

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

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MAY 07 2019

HABITAT CONSERVATION
PLANNING BRANCH



AMENDMENT NO. 1
(A Major Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2012-005-04
Shimmick-Baker LLC
Madera Quarry in Madera County

INTRODUCTION

On 17 May 2013, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2012-005-04 (ITP) to Shimmick-Baker LLC (Permittee) authorizing take of California tiger salamander (CTS; *Ambystoma californiense*) (Covered Species) associated with and incidental to the Madera Quarry in Madera County, California (Project). The Project as described in the ITP originally issued by CDFW includes development and operation of a hardrock quarry. 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 Project includes development of a new 78-acre hardrock quarry that will mine 900,000 tons of aggregate annually, which will result in a total of approximately 45 million tons of material being mined over the 50-year life of the Project. The mining excavation area will be approximately 2,200 feet in length; 1,700 feet wide; and up to 200 feet in depth. Project implementation will also result in development of a 28-acre aggregate processing plant, hot mix asphalt plant, materials stockpile areas, administration complex, and parking areas. Additional construction included the alignment and widening of Road 209 and improvements to the Road 209 and State Highway 41 intersection, which have since been completed.

The Covered Activities were expected to result in the permanent loss of 135.7 acres of upland grassland habitat for the Covered Species. These impacts were to be mitigated through protection of 270 acres of Habitat Management (HM) lands to offset the impacts to non-native grassland and vernal pool habitat. To meet this requirement, the Permittee secured the ITP under a Letter of Credit in the amount of \$2,027,750.40. The Permittee also committed to provide for both the permanent protection and perpetual management of a minimum of 270 acres of Habitat Management (HM) lands located immediately north of the Project Area that provide potential breeding opportunities in the form of an existing stockpond and grassland upland refugia habitat for the Covered Species (Condition of Approval 9 of the ITP) within 18 months of ITP issuance.

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In a letter dated January 2, 2018, CDFW notified the Permittee of several issues of non-compliance with the ITP that CDFW was made aware of through the required quarterly compliance reports. Through these reports CDFW became aware of (1) new ground-disturbing activity occurring prior to Covered Species and/or small mammal burrow surveys and excavation (inconsistent with ITP Conditions of Approval (COA) 8.2 and 8.3); (2) erosion of soil stockpiles into on-site streams and swales (inconsistent with COA 8.11); and (3) the lack of protection of compensatory habitat within 18 months of the effective date of the ITP (inconsistent with COAs 9 and 10).

In response to the Notice of Noncompliance, in a series of letters spanning from January 24, 2018 to June 25, 2018, the Permittee requested an amendment to the ITP. In these letters the Permittee requested: (1) that the ITP's Project Description include a description of efforts to remediate 0.17 acres of ground disturbance occurring in the absence of implementing take minimization measures required in the ITP; (2) that the ITP's Project Description include a description of efforts to remediate the erosion of 0.73 acres into on-site streams and swales; (3) an increase in the acreage of Habitat Management lands to compensate for these additional impacts; and (4) they be allowed an additional 58 months to satisfy the compensatory mitigation requirement.

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

1. Updates the ITP's Contact Person to include an additional point of contact.
2. This Amendment documents impacts to upland habitat and on-site streams and swales occurring in the absence of implementing take minimization measures, as required in the ITP, for the Covered Species.
3. This Amendment describes additional measures that will be taken to remediate and compensate for impacts to and prevent future erosion of soil stockpiles into on-site streams and swales.
4. This Amendment describes the additional Habitat Management (HM) lands, funding, and security required to remediate and compensate for impacts to upland habitat and on-site streams and swales.
5. This Amendment allows the Permittee an additional 58 months to satisfy the compensatory mitigation requirement.
6. Updates the ITP's Notices section to include current CDFW regional contact information.

AMENDMENT

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

1. The second paragraph of page 1 shall be amended to read:

Permittee:	Shimmick-Baker LLC
Principal Officer:	Paul Cocotis, President
Contact Person:	Paul Cocotis <i>and Jeff Lessman</i> , 510-777-5000
Mailing Address:	8201 Edgewater Drive, Suite 202 Oakland, California 94621

2. The first sentence of the third to last paragraph in the Project Description section of the ITP, page 2, shall be amended to read:

The Project will also set aside ~~272~~ 270 acres of Habitat Management (HM) lands to offset impacts to non-native grassland and vernal pool habitat.

3. The first sentence of the last paragraph in the Impacts of the Taking on Covered Species section of the ITP, page 4, shall be amended to read:

The Project is expected to cause the permanent loss of 135.7 acres of upland grassland habitat for the Covered Species through the excavation and development of the 121 acres of the mining site (including stream alignment activities); the 14.6 acres associated with the Road 209 alignment and the Road 209 and State Highway 41 intersection improvements; and on approximately 0.06-acres of the proposed HM lands where new or enhanced CTS breeding ponds will be developed in accordance with a CDFW-approved wetland development plan (collectively, the Project Area). ***Additional impacts within the 135.7-acre Project Area include 0.90 acres of habitat disturbance occurring in the absence of implementing take minimization measures. Specifically, 0.17 acres of upland habitat subject to ground disturbance in the absence of pre-construction surveys and burrow excavation and 0.73 acres of impacts to upland habitat and on-site streams and swales to remedy uncontrolled erosion.***

4. Condition of Approval 8.11, on page 13, shall be amended to read:

Soil Stockpiles. Permittee shall ensure that soil stockpiles are placed where soil will not pass into potential CTS breeding pools or into any other "Waters of the State," in accordance with Fish and Game Code 5650. Permittee shall appropriately protect stockpiles to prevent soil erosion. ***Permittee shall prepare***

an Erosion Control Plan that shall include, but not be limited to, planned proximity of soil stockpiles to waterways, description of stockpile height, description of erosion control methods and materials, and information to support efficacy of erosion control methods and materials. The Permittee shall submit the Erosion Control Plan to CDFW for written approval prior to the start of Covered Activities. Covered Activities within the Project Area may not proceed until the Erosion Control Plan is approved in writing by CDFW.

5. MMRP:

The corresponding MMRP Measure 47, Page 12 shall be amended to read the same as number 4 of the ITP amendment above.

6. Condition of Approval 9, which begins on page 15, shall be amended to read:

Habitat Management Land Acquisition:

CDFW has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result with implementation of the Covered Activities. This determination is based on factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation.

To meet this requirement, the Permittee shall provide for both the permanent protection and management of ~~272~~ 270 acres of HM lands located immediately north of the Project Area that provide potential breeding opportunities in the form of an existing stockpond and grassland upland refugia habitat for CTS pursuant to Condition of Approval 9.2 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.3 below. Permanent protection and funding for perpetual management of compensatory habitat must be complete before starting Covered Activities or within ~~76~~ 48 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations.

7. MMRP:

The corresponding MMRP Measure 13, Page 3 shall be amended to read:

Permittee shall provide for the permanent protection and management of ~~272~~ 270 acres of Habitat Management (HM) lands by completing the transfer of fee title to a

CDFW-approved public agency or the recordation of a conservation easement pursuant to Government Code 65965, and calculation and deposit of the management funds (Condition of Approval 9.3). Permanent protection and perpetual management of compensatory habitat must be complete before starting Covered Activities, or within **76 48** months of the effective date of the ITP if Performance Security is provided pursuant to Condition 10.

The timing requirement for this measure in the Implementation Schedule column of the MMRP shall be amended to read:

Before commencing ground- or vegetation-disturbing activities (or within **76 48** months of issuance of the ITP if Performance Security is provided).

8. Conditions of Approval 9.1.1 through 9.1.4, which begin on page 15 of the ITP, shall be amended to read:

9.1 Cost Estimates. CDFW has estimated the cost of acquisition, protection and perpetual management of the HM lands as follows:

- 9.1.1 Land acquisition costs for HM lands identified in Condition of Approval 9.3 below, estimated at \$4,400.00/acre for **272 270** acres: **\$1,196,800.00** ~~\$1,188,000.00~~. Land acquisition costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements;
- 9.1.2 Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 9.2.5 below, estimated at **\$53,238.79** ~~\$52,847.33~~;
- 9.1.3 Interim management period funding as described in Condition of Approval 9.2.6 below, estimated at **\$106,477.58** ~~\$105,694.66~~;
- 9.1.4 Long-term management funding as described in Condition of Approval 9.3 below, estimated at \$2,478.55/acre for **272 270** acres: **\$674,165.60** ~~\$669,208.50~~. The long-term management endowment fund is estimated initially for the purpose of providing Security to ensure implementation of HM land management.
- 9.1.5. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to

CDFW as described in Condition of Approval 9.4, estimated at \$12,000.00.

9. MMRP:

The corresponding MMRP Measure 14, Page 3 shall be amended to read the same as number 8 above and the timing requirement in the Implementation Schedule column shall be amended to read:

Before commencing ground- or vegetation-disturbing activities (or within **76 48** months of issuance of the ITP if Performance Security is provided).

10. Condition of Approval 10.1 Security Amount, which begins on Page 20, shall be amended to read:

Security Amount. The Security shall be in the amount of **\$2,042,681.97** ~~\$2,027,750.40~~. This amount is based on the cost estimates identified in Condition of Approval 9.1 above.

11. Condition of Approval 10, **Performance Security**, last paragraph, which begins on Page 21; shall be amended to read:

Even if Security is provided, the Permittee must complete the required acquisition, protection and transfer of all HM lands and record any required conservation easements no later than **76 48** months from the effective date of this ITP. CDFW may require the Permittee to provide additional HM lands and/or additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the Permittee does not complete these requirements within the specified timeframe.

12. MMRP:

The corresponding MMRP Measure, Section a) "Security Amount" of MMRP Measure 28, Page 8, shall be amended to read the same as number 10 of this amendment. The last paragraph of MMRP Measure 28, Page 8 shall be amended to read the same as number 11 of this amendment. The timing requirement of MMRP Measure 28, Page 8 in the Implementation Schedule column shall be amended to read:

Before commencing ground- or vegetation-disturbing activities (or within **76 48** months of issuance of the ITP if Performance Security is provided).

13. The fourth and fifth paragraph, respectively, of the Notices section in the ITP, page 22, shall be amended to read:

Original cover with attachment(s) to:

Julie A. Vance, ~~Jeffrey R. Single~~, Ph. D., Regional Manager
California Department of Fish and Wildlife
Region 4 – Central Region
1234 East Shaw Avenue
Fresno, California 93710
Telephone (559) 243-4005
Fax (559) 243-4022

Unless Permittee is notified otherwise, CDFW's Regional Representative for purposes of addressing issues that arise during implementation of this ITP is:

Jim Vang, ~~Lisa Gymer~~, Staff Environmental Scientist
California Department of Fish and Wildlife
Central Region
1234 East Shaw Avenue
Fresno, California 93710
Telephone (559) 243-4014, extension **254 238**
Fax (559) 243-4020

14. MMRP:

In addition to those MMRP Measures outlined above, the timing requirement within the Implementation Schedule column of MMRP Measures 15 through 27, beginning on Page 4 and ending on Page 8, shall be amended to read:

Before commencing ground- or vegetation-disturbing activities (or within **76 48** months of issuance of the ITP if Performance Security is provided)

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 increase the amount of take of the Covered Species compared to the Project as originally approved; however, by implementing the acquisition and permanent protection and management of additional compensatory Habitat Management Lands acreage, it is not expected that this Amendment will

increase Project impacts on these species (i.e., "impacts of taking" as used in Fish and Game Code Section 2081, subd. (b)(2)).

Discussion: This Amendment reflects a change in the acreage of upland habitat and on-site streams and swales impacted by Project activities, though the total area of disturbance of the Project remains the same. This change in take assessment is based on ground-disturbing activities and erosion of soil stockpiles occurring in the absence of implementing take minimization measures as required by the ITP. This Amendment makes five specific changes to the ITP as originally issued. These changes include: (1) updates to the ITP's Contact Person to include an additional point of contact; (2) documentation of impacts to upland habitat and on-site streams and swales occurring in the absence of implementing take minimization measures required in the ITP, as originally issued; (3) addition of measures to more effectively prevent future erosion of soil stockpiles into on-site streams and swales; (4) description of additional Habitat Management (HM) lands acreage, funding, and security required to offset impacts to upland habitat and on-site streams and swales; (5) addition of 58 months to satisfy the compensatory mitigation requirement; and (6) updates to the ITP's Notices section to include current CDFW regional contact information.

CDFW has determined that impacts to upland habitat and on-site streams and swales occurred in the absence of take minimization measures, resulting in Project impacts that were greater than contemplated in the original ITP. Additional compensatory HM Lands are now proposed to be conserved to remediate and fully mitigate those impacts and additional time is needed to satisfy the compensatory mitigation requirement. Other Project activities authorized by the ITP and associated impacts remain unchanged.

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 May 2013 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 the Project and ITP as amended: (1) will have no effect on the severity of Project-related impacts on the Covered Species because of the requirement of additional HM Lands and (2) does not substantively alter the measures that will be undertaken to minimize and mitigate previously authorized impacts on the Covered 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 and additional HM Lands 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 May 2013 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, considering the Final Revised Environmental Impact Report certified by Madera County 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 Project 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 documents impacts to upland habitat and on-site streams and swales resulting from not implementing take minimization measures required by the ITP, increases the mitigation acreage required by the original ITP, increases the cost estimates and amount of funding required to satisfy habitat mitigation requirements, extends the Permittee's timeline to satisfy the mitigation requirements, and requires additional measures to more effectively control erosion within the Project Area. Therefore, this Amendment will significantly modify the scope or nature of the permitted Project or activity, or the minimization, mitigation, or 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 2081-2012-005-04
SHIMMICK-BAKER LLC
Madera Quarry

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on

4/16/18 4/13/19



Julie A. Vance
Regional Manager
Central Region

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: Jeff Lessman Date: 4/26/2019

Printed Name: JEFFREY C LESSMAN Title: PRESIDENT

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