covered Activities are only occurring at the Project Area. After the implementation of Conditions of Approval 7.1 through 7.7 and all initial ground disturbance has been completed, the Designated Biologist(s) shall be at the Project Area at least once weekly to conduct these compliance inspections. The Designated Representative or Designated Biologist(s) shall prepare daily/weekly written observations and inspection records summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP.

5. The first sentence of ITP Condition 7.1, page 11 shall be amended to read:

Prior to any ground disturbance within the Project Area, the Designated Biologist(s) shall examine the Project Area: plus a 50-foot buffer (**where feasible**) for potential TKR, **and SJAS** burrows; and plus a 500-foot buffer (where feasible) for SJKF dens.

6. ITP Condition 7.2, page 11 shall be amended to read:

TKR **and SJAS** Trapping. All potential TKR **and SJAS** burrows at and within 50 feet of the Project Area (**where feasible**) that cannot be avoided shall be live trapped by the Designated Biologist(s) prior to the initiation of ground-disturbing Covered Activities (~~including exclusion fence installation~~) to minimize direct mortality. The trapping shall occur consistent with the CDFW-approved TKR **and SJAS** Relocation Plans **as** required in Conditions of Approval 6.3 **and 6.3.1**. Any captured TKR **and SJAS** shall be relocated to a CDFW approved release site identified in the TKR **and SJAS** Relocation Plans. The Designated Biologist(s) shall submit a report of the trapping/relocation effort to CDFW at least five business days prior to commencement of Covered Activities.

7. ITP Condition 7.3, page 12 shall be amended to read:

TKR **and SJAS** Burrow Excavation. Following live trapping activities, the Designated Biologist shall perform or oversee the excavation by hand of any small mammal burrows that cannot be avoided by a 50-foot no-disturbance buffer, and that have the potential to be occupied by TKR **and SJAS**. The Designated Biologist shall ensure that any TKR **and SJAS** encountered in the excavated burrows are captured by hand and relocated in accordance with the approved TKR **and SJAS** Relocation Plans (described in Condition of Approval 6.3 **and 6.3.1**). Dormant or torpid TKR **and SJAS** encountered shall also be relocated to an artificial burrow installed at a CDFW-approved release site identified in the TKR **and SJAS** Relocation Plans.

8. ITP Condition 7.7, page 13 shall be amended to read:

~~Following burrow excavation activities, the~~ **The** Designated Biologist shall perform or oversee installation of the TKR exclusion fence. The fence shall be installed in accordance with the CDFW-approved Covered Species Exclusion Fence Plan (described in Condition of Approval 6.4). This fence may also serve as the Project Area Boundaries as required under Condition of Approval 5.9. The exclusion fence shall be installed to prevent movement of the Covered Species into the Project Area once ground- or vegetation-disturbing activities commence. Permittee shall place exclusion fence at the edge of the temporary impact area, and because the exclusion fence cannot cross SR 119 or SR43/Enos Lane, the fencing shall be extended at least 50 feet past the ends of the Project Area and tapered back toward the roadway to the extent possible. The Designated Biologist shall supervise fence-line grubbing, ~~trenching,~~ construction, and installation to minimize potential impacts to the Covered Species. The exclusion fence shall be supported sufficiently to maintain its integrity under all conditions, such as wind and heavy rain, for the duration of the active construction period. ~~Exclusion fence shall be keyed six to eight inches into the ground to deter the Covered Species in the adjacent areas from digging under and entering the Project Area.~~ The exclusion fence shall be constructed of tightly woven material that prevents climbing and entrapment of any species.

9. The last sentence of ITP Condition 7.8, page 14 shall be amended to read:

Project workers and the Designated Biologist(s) shall allow the Covered Species to escape unimpeded if possible before Covered Activities are allowed to continue, or the Designated Biologist(s) shall capture and relocate individual TKR **and SJAS** as per the **required** Relocation Plans described in Conditions of Approval 6.3 **and 6.3.1**.

All terms and conditions of the ITP and MMRP that are not expressly amended herein remain in effect and must be implemented and adhered to by the Permittee.

FINDINGS

Issuance of this Amendment will extend Project-related take authorization for an additional Covered Species, compared to the Project as originally approved. Issuance of this Amendment will also result in revisions to three of the Avoidance and Minimization Measures made Conditions of Approval in the original ITP. It is not expected that this Amendment will increase Project-related impacts on the original

Covered Species (i.e., “impacts of taking” as used in Fish and Game Code Section 2081, subd. (b)(2)).

Discussion: This Amendment makes four changes to the ITP as originally issued. First, this Amendment provides take authorization for San Joaquin antelope squirrel and adds it to the list of Covered Species.

Second, this Amendment removes the requirement that trapping activities be conducted prior to installation of the Covered Species exclusion fence.

Third, this Amendment adds clarifying language to the requirement to trap and hand excavate in the Project Area buffer, where access may not be feasible.

Fourth, this Amendment modifies the Covered Species exclusion fence design criteria.

CDFW has determined that the changes to the list of Covered Species, removing the requirement that trapping will be conducted prior to Covered Species exclusion fence installation, clarifying the requirement to trap and hand excavate in the Project Area buffer, and modifying the Covered Species exclusion fence design criteria, as described in this Amendment, will not increase the amount of take or the severity of other impacts of the taking on the Covered Species.

Issuance of this Amendment does not affect CDFW's previous determination that issuance of the ITP meets, and is otherwise consistent with the permitting criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c).

Discussion: CDFW determined in December 2018 that the Project, as approved, met the standards for issuance of an ITP under CESA. This determination included findings that, among other things, the impacts of the taking would be minimized and fully mitigated and that the Project would not jeopardize the continued existence of the Covered Species. Those findings are unchanged with respect to this Amendment because while it authorizes incidental take of an additional species (San Joaquin antelope squirrel), the impacts of the taking of this additional species would be similarly minimized and fully mitigated through the purchase of the 4.97 acres of habitat credits from a State-approved conservation or mitigation bank, which will serve as compensatory mitigation for all three Covered Species, and would not jeopardize the continued existence of this additional species. Permittee's continued adherence to and implementation of the avoidance and minimization measures set forth in the ITP's Conditions of Approval and MMRP will minimize and fully mitigate impacts of the taking on the Covered Species.

None of the factors that would trigger the need for subsequent or supplemental environmental analysis of the Project under Public Resources Code section 21166 or

California Code of Regulations, title 14, sections 15162 and 15163, exist as a result of this Amendment.

Discussion: CDFW issued the ITP in December 2018 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, considering the mitigated negative declaration (SCH No. 2015041023) by California Department of Transportation (Caltrans) as the lead agency for the Project. As explained in the findings below, CDFW finds for purposes of CESA that this Amendment represents a major change in the potential Project-related impacts as originally approved. However, for the reasons explained above, CDFW concludes this Amendment is not a change in the Project that has the potential to create a new significant effect not previously analyzed, a substantial change in the circumstances under which the Project is being undertaken requiring major revisions to previous CEQA documents, or new information of substantial importance. As a result, CDFW finds that no additional subsequent or supplemental environmental review is required by CEQA as part of CDFW's approval of this Amendment.

CDFW finds that this Amendment is a Major Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

Discussion: This Amendment allows take coverage for an additional Covered Species, constituting a significant change in the potential Project-related impacts. This change expands take authorization, however will not increase the level of take, or the amount of habitat impacted. Therefore, this Amendment will significantly modify the nature of the permitted Project and the minimization, mitigation, and monitoring measures in the ITP. CDFW has determined that the change to the ITP constitutes a Major Amendment as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

The authorization provided by this Amendment is not valid until Permittee signs and dates the acknowledgement below, and returns one of the duplicate originals of this Amendment by registered first class mail to CDFW at:

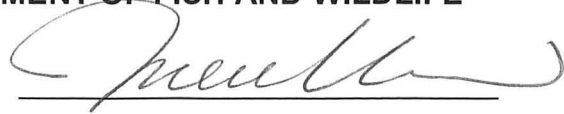
California Department of Fish and Wildlife
Habitat Conservation Planning Branch
Attention: CESA Permitting Program
Post Office Box 944209
Sacramento, California 94244-2090

Major Amendment No. 1
Incidental Take Permit 2081-2018-051-04
CALIFORNIA DEPARTMENT OF TRANSPORTATION
State Route 119-43/Enos Lane Intersection Improvement Project

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on

4/8/19



Julie A. Vance, Regional Manager
Region 4 – Central

ACKNOWLEDGMENT

The undersigned: (1) warrants that he or she is acting as a duly authorized representative of the Permittee, (2) acknowledges receipt of the original ITP and this Amendment, and (3) agrees on behalf of the Permittee to comply with all terms and conditions of the ITP as amended.

By:



Date:

4-8-2019

Printed Name:

Dena S. Gonzalez

Title:

Biology Senior