

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
INLAND DESERTS REGION
3602 INLAND EMPIRE BLVD., SUITE C-220
ONTARIO, CA 91764



AMENDMENT NO. 1
(A Major Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2021-001-06
San Bernardino County (SBD)-138 Construct Median and Standard Shoulders, Post
Mile (PM) 0.0-2.4/Los Angeles County (LAC) -138 PM 74.9-0.0 (08-1H830)

INTRODUCTION

On May 19, 2021, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2021-001-06 (ITP) to the California Department of Transportation District 8 (Permittee) authorizing take of Western Joshua tree (*Yucca brevifolia*) associated with and incidental to the San Bernardino County (SBD) – 138 Construct Median and Standard Shoulders, Post Mile (PM) 0.0-2.4/ Los Angeles County (LAC) – 138 PM 74.9-0.0 (08-1H830) (Project) (Figure 1). The Project as described in the Incidental Taker Permit (ITP) originally issued by CDFW includes adding a 4 to 14-foot median buffer with 8-foot standard shoulders; installing median and shoulder rumble strips; cold plane and overlay the exiting pavement; extend, replace, remove, or modify the existing culverts; road widening; road cut and fill; driving and parking off-pavement, on site disposal/borrow sites; utility relocation; and removal of vegetation and trees. The Project as originally planned would result in permanent impacts to 1.99 acres of Western Joshua tree (*Yucca brevifolia*) (Covered Species) habitat and removal of 37 Western Joshua trees (*Yucca brevifolia*), which is a candidate for threatened status under the California Endangered Species Act.

In issuing the ITP, CDFW found, among other things, that Permittee's compliance with the Conditions of Approval of the ITP would fully mitigate impacts to the Covered Species and would not jeopardize the continued existence of the Covered Species.

The Permittee issued the contract to construct the project, upon the contractors review of the Project it was determined than an additional 30 Covered Species will need to be removed to allow for the clear recovery zone and the adding of the 4 to 14-foot median buffer with 8-foot standard shoulders.

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

First, this Amendment recalculates the number of Covered Species that will be removed to reflect actual loss based on a refined Project description.

Second, this Amendment increases the acres of impact and subsequently increases the acres of Habitat Management (HM) lands.

AMENDMENT

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

1. The project description, on page 2 shall be amended to read:

Project Description:

The Project Area is ~~55~~ **up to 70 90** feet from center line. All work will **primarily** occur on the south bound side of the highway within the existing right-of-way (ROW). The Project includes adding a 4 to 14-foot median buffer with 8-foot standard shoulders; installing median and shoulder rumble strips; cold plane and overlay the exiting pavement; extend, replace, remove, or modify the existing culverts; road widening; road cut and fill; driving and parking off-pavement, on site disposal/borrow sites; utility relocation; and removal of vegetation and trees. Project activities include habitat restoration, grinding, grubbing and grading of the entire Project Area, trench digging, pile driving, road construction, tree removal, and other activities. After project staging, the first order of work shall be the removal of ~~37~~ **67** Covered Species.

2. The Impacts of the Taking on Covered Species, on pages 2, shall be amended to read:

Impacts of the Taking on Covered Species:

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above expected to result in incidental take of individuals of the Covered Species include vegetation clearing; general operation of vehicles and heavy equipment; vibration, and dust generating activities grading, leveling, and compaction; excavation activities (Covered Activities);

Incidental take of individuals of the Covered Species in the form of mortality (“kill”) may occur as a result of Covered Activities such as grading, staging areas, trenching, digging, removal of Covered Species, and grubbing. The areas where authorized take of the Covered Species is expected to occur include: the existing ROW on SR-138 from PM 0.0 to 2.4 in SBD 0.5 mile west of Phelan Road and from the SBD line to PM 74.9 in LAC (collectively, the Project Area).

The Project is expected to cause the removal of ~~37~~ **67** Covered Species which is equal to permanent loss of ~~4.99~~ **2.87** acres of Covered Species habitat. Impacts of

the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project's incremental contribution to cumulative impacts (indirect impacts). These impacts include: stress resulting from vibrations from grinding and grading, pollution discharge from the highway, reduction in seed bank, and long-term effects due to increased pollution.

3. Condition 8, on page 7, shall be amended to read:

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

To meet this requirement, the Permittee shall either purchase ~~3~~ **4.31** acres of Covered 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 ~~3~~**4.31** acres of Habitat Management (HM) lands 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. 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 9.1 below for all uncompleted obligations.

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

8.1.1. Land acquisition costs for HM lands identified in Condition of Approval 8.3 below, estimated at \$10,000.00/acre for ~~3~~ **4.31** acres: ~~\$30,000.00~~ **\$43,100.00**. Land acquisitions 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 \$2,000.00/acre for ~~3~~ **4.31** acres: ~~\$6,000.00~~
\$8,620.00.

8.1.3. Interim management period funding as described in Condition of Approval 8.3.6 below, estimated at \$1,000.00/acre for ~~3~~ **4.31** acres: ~~\$3,000.00~~ **\$4,310.00.**

8.1.4. Long-term management funding as described in Condition of Approval 8.4 below, estimated at \$3000.00/acre for ~~3~~ **4.31** acres: ~~\$9,000~~ **\$12,930.00.** 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.

8.2. Covered Species Credits. Permittee shall purchase ~~3~~ **4.31** acres of Covered Species credits from a CDFW-approved mitigation or conservation bank 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 MMRP #5 and 6, shall be amended to read the same as above and the timing requirement in the Implementation Schedule column shall remain unchanged.

4. Condition 9.1, on page 13, shall be amended to read:

9.1 Security Amount. The Security shall be in the amount of ~~\$51,000.00~~ **\$71,960.00.** This amount is based on the cost estimates identified in Condition of Approval 8.1 above.

The corresponding MMRP #21, shall be amended to read the same as above and the timing requirement in the Implementation Schedule column shall remain unchanged.

5. The Finding Pursuant to CESA (2), on page 16 shall be amended to read:
(2) Impacts of the taking on Covered Species will be minimized and fully

mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) permanent habitat protection; (2) establishment of avoidance zones; (3) worker education; and (4) Monthly/Quarterly Compliance Reports. CDFW evaluated 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. Based on this evaluation, CDFW determined that the protection and management in perpetuity of ~~3~~**4.31** acres of compensatory habitat that is contiguous with other protected Covered Species habitat and/or is of higher quality than the habitat being destroyed by the Project, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;

All terms and conditions of the ITP and MMRP that are not expressly amended herein remain in effect and must be implemented and adhered to by the Permittee.

FINDINGS

Issuance of this Amendment will increase the amount of take of the Covered Species compared to the Project as originally approved; however, by implementing the mitigation measures in Condition 8, 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)).

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

Discussion: CDFW determined in May 2021 that the Project, as approved, met the standards for issuance of an ITP under CESA. This determination included findings that, among other things, the impacts of the taking would be minimized and fully mitigated and that the Project would not jeopardize the continued existence of the Covered Species. Those findings are unchanged with respect to this Amendment because the Project and ITP as amended: (1) will have no effect on the amount or severity of 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.

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 allows an increase of the amount of authorized take and habitat impacts, constituting a significant change in the scope of the Project. However, by implementing mitigation measures, it is not expected that this Amendment will increase Project impacts on Covered Species over the long term. This Amendment also increases the Permittee's mitigation obligations. 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:

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

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 4/28/2022

DocuSigned by:
Richard Burg
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Richard Burg,
Acting Regional Manager
Inland Deserts 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: *Adam Compton*
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Date: 4/28/2022

Printed Name: Adam Compton

Title: Branch chief