

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

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AMENDMENT NO. 11
(A Major Amendment)
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 (*Vulpus 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. This amendment did not change the Construction Footprint, nor did it change the habitat impacts or the compensatory mitigation. 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. The size of the Construction Footprint increased by 54.39 acres from 1,049.00 acres to a total of 1,103.39 acres. 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 in 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. The amount of compensatory mitigation, Habitat Management (HM) lands, increased from 234 acres to 254 acres. 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 707.87 acres and 9.2 acres for a total increase of 780.07 acres for a new grand total of 1,883.46 acres. The increase of the Construction Footprint accommodated: (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. Permittee also requested 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*) 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 (Lazy K Ranch). In addition, the Permittee requested that exclusion fencing for California tiger salamander (CTS) 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. This amendment did not change the 1,883.46-acre Construction Footprint, nor did it change the habitat impacts or the compensatory mitigation. 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, to accommodate the north extension of the Project including guideway, an at-grade bridge, a wildlife crossing, overcrossing, embankment, road design changes, 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, the Covered Activities occurring within the increased Construction Footprint included 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) provide 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" CTS aquatic breeding habitat credits and 0.47 acres of currently released CTS 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) provide a modified timeframe in which the remaining 10.39-acre mitigation obligation must be met; and (3) revised the Performance Security amount required in order to proceed with Covered Activities. There was no increase to Construction Footprint for this amendment. CDFW issued **Major Amendment No. 6** on August 3, 2018, incorporating these changes.

In a letter dated September 24, 2018, the Permittee requested to revise the Project Description to allow for an increase in the Construction Footprint by 1.53 acres to a total of 2,040.71 acres. The Construction Footprint increase accommodated new Work Areas for improvements to Dry Creek Canal and the use of the roads adjacent to Dry Creek Canal for construction access. In a letter dated December 3, 2018, the Permittee requested, 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 did 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 a letter dated May 1, 2019, the Permittee requested revision to the ITP, to increase the extent of take of hairy Orcutt grass (HaOrGr) by 0.91 acres; increase the habitat management (HM) lands requirements for HaOrGr by 5.46 acres; 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 had 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. There was no increase to Construction Footprint for this amendment. CDFW issued **Major Amendment No. 8** on May 31, 2019.

In a letter dated February 15, 2019, the Permittee requested revision to the ITP to: (1) increase the size of the Construction Footprint by 89.78 acres from 2,040.71 to a total of 2,130.49 acres to accommodate 24 proposed design variations, (2) increase the length of intrusion protection barrier (IPB) by 14 miles from 4,060 linear feet to 73,894 linear feet and (3) allow for wildlife crossing variations at three locations. CDFW issued **Major Amendment No. 9** on June 10, 2019.

In a letter dated February 25, 2019, the Permittee requested revision to the ITP to: (1) increase in the Construction Footprint by 10.07 acres from 2,130.49 acres to 2,140.56 acres; (2) add Horizontal Direction Drilling (HDD) and the "jack and bore" method of pipeline construction and relocation required for some of the additional utility work, as Covered Activities; and (3) add 11 design variations to the Project Description. CDFW issued **Major Amendment No. 10** on August 8, 2019, incorporating these changes.

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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, Major Amendment No. 7, Major Amendment No. 8, Major Amendment No. 9, and Major Amendment 10 (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 October 29, 2019, the Permittee requested revision to the ITP to: (1) adjust the number of compensatory habitat mitigation lands from a single site to multiple sites; (2) reduce the mitigation acreage required for HaOrGr to correspond to a reassessment of the impacts and a decreased amount of take of HaOrGr resulting from Project construction; and (3) an expeditious review time for approval of the two HaOrGr mitigation site properties so that the Permittee can meet the terms of the contracts with willing sellers. In an e-mail dated January 15, 2020, CDFW informed the Permittee that this Amendment would also include correction of the Lazy K Ranch Mitigation Site acres and identify what mitigation is owed beyond what was available at the Lazy K Ranch Mitigation Site. There was no request for a change to the Construction Footprint acreage.

This Major Amendment No. 11 (Amendment) makes the following changes to the ITP, as amended:

First, this Amendment increases the number of compensatory mitigation sites to address hairy Orcutt grass impacts from a single site to multiple sites.

Second, this Amendment changes the amount of habitat mitigation necessary to address hairy Orcutt grass impact and updates Table 6.

Third, this Amendment updates mitigation acres at Lazy K Ranch to reflect the actual quantities under the Conservation Easement and allotments for each species.

Fourth, this Amendment changes Condition of Approval 9.3.2 to allow for an expedited habitat and management land approval review period timeline of less than three months at CDFW's discretion.

AMENDMENT

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

1. The Project Location on page 2 paragraph two, shall be amended for clarity to read as follows:

Permittee will conduct riparian and wetland restoration at ***on a portion of*** the Lazy K Ranch Mitigation Site (Mitigation Site) to offset Project impacts. The ***entire*** Lazy K Ranch is approximately 1,555.75 acres. It is located northeast of the City of Chowchilla, on the border of southeastern Merced and northwestern Madera counties (Exhibit 3). It is on the east side of South Santa Fe Avenue, south of the intersection with Marguerite Road. Specifically, the Lazy K Ranch is located in Section 1, Township 9 South, Range 16 East MDB&M, and Sections 7, 8, 9, and 18, Township 9 South, Range 17 East MDB&M.

2. The first paragraph of the section entitled "Lazy K Ranch Mitigation Site Activities" on page 41 of the ITP, as amended, shall be amended to read as follows:

Lazy K Ranch Mitigation Site Activities

Permittee will conduct riparian and wetland restoration at the Lazy K Ranch Mitigation Site (Mitigation Site). The riparian and wetland restoration ~~is~~ ***are*** not intended to mitigate any impacts related to issuance of this ITP. Instead, the riparian and wetland restoration would mitigate other Project impacts pursuant to the terms and conditions of other permits, both Federal and State. However, because ***the work to restore*** the riparian and wetland restoration ***areas*** has potential to take Covered Species, the Mitigation Site is included in the Project Area and such riparian and wetland restoration is a Covered Activity. The Mitigation Site will consist of a ~~415.18~~ ***59.79***-acre Wetland Restoration Area, a 4.09-acre Riparian Restoration Area, and a ~~410.52~~ ***381.91***-acre Preservation Area, for a total of ~~529.79~~ ***445.79*** acres. There will also be ~~476.07~~ ***258.07*** acres of Temporary Use Areas that will consist of a ~~474.84~~ ***256.84***-acre Inoculum Collection Area and a 1.23-acre Staging Area (Exhibit 4). Within the ~~474.84~~ ***256.84***-acre Inoculum Collection Area, a maximum of two acres will be impacted during inoculum collection.

3. The first paragraph of the section entitled "Impacts of the Taking on Covered Species" on pages 43 and 44 of the ITP, as amended, shall be further amended to read as follows:

This ITP covers all Project related activities that cumulatively disturb no more than 2,140.56 acres within the Construction Footprint, ***as well as 258.07 acres of Temporary Use Areas*** and ~~529.79~~ ***445.79*** acres ***under Conservation Easement*** within the Lazy K Ranch Mitigation Site (the Construction Footprint and Lazy K

Ranch Mitigation Site are collectively, the Project Area). Project activities include subsurface geotechnical drilling and boring; habitat grubbing, vegetation removal, clearing, and mass grading followed by the mobilization of equipment and materials; earthwork including construction of temporary and permanent excavation support structures; excavation of open cut slope and fill, at grade profile excavation and leveling, and retained fill cut, rail bed foundation soil compaction, and elevated profiles and elevated profile structure components including construction and installation of straddle bents, foundations, pile caps, substructures, and superstructures; trench digging and other subsurface utility installation, relocation, and protection; pad preparation and construction of a batch plant, materials storage, fabrication, casting areas, access roads, and staging areas; rotary drilled reinforced concrete cast in place pile and drive pile installation; excavation of drainage swales and fabrication and installation of underground drainage culverts and pipes; 23 roadway modifications including realignment and resurfacing, construction of new access roads, overcrossing, and undercrossing; construction of waterway crossing structures over the Fresno River, Cottonwood Creek, and the San Joaquin River including partial dewatering and diversion of water; construction and assembly of tie and ballast and slab track railway systems, and shoofly track; erecting mast poles; construction of electrical systems facilities including the OCS, TPSS, two switching stations, and six paralleling stations; construction of signal huts and bungalows including installation of cabling to the field hardware and track stations; traction electrification; excavation and construction of wildlife crossings, construction of the Downtown Fresno Station; installation of AD and AR fence; construction of temporary job site trailers and field offices including the development of building pads and preparation of parking areas; application of dust suppressants; operation and maintenance activities such as track, power, structure, signaling, train control, communications, intruder, and right-of way inspection and repair; and equipment staging, inoculum collection, land grading, and excavation of wetlands in the Wetland Restoration Area and mowing, hand tool or auger planting of trees and shrubs, and installation of irrigation systems in the Riparian Restoration Area within the Lazy K Ranch Mitigation Site and other activities within the Construction Footprint and Mitigation Site described in the Project Description section of this ITP (Covered Activities).

4. Measure 8.58.2.1, under Condition of Approval 8.58 added to page 85 of the ITP as amended, shall be further amended to read as follows:

8.58.2.1 HaOrGr Enhancement Plan. The Designated Biologist(s) shall prepare a HaOrGr Enhancement Plan (Enhancement Plan). The Enhancement Plan shall include, but not be limited to, a discussion (and map) of the proposed

enhancement site **or sites** that shall encompass no less than ~~9.84~~ **1.37** acres of intact, created, or restored vernal pool(s) that contain physical soils characteristics associated with claypan vernal pool habitat; 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. 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.

5. Measure 8.58.2.2, under Condition of Approval 8.58 added to page 85, of the ITP as amended, shall be further amended to read as follows:

8.58.2.2 Permanent Protection of Habitat Management Lands. Permittee shall (1) ***preserve two landscapes comprised of the following Madera County Assessor Parcel Numbers (APNs) identified as APNs 031-202-002 (HOG Hills Preserve), (totaling approximately 408 acres); and 035-212-004, 035-212-005, 035-212-006, and a portion of 035-242-003 (HOG Flats Preserve), (totaling approximately 145 acres) supporting wetland and upland habitat features for long-term protection and viability of HaOrGr and CTS;*** (42) permanently preserve and fund the perpetual management of ~~20.80~~ **14.10** acres of Habitat Management lands demonstrated through protocol level botanical surveys to be occupied habitat for HaOrGr; and (23) shall permanently preserve and fund the perpetual management of ~~10.40~~ **1.37** 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.

6. Condition of Approval 9, Paragraph 2 on pages 87-88 of the ITP as amended, shall be further amended into Paragraphs 2 and 3 to read as follows:

To meet this requirement for all Covered Species other than hairy Orcutt grass, the Permittee shall purchase 6.9 acres (6.43 acres of currently released vernal pool fairy shrimp credits that are also designated as "future release" CTS aquatic breeding habitat and 0.47 acres of currently released CTS upland habitat that has

been identified to hold water with sufficient duration to support breeding) of Covered Species credits from the CDFW-approved Dutchman Creek Mitigation Bank (Condition of Approval 9.2). ***The Permittee shall also provide for the permanent protection and management of 418.92 acres of Habitat Management (HM) lands within the Preservation Area at Lazy K Ranch pursuant to Condition of Approval 9.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 below. The 418.92 acres includes the following to meet requirements of the ITP:***

- ***8.18 acres of preserved CTS breeding habitat,***
- ***355.25 acres of preserved upland for CTS, SWHA, and SJKF,***
- ***51.4 acres of restored upland for CTS, SWHA, and SJKF,***
- ***4.09 acres of riparian habitat for SWHA foraging.***

The Permittee shall also either purchase ***an additional 10.67 acres of Covered Species credit for CTS breeding habitat,*** an additional 28.46 ***10.14*** acres of Covered Species credit for SWHA foraging habitat, and ***an additional 89.86 3.72*** acres of Covered Species credit for SJKF upland habitat if the SWHA foraging habitat is not simultaneously suitable for SJKF from a CDFW approved mitigation or conservation bank with a service area that encompasses the Project Area ***pursuant to Condition of Approval 9.2 below*** OR shall provide for the permanent protection and management of an additional 28.46 acres of SWHA foraging habitat and 89.86 acres of SJKF upland ***all the additional acreages above as*** Habitat Management (HM) lands pursuant to Condition of Approval 9.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 below. ~~The Permittee shall also provide for the permanent protection and management of 392.42 acres of Habitat Management (HM) lands within the Preservation Area at Lazy K Ranch pursuant to Condition of Approval 9.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 below.~~

7. Condition of Approval 9, Paragraph 5 (now 6) on pages 88-89 of the ITP as amended, shall be further 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 ~~20.80~~ ***14.10*** 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 ~~10.40~~ ***1.37*** 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.

8. Table 6 on page 89 of the ITP, as amended, shall be further 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	6.05
Direct Permanent Breeding Habitat	6.57
Direct Permanent Upland Refugia/Foraging Habitat	154.26
Total Impacts	166.88
Upland Compensatory Mitigation	308.52
Breeding Habitat Compensatory Mitigation	25.76
Total Compensatory Mitigation	334.28
<i>Swainson's Hawk</i>	
Direct Permanent Foraging Habitat	420.88
Direct Permanent Nesting Habitat	1 nest tree
Total Impacts	420.88
Total Compensatory Mitigation	420.88
<i>San Joaquin Kit Fox</i>	
Direct Permanent Preferred Foraging/Dispersal Habitat	96.11
Direct Permanent Marginal Dispersal Habitat	436.30
Total Impacts	532.41
Total Compensatory Mitigation	410.37
<i>Hairy Orcutt Grass</i>	
Direct Permanent	1.85
Indirect Permanent	3.35
Total Impacts	5.20

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Impact Type	Acres
Compensatory Habitat Mitigation Lands	20.80 14.10
Enhancement Lands	10.40 1.37
Total Compensatory Mitigation	31.20 15.47

9. Condition of Approval 9.2 on page 91 of the ITP, as amended, shall be further amended to read as follows:

Covered Species Credits. Permittee shall purchase 6.9 acres (6.43 acres of currently released vernal pool fairy shrimp credits that are also designated as "future release" CTS aquatic breeding habitat and 0.47 acres of currently released CTS upland habitat that has been identified to hold water with sufficient duration to support breeding) of Covered Species credits, other than hairy Orcutt grass, from the CDFW-approved Dutchman Creek Conservation Bank within 30 days of issuance of the Amendment.

~~Permittee shall also purchase an additional 0.64 acre of SWHA foraging habitat and 0.64 acre of SJKE upland habitat of Covered Species credits from a CDFW-approved mitigation or conservation bank, with a service area that encompasses the Project Area, within 18 months of issuance of this Amendment if HM lands for the additional 0.64 acre of SWHA foraging habitat and 0.64 acre of SJKE upland habitat are not provided pursuant to Condition of Approval 9 above.~~

OR AND:

10. Condition of Approval 9.3.2 on page 92 of the ITP as amended, shall be amended to read as follows:

9.3.2. HM Lands Approval. Obtain CDFW written approval of the HM lands before acquisition and/or transfer of the land by submitting, at least three months before acquisition and/or transfer of the HM lands, **or sooner at CDFW's discretion**, a formal Proposed Lands for Acquisition Form (see Attachment 3B) identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the Project's impacts on Covered Species;

11. Condition of Approval 9.3.6 on pages 923 of the ITP, as amended, shall be further amended to read as follows:

Interim Management (Initial and Capital). Provide for the interim management of the HM lands. The Permittee shall ensure that the interim land manager implements the interim management of the HM lands as described in the final

management plan and conservation easement approved by CDFW. The interim management period shall be a minimum of three years from the date of HM land acquisition and protection and full funding of the Endowment and includes expected management following start-up activities. Interim management period activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, and vegetation and invasive species management. Permittee shall either (1) provide a security to CDFW for the minimum of three years of interim management that the land owner, Permittee, or land manager agrees to manage and pay for at their own expense, (2) establish an escrow account with written instructions approved in advance in writing by CDFW to pay the land manager annually in advance, or (3) establish a short-term enhancement account with CDFW or a CDFW-approved entity for payment to the land manager.

AND:

~~Permittee shall also purchase 7.5 acres of Covered Species credits from the CDFW-approved Dutchman Creek Mitigation Bank no later than September 12, 2015.~~

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 four specific changes to the ITP, as amended.

First, this Amendment increases the number of compensatory mitigation sites to address HaOrGr impacts from a single site to multiple sites.

Second, this Amendment adjusts the amount of habitat mitigation necessary to address hairy Orcutt grass impacts and updates Table 6.

Third, this Amendment updates mitigation acres at Lazy K Ranch to reflect the actual quantities under the Conservation Easement and allotments for each species.

Fourth, this Amendment changes Condition of Approval 9.3.2 to allow for an expedited habitat and management land approval review period timeline of less than three months at CDFW's discretion.

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, in February 2109, in May 2019, June 2019 and in August 2019 that Minor Amendment No. 1, Major Amendments No. 2 and No. 3, Minor Amendment No. 4, and Major Amendments No. 5, No. 6, No. 7, No. 8, No. 9, and No. 10, 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 reduce the habitat compensation in proportion to the impacted acres due to the reevaluation of the impact by number of plants per acres. Eighteen plants will be taken by the Project and the two mitigation sites contain approximately 820,019 HaOrGr individuals, which ensures that the fully mitigate standard is still met, and (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, Major Amendment No. 7 in February 2019, Major Amendment No. 8 in May 2019, Major Amendment No. 9 in June 2019, and Major Amendment 10 in August 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 number of compensatory mitigation sites to address HaOrGr impacts from a single site to multiple sites; adjusts the amount of habitat mitigation necessary to address hairy Orcutt grass impacts and updates Table 6; updates mitigation acres at Lazy K Ranch to reflect the actual quantities under the Conservation Easement and allotments for each species; and changes Condition of Approval 9.3.2 to allow for an expedited habitat and management land approval review period timeline of less than three months at CDFW's discretion.

As described above, these changes to the ITP, as amended, will decrease the Project impacts on Covered Species previously analyzed and authorized by the ITP, as amended, and affect Permittees' substantive mitigation obligations under the ITP, as amended. 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 February 2020

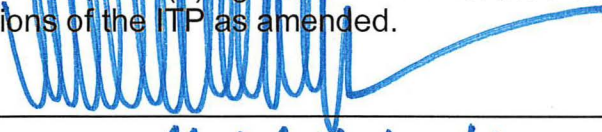


for Julie A. Vance
Regional Manager
Central Region

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:



Date:

February 12, 2020

Printed Name:

Mark A. McLoughlin

Title:

Director of Environmental Services

Major Amendment No. 11
Incidental Take Permit 2081-2013-025-04
CALIFORNIA HIGH-SPEED RAIL AUTHORITY
CALIFORNIA HIGH-SPEED TRAIN PROJECT
Merced to Fresno Section Permitting Phase 1