

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
NORTH CENTRAL REGION
1701 NIMBUS ROAD
RANCHO CORDOVA, CA, 95670



AMENDMENT NO. 3
(A Minor Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2018-058-02-A3
California Department of Transportation
Sutter Bypass Widening and Rehabilitation Project in Sutter County

INTRODUCTION

On January 22, 2019, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2018-058-02 (ITP) to the California Department of Transportation (Permittee), authorizing take of Giant garter snake (*Thamnophis gigas*) (Covered Species) associated with and incidental to the Sutter Bypass Widening and Rehabilitation Project in Sutter County, California (Project). The Project as described in the ITP as originally issued by CDFW includes road realignment, bridge replacement, pavement rehabilitation, and shoulder widening along 6.3 miles of State Route (SR) 20. In issuing the ITP, CDFW found, among other things, that Permittee's compliance with the Conditions of Approval of the ITP would fully mitigate Project impacts of the taking on the Covered Species and that issuance of the ITP would not jeopardize the continued existence of the Covered Species.

On October 7, 2019, Amendment #1 was issued for the ITP. This amendment extended the 2019 construction season work period (May 1 – October 1) by 30 days to allow completion of work. All Covered Activities within Covered Species habitat, including activity within 200 feet of aquatic habitat were authorized to occur between May 1 to November 1, during the 2019 construction season.

On October 14, 2020, Amendment #2 was issued for the ITP. This amendment extended the 2020 construction season work period (May 1 – October 1) by 15 days to allow completion of work underway. All Covered Activities within Covered Species habitat, including activity within 200 feet of aquatic habitat were authorized to occur between May 1 to October 16, during the 2020 construction season. Second, this Amendment allowed the Permittee flexibility in requesting work period modifications for the remaining work season(s).

In a letter received on February 24, 2021, the Permittee requested to use of mitigation credits to compensate for the temporary impacts to Covered Species habitat instead of performing on-site habitat restoration. The purpose of this request is because the Permittee cannot guarantee the on-site habitat restoration can be restored to original

pre-Project conditions. All other measures set forth within the above referenced ITP will remain the same.

This Minor Amendment No. 3 (Amendment) makes the following changes to the existing ITP:

First, this Amendment, consistent with Condition of Approval 6.11 in the original ITP, allows the Permittee to mitigate for 4.62 acres of temporary impacts to Covered Species habitat at a 3:1 ratio for 13.86 giant garter snake aquatic habitat credits, instead of on-site at a 1:1 ratio.

Second, this Amendment will allow for the mitigation to occur by August 31, 2021, instead of 18 months of the original issuance of the ITP. The amendment is being sought 25 months after their ITP execution, so the date of mitigation completion is being extended to August 31, 2021 to allow the Permittee to complete the purchase of credits for temporary impacts.

Third, this Amendment, removes the requirement for on-site restoration.

AMENDMENT

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

1. ITP Condition 9, pages 14-15 (Habitat Management Land Acquisition and Restoration) shall be amended to read:

9. Habitat Management Land Acquisition and Restoration:

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

~~To meet this requirement~~ ***To cover permanent and temporary impacts***, the Permittee shall either purchase ~~7.75~~ ***21.61*** acres (***7.75 acres for permanent impacts and 13.86 acres for temporary impacts***) of Giant Garter Snake habitat credits from a CDFW-approved mitigation site, or a CDFW-approved established mitigation or conservation bank, (Condition of Approval 9.2), OR shall provide for ~~both~~ the permanent protection and management of a minimum of 7.75 acres of Habitat Management (HM) lands pursuant to Condition of Approval 9.3 below, ***the purchase***

of 13.86 acres of Giant Garter Snake habitat credits from a CDFW-approved mitigation bank, and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 below. Compensatory habitat shall be acquired on an in-kind basis to include in-water, floodplain, upland riparian and terrestrial habitat for the Covered species as appropriate through preservation, restoration, enhancement, and/or creation of habitat that is the same or better quality as the in-kind in-water, floodplain, upland riparian and terrestrial habitat that will be impacted as appropriate. Permittee shall consult with CDFW on the appropriate habitat types acquired for Covered species mitigation prior to credit acquisition. Permanent protection and funding for perpetual management of compensatory habitat must be complete before starting Covered Activities, or **by August 31, 2021** ~~within 18 months of the effective date of this ITP~~ if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations. ~~The Permittee shall also restore on-site 4.62 acres of temporarily impacted Covered Species Habitat pursuant to Condition of Approval 9.6 below.~~

9.1 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:

- 9.1.1** Land acquisition costs for HM lands identified in Condition of Approval 9.3 below, estimated at \$42,500.00 per acre; for 7.75 acres: \$329,375. Land acquisition costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements;
- 9.1.2** Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 9.3.5 below, estimated at \$67,660.00;
- 9.1.3** Interim management period funding as described in Condition of Approval 9.3.6 below, estimated at \$21,601.00;
- 9.1.4** Long-term management funding as described in Condition of Approval 9.4 below, estimated at \$24,966.00 per acre; for 7.75 acres: \$193,487.00. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.
- 9.1.5** Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 9.5, estimated at \$3,000.00.

~~9.1.6 Restoration of on-site temporary effects to Covered Species habitat as described in Condition of Approval 9.6, calculated at \$2,175.00 per acre; for 4.62 acres: \$10,048.00.~~

9.2 Covered Species Credits. Permittee shall purchase ~~7.75~~ **21.61** acres of Covered species aquatic habitat credits from a CDFW-approved mitigation site, or a CDFW-approved established mitigation or conservation bank with known Covered Species occurrences prior to initiating Covered Activities, or no later than August 31, 2021~~18 months from the issuance of this ITP~~, if Security is provided pursuant to Condition of Approval 10 below.

2. ITP Condition 9.6, page 19-20 (On-site Restoration for Temporary Impacts) shall be deleted.

~~9.6. On-Site Restoration for Temporary Impacts. 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 10, the Plan shall be prepared by a Qualified Biologist or Stream Restoration Specialist, and address recovery or enhancement of at least 4.62 acres of Covered Species Habitat. The Plan shall include a Giant Garter Snake Habitat Improvement Plan (GGSHIP) as specified below. The On-Site Habitat Restoration/Habitat Enhancement Plan for temporary impacts shall also include success criteria, a monitoring and reporting schedule, and corrective actions to be taken if mitigation measures do not meet the approved success criteria. All plantings shall be derived from locally available genotypes. The Permittee shall monitor the survival and vigor of onsite plantings for a period of five years to ensure attainment of a 75% survivorship after five years, with the final two years occurring without supplemental watering, if success criteria are not achieved within 5 years, additional years of enhancement and monitoring shall be required until the criteria is met. Removal of invasive plant species rated as "High" by California Invasive Plant Council (Cal-IPC) to a 10% or less ground cover within the restoration area shall also be incorporated into the plan over a period of 5 years, additional management actions occurring over additional years may be required until the 10% ground cover criteria is met.~~

~~The GGSHIP Plan shall include the following:~~

~~a) A fresh water aquatic component that plants protective herbaceous vegetation that will allow foraging. The emergent vegetation shall be planted along the top of bank over a minimum length of 200 linear feet (100 feet on the side of each bank) and shall be subject to a 75% success criteria over 5 years, with the final two years occurring without supplemental watering, if~~

~~success criteria are not achieved within 5 years, additional years of enhancement and monitoring shall be required until the criteria is met. The Permittee shall also remove invasive plant species rated as "High" by Cal-IPC to a 10% or less ground cover over a period of 5 years, additional management actions over additional years may be required until the 10% criteria is met. Emergent wetland plants recommended for planting are hard stem bulrush (*Scirpus acutus*), and California bulrush (*Scirpus californicus*). Additional wetland plantings may include cattail (*Typha* spp.), and water primrose (*Ludwigia peploides*), or Baltic rush (*Juncus balticus*). Cover species on or adjacent to the bank should include grasses and forbs described in the hydroseeding mix below. Additional cover may include California blackberry (*Rubus vitifolius*) or wild grape (*Vitis californica*).~~

~~b) An upland component near the aquatic habitat that can be used for thermoregulation and for summer shelter in burrows. This shall be accomplished through the development of bankside cracks, crevices, holes in vegetated rock slope protection or the preservation of existing small mammal burrows on-site and the preservation and planting of native plant species.~~

~~c) An upland Refugia component that will service as winter hibernacula. This can also be accomplished through the pre-Project identification, protection and preservation of small mammal burrows on-site or through the development of bankside cracks, crevices and holes in vegetated rock slope protection. Upland native vegetation shall be planted and subject to a 75% success criteria over 5 years, with the final two years occurring without supplemental watering, if success criteria are not achieved within 5 years, additional years of enhancement and monitoring shall be required until the criteria is met. As well as removal of invasive plant species rated as "High" by Cal-IPC to a 10% or less ground cover over a period of 5 years, additional management actions over additional years may be required until the 10% criteria is met.~~

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 not increase the amount of take of the Covered Species compared to the Project as originally approved, nor will this Amendment increase other 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 one specific change to the ITP as originally issued and previously amended. The mitigation for the 4.62 acres of temporary impacts to Covered Species habitat was changed from on-site restoration at 1:1 to the purchase of Covered Species aquatic habitat credits at 3:1 (13.86 credits) from a CDFW-approved mitigation bank or other mechanism approved by CDFW prior to initiating Covered Activities, or no later than August 31, 2021. The Permittee have identified available suitable credits at Gilsizer Slough South GGS Conservation Bank and that they will need between 2-4 weeks after this ITP amendment issuance to complete the transfer of the credits. The resulting impacts to the Covered Species, however, including the quality of the mitigation for temporary impacts to Covered Species habitat as a result of the Project, will remain the same.

CDFW has determined that a change in mitigation type for the temporary impacts to the Covered Species habitat will not increase the amount of take or the severity of other impacts of the taking on the Covered Species. Given the circumstances of this Project, CDFW believes that the changes to the Project or Conditions of the ITP described in this Amendment, including mitigation type request change for temporary impacts to Covered Species habitat, will not increase impacts to the Covered Species.

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

Discussion: CDFW determined in January 2019, 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) does not substantively alter the measures that will be undertaken to 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 January 2019, 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 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 is a minor change to the original ITP. CDFW finds for the same reasons under CEQA that approval of the 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 the California Department of Transportation 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 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 Minor Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(4).

Discussion: This Amendment changes the mitigation for the 4.62 acres of temporary impacts to Covered Species habitat from on-site restoration at 1:1 to the purchase of Covered Species aquatic habitat credits at 3:1 (13.86 credits) from a CDFW-approved mitigation bank or other mechanism approved by CDFW prior to initiating Covered Activities, or no later than August 31, 2021. These changes to the ITP will not: (1) increase the level of take or other Project impacts on Covered Species previously analyzed and authorized by the ITP, (2) affect Permittee's substantive mitigation obligations under the ITP, (3) require further environmental review under CEQA, or (4) increase temporal impacts on the Covered Species. Therefore, this Amendment will not 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 the change to the ITP constitutes a Minor Amendment as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(4).

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

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

Minor Amendment No. 3
Incidental Take Permit 2081-2018-058-02
CALIFORNIA DEPARTMENT OF TRANSPORTATION
Sutter Bypass Widening and Rehabilitation Project

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 7/21/2021

DocuSigned by:
Kelley Barker for
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Kevin Thomas
Regional Manager
North 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: *Johny Tan*
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Date: 7/22/2021

Printed Name: Johny Tan

Title: Project Manager