

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



RECEIVED

JUN 10 2019

AMENDMENT NO. 8
(A Major Amendment)

HABITAT CONSERVATION
PLANNING BRANCH

California Endangered Species Act
Incidental Take Permit No. 2081-2013-025-04

California High-Speed Train Project Merced to Fresno Section Permitting Phase 1

INTRODUCTION

On March 12, 2014, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2013-025-04 (ITP) to the California High Speed Rail Authority (Permittee) authorizing take of California tiger salamander (*Ambystoma californiense*), Swainson's hawk (*Buteo swainsoni*), and San Joaquin kit fox (*Vulpes macrotis mutica*) (collectively, the Covered Species) associated with and incidental to the Permitting Phase 1 of the Merced to Fresno Section of the High-Speed Train (HST) Project (Project). The Project as described in the ITP originally issued by CDFW includes HST alignment beginning at the intersection of Avenue 17 and the Burlington Northern Santa Fe (BNSF) Railway, in the City of Madera, Madera County, California, and continuing south to an area on the southern side of State Route (SR) 41, adjacent to Los Angeles Street in the City of Fresno, Fresno County, California. The total length of the Project is 24.1 miles. The Project is the first of the nine California HST sections to be constructed; each section will function independently, but once joined together will create a statewide HST system. The HST will be an electrically powered, high-speed train with steel-wheel-on-steel-rail technology and state-of-the art safety, signaling, and automated train-control systems. The trains will be capable of operating at speeds of up to 220 miles per hour (mph) over a fully grade separated, dedicated track alignment. The Project will be built using a design/build (D/B) approach, a method of construction by which one D/B contractor works under a single contract with the Permittee to provide design and construction services. The Project as originally permitted in the ITP includes construction and installation of all Project components, including disturbance of up to 1,049.00 acres (hereafter, Construction Footprint). Construction may occur at any point along the Construction Footprint, and construction may occur at multiple locations simultaneously. The Project also includes operations, maintenance, and inspection activities within the Construction Footprint (O&M), and Mitigation Site activities.

In a letter dated July 23, 2014, the Permittee requested revisions to several ITP Conditions of Approval, specifically those that mentioned Designated Biologists, so that individuals with less species-specific training ("General Biological Monitors") could be used to perform less technical monitoring tasks. The Permittee also requested the

deletion of Condition of Approval 8.48 (O&M Tree and Wood Shrub Removal), and minor modifications to several other measures, primarily for clarification purposes. In a follow up email on August 13, 2014, the Permittee also requested that a single Condition of Approval be modified (Condition of Approval 6.2) related to the Designated Biologist to help expedite processing of an Amendment. CDFW issued Minor Amendment No. 1 on August 21, 2014 incorporating these changes.

In an email dated April 24, 2015, the Permittee requested a revision of the ITP's Project Description for the Fresno River crossing, to modify the design in this area from a viaduct design to one with a partial retained fill segment, and add two new staging areas. In addition, the Permittee asked to include the previously requested Designated Biologist changes not addressed in Minor Amendment No. 1. The Permittee also requested that Wildlife Crossing #5 be moved slightly to a new location (approximately 50 feet from the authorized location), and that changes to the land use and vegetation communities be updated, and the applicable land cover designation be substituted. Lastly, in addition to the increased mitigation that was required to offset the requested Construction Footprint increase, CDFW also required additional mitigation to address a non-compliance event that occurred on June 2014; 7.2 acres of fallow land and 2 acres of grassland habitat that were disturbed by the Permittee's contractor outside of the footprint permitted by the ITP. CDFW issued Major Amendment No. 2 on June 12, 2015 incorporating these changes.

In a set of emails dated September 25, 2015, May 2, 2015, and May 23, 2016, the Permittee requested a revision to the ITP to increase the size of the Construction Footprint by 770.87 acres to a total of 1,874.26 acres. The increase of the Construction Footprint accommodates: (1) four new road crossings; (2) additional impact areas for repaving of asphalt at the ends of planned overpasses; (3) utility relocations; (4) construction access; (5) road improvements and right-of-way (ROW) acquisitions; (6) a temporary 20-foot construction easement, north of the San Joaquin River, to install barrier fence around the HST ROW; and (7) a 2.7-mile extension of the northern boundary of the Construction Footprint. The Permittee also requested: (1) the removal of overcrossing and road improvements; (2) additional road alignments and locations; (3) modification of the design and/or placement of bridges and ROW crossings; and (4) the addition of a paralleling station, radio tower, and two new permanent access roads to be located in Madera County, California. Because of the increase in the Construction Footprint, the amendment request also included an increase in the amount of compensatory mitigation (Habitat Management (HM) lands and associated endowment), an increase in the Performance Security amount required to proceed with Covered Activities, and a request to extend the required timeframe to protect and transfer all HM lands and record any required conservation easements. Lastly, the State

endangered hairy Orcutt grass (*Orcuttia pilosa*, *HaOrGr*) was added to the list of Covered Species subject to take authorization. CDFW issued Major Amendment No. 3 on September 20, 2016 incorporating these changes.

In an email dated October 24, 2016, the Permittee requested an amendment to the ITP to extend the dry season work window beyond October 31st to November 15th for ground-disturbing activities at the Lazy K Ranch Mitigation Site. In addition, the Permittee requested that exclusion fencing for California tiger salamander be allowed for use during ground disturbance at the Lazy K Ranch, under the provision that the fencing would be removed when the proposed extended dry season work window expires. CDFW issued Minor Amendment No. 4 on October 31, 2016 incorporating these changes.

In an email dated April 5, 2017, the Permittee requested an amendment of the ITP to increase the size of the Construction Footprint by 155.72 acres to a total of 2,039.18 acres. This increase in the Construction Footprint is necessary to accommodate the full extent of the footprint for the north extension of the Project. The north extension includes 2.89 miles of guideway, construction of an at-grade bridge over Schmidt Creek, a wildlife crossing north of Road 27, and a four-lane overcrossing at Road 26. Additional design refinements in the request include structural design changes to the Avenue 17 overcrossing, which includes replacing a planned retaining wall with an engineered embankment, an additional 0.35 acres of land at El Paso Road, 0.008 additional acres at Ridgedale Drive to accommodate final design of the road, and the inclusion of approximately 14.97 acres of the BNSF transportation corridor between Avenue 17 and Avenue 19 to be used for geotechnical investigation, utility relocation and potential access improvements between the BNSF and HST corridors. In addition to the major construction elements and design refinements listed above, Covered Activities that will occur within the increased Construction Footprint include the construction and improvement of private and public access ways, structure demolitions, utility relocation and protection, and fencing. CDFW issued Major Amendment No. 5 on June 23, 2017 incorporating these changes.

In a letter dated September 19, 2017, the Permittee requested an amendment of the ITP to include an alternative option to fulfill their mitigation obligation that increased as a result of the increased Construction Footprint as issued in Major Amendment No. 5. To address this request the ITP was revised to: (1) provided an option to purchase 6.9 acres (6.43 acres of currently released vernal pool fairy shrimp credits that are also designated as "future release" California tiger salamander aquatic breeding habitat credits and 0.47 acres of currently released California tiger salamander upland habitat that has been identified to hold water with sufficient duration to support breeding) of

Covered Species credits from CDFW-approved Dutchman Creek Conservation Bank; (2) provided a modified timeframe in which the remaining mitigation obligation must be met; and (3) revised the Performance Security amount required in order to proceed with Covered Activities. CDFW issued Major Amendment No. 6 on August 3, 2018 incorporating these changes.

In a letter dated September 24, 2018, the Permittee requested further revision to the ITP, as amended, to revise the Project Description to allow for an increase in the Construction Footprint. The Construction Footprint increase accommodates new Work Areas for improvements to Dry Creek Canal and the use of the roads adjacent to Dry Creek Canal for construction access. The new Work Areas would result in an increase of 1.53 acres of permanent impacts. In a letter dated December 3, 2018, the Permittee requested amending the ITP, as amended, to accommodate construction of an intrusion protection barrier (IPB) within specific limits of the HST alignment in Fresno County to mitigate the risk of any potential derailed trains from the adjacent private rail lines from entering the path of the HST. The IPB would be a concrete wall and will not require additional Project Construction Footprint area beyond what was already permitted. IPB construction would occur in three locations totaling 4,060 linear feet, within downtown Fresno, along the "Fresno Trench." CDFW issued Major Amendment No.7 on February 28, 2019.

In issuing the ITP, Minor Amendment No. 1, Major Amendment No. 2, Major Amendment No. 3, Minor Amendment No. 4, Major Amendment No. 5, Major Amendment No. 6, and Major Amendment No. 7 (collectively, the ITP, as amended), CDFW found, among other things, that Permittee's compliance with the Conditions of Approval would fully mitigate impacts to the Covered Species and would not jeopardize the continued existence of the Covered Species.

In a letter dated May 1, 2019, the Permittee requested further revision to the ITP, as amended, to increase the extent of take of HaOrGr; increase the habitat management (HM) lands requirements for HaOrGr; allow the take of HaOrGr to proceed with Security in place; change pre-construction botanical inventory requirements to require only focused surveys for HaOrGr; revise HaOrGr buffer and salvage requirements to reduce impacts to the species by eliminating the requirement to salvage all HaOrGr within 50 feet of the Construction Footprint, including outside of the right-of-way; and, because the impact/salvage areas have low HaOrGr seed abundance and high invasive plant seed abundance, eliminate the requirement to salvage plants in the Construction Footprint in lieu of CDFW's acceptance of the required Habitat Enhancement Plan for HaOrGr.

This Major Amendment No. 8 (Amendment) makes the following changes to the ITP, as amended:

First, this Amendment changes the "Impacts of the Taking on Covered Species" section to reflect that HaOrGr was discovered in an additional vernal pool that would be impacted within the Construction Footprint. The extent of take of HaOrGr is increased from 0.94 to 1.85 acres.

Second, this Amendment changes Condition of Approval 8.58.2.2, increasing the HM lands requirements commensurate with the increased impacts to HaOrGr

Third, this Amendment changes Condition of Approval 8.58.2.3 to allow the Permittee to focus botanical inventories on HaOrGr.

Fourth, this Amendment changes Condition of Approval 8.58.2.4 to remove the requirement for the Permittee to salvage and translocate all HaOrGr within 50 feet of the Construction Footprint.

Fifth, this Amendment changes Condition of Approval 8.58.2.1 by replacing the HaOrGr salvage and translocation requirement with a requirement for the Permittee to obtain CDFW's written approval of the HaOrGr Habitat Enhancement Plan prior to initiating vegetation- or ground-disturbing activities that would cause take of HaOrGr or affect its habitat and strikes Condition of Approval 8.58.2.5 to be consistent with the revised Condition of Approval 8.58.2.1.

Sixth, this Amendment changes Condition of Approval 9 to allow the Permittee to provide Security in order to proceed with Covered Activities that would take HaOrGr.

Seventh, this Amendment updates impact and mitigation values in Table 6 of the ITP to reflect the increases in this Amendment as well as changes to Table 6 that should have occurred with Amendment 7.

Eighth, this Amendment adds Condition of Approval 10.2.1 and changes Condition of Approval 10.3 to allow Security for HaOrGr HM Lands requirements to be in the form of a binding contract with a mitigation provider, subject to CDFW's written acceptance of that contract as Security.

AMENDMENT

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

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1. The first paragraph of the section entitled "Hairy Orcutt Grass" in the "Impacts of the Taking on Covered Species" section of the ITP, as amended, shall be further amended to read as follows:

During seasonal botanical surveys conducted during the spring of 2016, two vernal pools within the Construction Footprint and three vernal pools within the 250-foot buffer zone were found to contain hairy Orcutt grass (HaOrGr). **Surveys in 2017 found HaOrGr in an additional pool within the Construction Footprint.** An additional seven vernal pools were impacted in the construction of the access road and were located directly adjacent to the ~~five~~**six** surveyed vernal pools found to contain HaOrGr. The vegetation cover type that could function as habitat for HaOrGr was quantified during the botanical surveys and later reconnaissance surveys conducted by CDFW to estimate the incidental take in the form of mortality and indirect impacts that will occur as a result of Project build out. Five vernal pools were directly impacted by the new access road construction and ~~two~~**three** will be directly impacted as a result of future construction. The direct permanent impacts to all ~~seven~~**eight** vernal pools totals ~~0.94~~**1.85** acres. Two vernal pools were indirectly impacted by the new access road construction and three vernal pools will be indirectly impacted as a result of future construction. The indirect impacts to all five vernal pools totals 3.35 acres (Table 5).

2. Table 5 of the ITP, as amended, is amended to read as follows:

Table 5. Covered Species Habitat Impacts

Covered Species	Habitat Type	Impact Type	Impact Acres
California tiger salamander	Upland refugia (California annual grassland, pasture, barren, fallow field, inactive agriculture, and ruderal)	Permanent	150.53
		Permanent (Direct)	6.47
	Aquatic breeding (vernal pool, open water, seasonal wetland)	Permanent (Indirect)	6.07

Covered Species	Habitat Type	Impact Type	Impact Acres
Swainson's hawk	Foraging (California annual grassland, pasture, barren, fallow field, inactive agriculture, ruderal, field crops, row, crops, and irrigated hay crops)	Permanent	393.06
	Nesting (riparian and eucalyptus woodland)	Permanent	1 nesting tree(s)
San Joaquin kit fox	Upland (California annual grassland, pasture, barren, fallow field, inactive agriculture, and ruderal)	Permanent	438.90
Hairy Orcutt grass	vernal pool, seasonal wetland	Permanent (Direct)	0.941.85
		Permanent (Indirect)	3.35

3. Condition of Approval 8.58.2.1 of the ITP, as amended, shall be further amended to read as follows:

~~HaOrGr Salvage, Translocation and Enhancement Plan.~~ The Designated Biologist(s) shall prepare a HaOrGr Salvage, Translocation and Enhancement Plan (Enhancement Plan). The Enhancement Plan shall include, but not be limited to, a discussion (and map) of the proposed translocation and enhancement site that shall encompass no less than 9.84 acres of intact, created, or restored vernal pool(s) that contain physical soils characteristics associated with claypan vernal pool habitat; ~~an identification of the hand excavation, handling, storage, germination, and translocation methods for salvaged seed, duff and plants collected from the Construction Footprint in accordance with Condition of Approval 8.58.2.5 below; identification and layout of where translocated individual germinated plants, duff, and seed will be placed that has been collected in accordance with Conditions of Approval 8.58.1.1 and 8.58.2.5; a five-year monitoring plan that shall include at least three monitoring events from April through July annually; quantifiable multi-year survival rates and other success criteria; pesticide free invasive species eradication methods and other adaptive management strategies; and a five year contingency plan to remedy unsuccessful~~

translocations. The Enhancement Plan shall be submitted to CDFW for approval and ~~Covered Activities shall not proceed anywhere within the Project Area which represents potential vernal pool or wetland habitat (as depicted in the Baseline Map Book, Exhibit 5, Map 55) suitable habitat for HaOrGr.~~ **Prior to initiating vegetation- or ground-disturbing activities that would cause take of HaOrGr or affect its habitat (as depicted in the Baseline Map Book, Exhibit 5, Map 55), the Permittee shall obtain CDFW's written acceptance of the Habitat Enhancement Plan for HaOrGr.** Only the approved Designated Biologist(s) are authorized to collect, handle, and translocate HaOrGr to the enhancement and translocation site.

4. Condition of Approval 8.58.2.2 of the ITP, as amended, shall be further amended to read as follows:

Permanent Protection of Habitat Management Lands. ~~With the exception of the one-time seed and plant collection as described in Condition of Approval 8.58.1.1 above, prior to commencement of any vegetation or ground disturbance Covered Activities in all areas of suitable habitat for HaOrGr (as depicted in the Baseline Map Book, Exhibit 5, Map 55) Permittee shall (1) permanently preserve and fund the perpetual management of 17.16~~**20.80** acres of Habitat Management lands demonstrated through protocol level botanical surveys to be occupied habitat for HaOrGr; and (2) shall permanently preserve and fund the perpetual management of ~~8.58~~**10.40** acres of enhancement and translocation habitat as identified in the Enhancement Plan and in accordance with Condition of Approval 8.52.2.1 above. Permittee shall obtain CDFW written approval of any acquisition and perpetual protection and management of the Habitat Management and enhancement and translocation lands in accordance with Conditions of Approval 9.3 and 9.4 below.

5. Condition of Approval 8.58.2.3 of the ITP, as amended, shall be further amended to read as follows:

HaOrGr Pre-construction Surveys. Prior to starting vegetation- or ground-disturbance Covered Activities in all Work Areas depicted in the Baseline Map Book, Exhibit 5, Baseline Map 55, the Designated Biologist shall conduct **focused** botanical surveys **for HaOrGr**. The botanical surveys shall be floristic in nature and cover the entire Work Area and shall be timed appropriately to detect HaOrGr. These surveys shall provide 100 percent visual coverage of the Work Area and a 50-foot buffer zone. **Permittee shall clearly mark all HaOrGr locations found within the right-of-way.** Permittee shall provide the survey results to CDFW in a

written report no more than 30 days prior to the beginning of Covered Activities within the Work Area.

6. Condition of Approval 8.58.2.4 of the ITP, as amended, shall be further amended to read as follows:

HaOrGr Avoidance Buffer and Fencing. All HaOrGr *in the HSR right-of-way* that would not be directly impacted by vegetation- or ground-disturbing activities shall be avoided by a minimum 50 feet *to the extent feasible. In accordance with direction from a Designated Biologist, Ssturdy*, highly visible, orange plastic construction avoidance fencing shall be installed around HaOrGr avoidance areas *in the HSR right-of-way and at work area boundaries within 50 feet of HaOrGr outside of the right-of-way* located in accordance with direction from the Designated Biologist. Fencing shall be securely staked and installed in a durable manner that would be reasonably expected to withstand wind and weather events and last at least through the construction period. Fencing shall be inspected at least biweekly during the construction period. Fencing shall be removed upon completion of Covered Activities in the Work Area containing the fencing. Any HaOrGr that cannot be avoided by a minimum of 50 feet shall be salvaged and translocated in accordance with Condition of Approval 8.58.2.5 below.

7. Condition of Approval 8.58.2.5 of the ITP, as amended, shall be stricken from the ITP, as amended.:

HaOrGr Translocation. Prior to initiating vegetation- or ground-disturbing activities and no more than 60 days after surveys have been completed in accordance with Condition of Approval 8.58.2.3 if any HaOrGr are found in the Work Area or within the 50-foot buffer zone, the Designated Biologist shall collect HaOrGr after the floristic period has ended (July 1 through August 15) along with the duff collected by scraping no more than the first two (2) inches of topsoil from the source vernal pool or wetland and translocated (September 15 through October 31) in accordance with the Enhancement Plan (Condition of Approval 8.58.2.1). The Permittee shall obtain CDFW's written approval of the translocation and enhancement receiver site for translocation purposes prior to taking (excavating, moving, or otherwise disturbing) any HaOrGr and shall have completed all compensatory mitigation requirements as set forth in Condition of Approval 8.58.2.2.

8. Condition of Approval 9 of the ITP, as amended, paragraph 5 following the heading "Habitat Management Land Acquisition," is amended to read as follows:

Further, prior to commencement of any Covered Activities in all areas of suitable habitat for HaOrGr, Permittee shall (1) permanently preserve and fund the perpetual management of ~~17.46~~**20.08** acres of Habitat Management lands demonstrated through protocol level botanical surveys to be occupied habitat for HaOrGr; and (2) shall permanently preserve and fund the perpetual management of ~~8.58~~**10.40** acres of enhancement and translocation habitat as identified in the Enhancement Plan and in accordance with Condition of Approval 8.58.2.1 above; **or (3) shall provide Security for acquisition and perpetual management of the acres described, and implementation of the Enhancement Plan as described, in (1) and (2) of this paragraph; and shall obtain CDFW's written acceptance of the Security.** Permittee shall obtain CDFW written approval of any acquisition and perpetual protection and management of the Habitat Management and enhancement and translocation lands in accordance with Conditions of Approval 9.3 and 9.4 below.

9. Table 6 of the ITP, as amended, is amended to read as follows:

Table 6. Compensatory Mitigation Acres for Covered Species

Impact Type	Acres
<i>California Tiger Salamander</i>	
Indirect Permanent Breeding Habitat	6.07
Direct Permanent Breeding Habitat	6.47
Direct Permanent Upland Refugia/Foraging Habitat	150.53
Total Impacts	163.07
Upland Compensatory Mitigation	301.06
Breeding Habitat Compensatory Mitigation	25.48
Total Compensatory Mitigation	326.54
<i>Swainson's Hawk</i>	
Direct Permanent Foraging Habitat	392.42 393.06
Direct Permanent Nesting Habitat	1 nest tree
Total Impacts	392.42 393.06
Total Compensatory Mitigation	392.42 393.06
<i>San Joaquin Kit Fox</i>	
Direct Permanent Preferred Foraging/Dispersal Habitat	67.80
Direct Permanent Marginal Dispersal Habitat	370.46 371.10
Total Impacts	438.26 438.90
Total Compensatory Mitigation	320.83 321.47

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Impact Type	Acres
<i>Hairy Orcutt Grass</i>	
Direct Permanent	0.941.85
Indirect Permanent	3.35
Total Impacts	4.295.20
Compensatory Habitat Mitigation Lands	17.1620.80
Enhancement and Translocation Lands	8.5810.40
Total Compensatory Mitigation	25.7431.20

10. The following Condition of Approval 10.2.1 is added to the ITP, as amended, on page 77 of the ITP:

Security for HaOrGr HM Lands. The Security shall be in the form of a binding contract between Permittee and a mitigation company to preserve and fund perpetual management of HaOrGr HM lands, and implement the Enhancement Plan, as described in Conditions of Approval 8.58.2.1 and 9 of this ITP.

11. Condition of Approval 10.3 of the ITP, as amended, is amended as follows:

Security Timeline. The Security shall be provided to CDFW within 30 days after the effective date of this Amendment and within 30 days after the effective date of any subsequent amendment(s), prior to commencement of vegetation- or ground-disturbing activities or any other Covered Activities, whichever comes first. ***For the HaOrGr security requirement described in Conditions of Approval 9 and 10.2.1, Permittee shall obtain CDFW's written acceptance of the Security prior to commencing Covered Activities that may cause the take or affect the habitat of HaOrGr.***

The corresponding measures in the Mitigation Monitoring and Reporting Plan (MMRP) (Attachment 1 of the ITP, as amended) shall be further amended to read the same as above. All terms and conditions of the ITP, as amended, and the 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 avoidance, minimization, and mitigation measures contained in the ITP, as amended, and in this Amendment, this Amendment will not increase Project impacts on the Covered Species (i.e., "impacts of taking" as used in Fish and Game Code Section 2081, subd. (b)(2)).

Discussion: This Amendment makes eight specific changes to the ITP, as amended. First, this Amendment changes the "Impacts of the Taking on Covered Species" section to reflect that HaOrGr was discovered in an additional vernal pool that would be impacted within the Construction Footprint. The extent of take of HaOrGr is increased from 0.94 to 1.85 acres.

Second, this Amendment changes Condition of Approval 8.58.2.2, increasing the HM lands requirements commensurate with the increased impacts to HaOrGr.

Third, this Amendment changes Condition of Approval 8.58.2.3 to allow the Permittee to focus botanical inventories on HaOrGr.

Fourth, this Amendment changes Condition of Approval 8.58.2.4 to remove the requirement for the Permittee to salvage and translocate all HaOrGr within 50 feet of, or within, the Construction Footprint.

Fifth, this Amendment changes Condition of Approval 8.58.2.1 by replacing the HaOrGr salvage and translocation requirement to a requirement for the Permittee to obtain CDFW's written approval of the HaOrGr Habitat Enhancement Plan prior to initiating vegetation or ground-disturbing activities and strikes Condition of Approval 8.58.2.5 to be consistent with the revised Condition of Approval 8.58.2.1.

Sixth, this Amendment changes Condition of Approval 9 to allow the Permittee to provide Security in order to proceed with Covered Activities that would take HaOrGr.

Seventh, this Amendment updates impact and mitigation values in Table 6 of the ITP to reflect the increases in this Amendment as well as changes to Table 6 that should have occurred with Amendment 7.

Eighth, this Amendment adds Condition of Approval 10.2.1 and changes Condition of Approval 10.3 to allow Security for HaOrGr HM Lands requirements to be in the form of

a binding contract with a mitigation provider, subject to CDFW's written acceptance of that contract as Security.

CDFW has determined that although the Amendment may result in an increase in take of the Covered Species, any additional impacts of the taking that would arise will be minimized and fully mitigated through implementation of the Conditions of Approval. Accordingly, there will be no increase in Project impacts to the Covered Species with this Amendment.

Issuance of this Amendment does not affect CDFW's previous determination that issuance of the ITP, as amended 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 March 2014 that the Project as approved, met the standards for issuance of an ITP under CESA. CDFW determined in August 2014, in June 2015, in September 2016, in October 2016, in June 2017, in August 2018, and in February 2109 that Minor Amendment No. 1, Major Amendments No. 2 and No. 3, Minor Amendment No. 4, and Major Amendments No. 5, No. 6, and No. 7, respectively, to the ITP 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 increase the habitat compensation in proportion to the increase in impact due to the increase in habitat impact so that the fully mitigate standard is still met, (2) does not alter the Permittee's continued adherence to and implementation of the avoidance and minimization measures set forth in the Conditions of Approval in the ITP, as amended, and MMRP which 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 original ITP in March 2014, Minor Amendment No. 1 to the ITP in August 2014, Major Amendment No. 2 in June 2015, Major Amendment No. 3 in September 2016, Minor Amendment No. 4 in October 2016, Major Amendment No. 5 in June 2017, Major Amendment No. 6 in August 2018, and Major Amendment No. 7 in February 2019 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, considering

the California High-Speed Train: Merced to Fresno Section Final Project Environmental Impact Report/Environmental Impact Statement (EIR/EIS) (SCH No. 2009091125) certified by the lead agency, California High-Speed Rail Authority, on May 3, 2012; Addendum 2013-1 to the Final Merced to Fresno Project Section EIR/EIS (October 2013); and Addendum 2013-2 to the Final Merced to Fresno Section Project EIR/EIS (November 2013). As explained in the findings below, CDFW finds for purposes of CESA that this Amendment represents a major change to the ITP, as amended. However, for the reasons explained above, CDFW concludes that approval of this Amendment will not result in and does not have the potential to create any new significant or substantially more severe environmental effects than previously analyzed and disclosed by California High Speed Rail Authority during its lead agency review of the Project, particularly with respect to the impacts authorized by CDFW pursuant to the ITP, as amended. As a result, CDFW finds that no 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 increases the covered extent of take of HaOrGr from 0.94 to 1.85 acres, increases the HM lands requirements commensurate with the increased impacts to HaOrGr, allows the Permittee to reduce the scope of botanical inventories to focus on HaOrGr, removes the requirement for the Permittee to salvage and translocate all HaOrGr within 50 feet of the Construction Footprint, replaces the HaOrGr salvage and translocation requirement with a requirement for the Permittee to obtain CDFW's written approval of the HaOrGr Habitat Enhancement Plan prior to initiating vegetation or ground-disturbing activities, updates impact and mitigation values in Table 6 of the ITP to reflect the increases in this Amendment as well as changes to Table 6 that should have occurred with Amendment 7, allows the Permittee to provide Security in order to proceed with Covered Activities that would take HaOrGr, and allows Security for HaOrGr HM Lands requirements to be in the form of a binding contract with a mitigation provider, subject to CDFW's written acceptance of that contract as Security.

As described above, these changes to the ITP, as amended, will increase the Project impacts on Covered Species previously analyzed and authorized by the ITP, as amended, affect Permittees' substantive mitigation obligations under the ITP, as amended, and will increase temporal impacts on the Covered Species. Therefore, this Amendment will substantially increase the scope or nature of the permitted Project or activity, or significantly modify the minimization, mitigation, or monitoring measures in the ITP, as amended. CDFW has determined that the changes to the ITP, as amended

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

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on

5/31/19

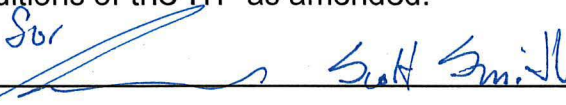


Julie A. Vance
Regional Manager
Central Region

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:

Sub
 Mark A. McLoughlin

Date: 5/31/19

Printed Name:

Mark A. McLoughlin

Title:

Director of Environmental Services

Major Amendment No. 8
Incidental Take Permit 2081-2013-025-04
CALIFORNIA HIGH-SPEED RAIL AUTHORITY
CALIFORNIA HIGH-SPEED TRAIN PROJECT
Merced to Fresno Section Permitting Phase 1

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