

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
BAY DELTA REGION 3
2825 CORDELIA ROAD, SUITE 100
FAIRFIELD, CA 94534



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HABITAT CONSERVATION
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AMENDMENT NO. 1
(A Major Amendment)

California Endangered Species Act
Incidental Take Permit No. 2081-2016-060-03
California Department of Transportation District 4
Interstate 680 Freeway Performance Project in Alameda County

INTRODUCTION

On June 29, 2017, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2016-060-03 (ITP) to the California Department of Transportation (Caltrans) (Permittee) authorizing take of California tiger salamander (*Ambystoma californiense*) and Alameda whipsnake (*Masticophis lateralis euryxanthus*) (collectively, the Covered Species) associated with and incidental to the Interstate 680 Freeway Performance Project in Alameda County, California (Project).

The Project as described in the ITP originally issued by CDFW includes installation of ramp metering systems for 18 on-ramps/connectors along Interstate 680 (I-680) in Alameda County. Four of these on-ramps/connectors will be widened using retaining walls to provide for High Occupancy Vehicle (HOV) Lanes, additional mixed flow lanes and California Highway Patrol (CHP) pullouts. New traffic operations systems (TOS) elements will also be installed including 13 closed circuit television systems, three changeable message signs and 50 one-directional traffic monitoring stations (TMS). Maintenance Vehicle Pullouts (MVP) will also be constructed for access to TOS elements. 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.

On October 31, 2019, Caltrans in response to a non-compliance letter dated September 10, 2019 from CDFW requested a major amendment to the ITP for additional impacts to Covered Species habitat that occurred to areas included in the Biological Study Area but not identified as areas of impact in the original ITP application. The major amendment is requested for the addition of impacts associated with clearing, grubbing and trenching for wildlife exclusion fencing (WEF) and also includes removal of Covered Activities for widening at the Sunol Boulevard southbound on-ramp, revisions to impact analysis, and an update to the associated compensatory mitigation.

The unauthorized grading, clearing and grubbing occurred to an area of approximately 1,000 linear feet (872 square feet or 0.02 acres). The action occurred without immediate notification to CDFW, without proper delineation of property boundaries, without proper delineation of Covered Species habitat, without proper compliance monitoring and without proper installation of a temporary Covered Species barrier. CDFW was not notified of this action until after it had taken place.

The revisions to Covered Species habitat impacts include an increase in temporary impacts to Covered Species habitat as a result of unauthorized activities to 0.02 acres to Covered Species habitat.

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

1. Update Project Description Page 2, Paragraph 2 for land cover analysis and Table 1.
2. Update the Project Description on Page 2, Paragraph 3 to reflect impact analysis revisions.
3. Update Impact Analysis Table 2, on Page 2.
4. Update Impact Analysis Table 2,
5. Update the Project Description on Page 6, Paragraph 2 to reflect impact analysis revisions.
6. Update Condition 8, Habitat Management Land Acquisition and Restoration on Page 16, Paragraph 2 to reflect impact analysis revisions.
7. Update Habitat Management Land Acquisition and Restoration on Page 17, Condition of Approval 8.1.1. to 8.1.6. to reflect impact analysis revisions.
8. Update Habitat Management Land Acquisition and Restoration on Page 17, Condition of Approval 8.2. to reflect impact analysis revisions.
9. Update Habitat Management Land Acquisition and Restoration on Page 21, Condition of Approval 8.6. to reflect impact analysis revisions.
10. Update Performance Security on Page 21, Condition of Approval 9.1 to reflect impact analysis revisions.

AMENDMENT

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

1. Update Project Description Page 2, Paragraph 2 for land cover analysis as follows:

The Biological Study Area (BSA) illustrated in Figure 1 consists of ~~793.23~~ ***793.25*** acres of which consists of 479.64 acres of previously paved surfaces of the freeway, on- and off-ramps and adjacent street surfaces. Approximately 244.26 of the 793.23 acres is considered urbanized or landscaped areas. Approximately ~~62.63~~ ***62.65*** acres of the BSA is considered grassland, 5.10 acres oak woodland, 0.30 acres riparian woodland, 0.08 acres freshwater marsh and 1.22 acres is considered stream channel. The Project will result in ~~47.63~~ ***17.65*** acres of temporary impacts and 5.09 acres of permanent impacts as specified in the Table 1 below.

Table 1. Biological Study Area Land Cover Types.

Vegetation/Land Cover Type	Total Area within BSA (Acres)	Temporary Impacts (Acres)	Permanent Impacts (Acres)	Total Impacts (Acres)
Grassland	62.63 <i>62.65</i>	4.59 <i>4.61</i>	0.97	5.56
Oak Woodland	5.10	0.26	0.00	0.26
Riparian Woodland	0.30	0.00	0.00	0.00
Freshwater Marsh	0.08	0.00	0.00	0.00

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Interstate I-680 Freeway Performance Project

Vegetation/Land Cover Type	Total Area within BSA (Acres)	Temporary Impacts (Acres)	Permanent Impacts (Acres)	Total Impacts (Acres)
Creek Channel	1.22	0.00	0.00	0.00
Urbanized/Landscaped	244.26	12.78	4.12	16.90
Paved Road	479.64	--	--	--
Total	793.23 793.25	17.63 17.65	5.09	22.72 22.74

2. Update the Project Description on Page 2, Paragraph 3 to reflect impact analysis revisions as follows:

The Project will result in temporary impacts to ~~4.85~~ **4.87** acres of suitable California tiger salamander (CTS) habitat and 0.97 acres of permanent impact to CTS suitable habitat as illustrated in Table 2. The Project will result in temporary impacts to ~~4.85~~ **4.87** acres of Alameda whipsnake (AWS) suitable habitat and permanent impacts to 0.97 acres of suitable AWS habitat as illustrated in Table 3. These areas of impact are concurrent and occur to the same total area of ~~5.82~~ **5.84** acres of temporary and permanent impact areas, collectively.

3. Update Impact Analysis Table 2, on Page 2 as follows:

Table 2. Impacts to Suitable California Tiger Salamander Habitat

Land Cover Type	Temporary Impacts (Acres)	Permanent Impacts (Acres)	Total Impacts (Acres)
Grassland	4.59 4.61	0.97	5.56 5.58
Oak Woodland	0.26	0.00	0.26
Total	4.85 4.87	0.97	5.82 5.84

4. Update Impact Analysis Table 3, on Page 2 as follows:

Table 3. Impacts to Suitable Alameda Whipsnake Habitat.

Land Cover Type	Temporary Impacts (Acres)	Permanent Impacts (Acres)	Total Impacts (Acres)
Grassland	4.59 4.61	0.97	5.56 5.58
Oak Woodland	0.26	0.00	0.26
Total	4.85 4.87	0.97	5.82 5.84

5. Update the Project Description on Page 6, Paragraph 2 to reflect impact analysis revisions as follows:

Impacts to AWS include 0.97 acres of permanent impacts and ~~4.85~~ **4.87** acres of temporary impacts to upland foraging and dispersal habitat. Impacts to CTS include 0.97 acres of permanent impacts and ~~4.85~~ **4.87** acres of temporary impacts to upland foraging and dispersal habitat. All impacts overlap for both Covered Species.

6. Update Condition 8, Habitat Management Land Acquisition and Restoration on Page 16, Paragraph 2 to reflect impact analysis revisions as follows:

To meet this requirement, the Permittee shall either purchase ~~7.76~~ **7.78** acres of Alameda whipsnake credits and ~~7.76~~ **7.78** acres of California tiger salamander upland credits from a CDFW-approved mitigation or conservation bank; and if dual Alameda whipsnake/California tiger salamander credits are available the Permittee shall purchase ~~7.76~~ **7.78** acres of dual species credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 8.2), OR shall provide for both the permanent protection and management of a minimum of ~~7.76~~ **7.78** acres of Habitat Management (HM) lands (assuming the HM lands supports both Covered Species) pursuant to Condition of Approval 8.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 8.4 below. Compensatory habitat shall include upland foraging and dispersal habitat for Covered Species through preservation, restoration, enhancement, and/or creation of habitat that is the same or better quality as upland habitat and the riparian habitat that will be impacted. Permanent protection and funding for perpetual management of compensatory habitat must be complete before starting Covered Activities, or within 18 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 8 below for all uncompleted obligations. The Permittee shall also restore on-site ~~4.85~~ **4.87** acres of temporarily impacted Covered Species habitat pursuant to Condition of Approval 8.6 below.

The corresponding language in the MMRP (Attachment 1) shall be determined as amended to reflect the changes noted here in condition of approval 8.

7. Update Habitat Management Land Acquisition and Restoration on Page 17, Condition of Approval 8.1.1. to 8.1.6. to reflect impact analysis revisions as follows:

8.1 Cost Estimates. CDFW has estimated the cost of acquisition, protection, and perpetual management of the HM lands and restoration of temporarily disturbed habitat as follows:

8.1.1. Land acquisition costs for HM lands identified in Condition of Approval 8.3 below, estimated at \$22,000.00 per acre; for ~~7.76~~ **7.78** acres: \$170,720.00. Land acquisition costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements;

8.1.2. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 8.3.5 below, estimated at ~~\$35,342.00~~ **\$35,381.00**;

8.1.3. Interim management period funding as described in Condition of Approval 8.3.6 below, estimated at ~~\$20,676.00~~ **\$20,728.00**;

8.1.4. Long-term management funding as described in Condition of Approval 8.4 below, estimated at ~~\$13,988.00~~ **\$13,972.00** per acre; for ~~7.76~~ **7.78** acres: ~~\$108,550.00~~

\$108,705.00. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.

8.1.5. 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 8.5, estimated at \$3,000.00.

8.1.6 Restoration of on-site temporary effects to Covered Species habitat as described in Condition of Approval 8.6, calculated at \$2,500.00 per acre; for ~~4.85~~ **4.87** acres: \$12,125.00.

The corresponding language in the MMRP (Attachment 1) shall be determined as amended to reflect the changes noted here in condition of approval 8.1.1. to 8.1.6.

8. Update Habitat Management Land Acquisition and Restoration on Page 17, Condition of Approval 8.2. to reflect impact analysis revisions as follows:

8.2 Covered Species Credits. Permittee shall purchase ~~7.76~~ **7.78** acres of Alameda whipsnake credits and ~~7.76~~ **7.78** acres of California tiger salamander upland credits from a CDFW-approved mitigation or conservation bank and if dual Alameda whipsnake/California tiger salamander credits are available the Permittee shall purchase ~~7.76~~ **7.78** acres of dual species credits prior to initiating Covered Activities, or no later than 18 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 9 below.

The corresponding language in the MMRP (Attachment 1) shall be determined as amended to reflect the changes noted here in condition of approval 8.2.

9. Update Habitat Management Land Acquisition and Restoration on Page 21, Condition of Approval 8.6. to reflect impact analysis revisions as follows:

8.6 Habitat Restoration. Permittee shall restore on-site the ~~4.85~~ **4.87** acres of Covered Species habitat that will be temporarily disturbed during construction to pre-project or better conditions. Within 6 months of issuance of this ITP, the Permittee shall prepare a Vegetation Restoration Plan to facilitate revegetation of the ~~4.85~~ **4.87** acres of temporary construction disturbance on-site and shall ensure that the Plan is successfully implemented by the contractor. The Plan shall include detailed specifications for restoring all temporarily disturbed areas, such as seed mixes and application methods. The plan shall also indicate the best time of year for seeding to occur. Plantings undertaken between March 1 and October 31 shall include regular watering to ensure adequate growth.

The corresponding language in the MMRP (Attachment 1) shall be determined as amended to reflect the changes noted here in condition of approval 8.6.

10. Update Performance Security on Page 21, Condition of Approval 9.1 to reflect impact analysis revisions as follows:

9.1 Security Amount. The Security shall be in the amount of ~~\$350,413.00~~ **\$350,660.00**. This amount is based on the cost estimates identified in Condition of Approval 8.1 above.

The corresponding language in the MMRP (Attachment 1) shall be determined as amended to reflect the changes noted here in condition of approval 9.1.

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 increase the amount of take of the Covered Species compared to the Project as originally approved; however, the increase in impacts is 0.02 acres of temporary Covered Species habitat. In addition, implementing measures required by this ITP and as described in the MMRP (Attachment 1) including permanent habitat protection, establishment of avoidance zones, worker education and monthly compliance reports will decrease the amount of take to Covered Species habitat. 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: CDFW included the increased impacts based on a non-compliance letter that was issued on September 10, 2019 for unauthorized grading activities that occurred on April 25, 2019. CDFW required the proponent to submit a major amendment to address the unauthorized activities which were conducted outside of the Permittee's reported area of temporary and permanent impacts as specified in the impacts on the taking of covered species section of ITP 2081-2016-060-03. The unauthorized impacts affected approximately 1,000 linear feet over an area of approximately 0.02 acres.

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 June 2017 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) Would not significantly increase the Project impacts on the Covered Species, as discussed above, 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 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 June 2017 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 for the I-680 Freeway Performance Initiative Project (SCH #2013112047) adopted by the California Department of Transportation 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 identifies previously unauthorized grading activities and removes other elements of the Project that results in an overall reduction of impacts to Covered Species habitat. As described above, these changes have resulted in significant reevaluation and analysis of the Projects impacts to Covered Species habitat, as well as, additional analysis of the Habitat Management Land Acquisition and Restoration conditions of approval. 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

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CALIFORNIA DEPARTMENT OF TRANSPORTATION
Interstate I-680 Freeway Performance Project

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE


on 12 12 19.



Gregg Erickson
Regional Manager
Bay Delta 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: 

Date: 1/2/80

Printed Name: RON KIAAINA

Title: PROJECT MANAGER