



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

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GAVIN NEWSOM, Governor

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December 1, 2023

Caitlin De La Torre

California Department of Transportation, District 4

Office of Environmental Management

111 Grand Avenue

Oakland, CA 94623

Caitlin.DeLaTorre@dot.ca.gov

Subject: Incidental Take Permit for 2081-2019-059-03 State Route 84 Expressway Widening and SR-84/I-680 Improvements Project, EA 04-29763, Alameda County, Amendment No. 2

Dear Caitlin De La Torre:

Enclosed you will find an electronic copy of the Incidental Take Permit Amendment (Amendment) for the above referenced Project, which has been digitally signed by the California Department of Fish and Wildlife (CDFW). Please read the Amendment carefully and sign the acknowledgement **no later than 30 days from CDFW signature**, and prior to continuation of ground-disturbing activities. You may return an electronic copy of the Amendment with digital signature to CESA@wildlife.ca.gov. Digital signatures shall comply with Government Code section 16.5. Digital signatures facilitated by CDFW will be automatically returned. Alternatively, you may return a hard copy of the permit via mail to:

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

You are advised to keep the original permit and Amendment in a secure location and distribute copies to appropriate project staff responsible for ensuring compliance with the conditions of approval of the permit. **Note that you are required to comply with certain conditions of approval prior to continuation of ground-disturbing activities.** Additionally, a copy of the Amendment must be maintained at the project work site and made available for inspection by CDFW staff when requested.

This Amendment will not take effect until the signed acknowledgment is received by CDFW. If you wish to discuss these instructions or have questions regarding the permit, please contact Jason Faridi, Senior Environmental Scientist (Supervisory), at (707) 810-0764 or Jason.Faridi@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell

B77F9A6211EF486
Erin Chappell

Regional Manager

Bay Delta Region

Conserving California's Wildlife Since 1870

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



**AMENDMENT NO. 2
(A Major Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2019-059-03
State Route 84 Expressway Widening and SR-84/I-680 Improvements Project,
EA 04-29763, Alameda County, Alameda County**

INTRODUCTION

On September 11, 2020, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2019-059-03 (ITP) to the California Department of Transportation (Permittee) for take of Alameda whipsnake a.k.a. Alameda striped racer (*Masticophis lateralis euryxanthus*) and California tiger salamander (*Ambystoma californiense*), the Covered Species associated with the State Route 84 Expressway Widening and SR-84/I-680 Improvements Project in Alameda County, California. The Project as described in the ITP originally issued by CDFW includes widening of SR-84 from two lanes to four lanes and modifications to expressway standards from south of Ruby Hill Drive and the I-680 interchange. The Project will also improve SR-84/I-680 interchange ramps and extend the existing high-occupancy vehicle (HOV)/express lane on southbound I-680 northward approximately 0.8 miles north of Koopman Road, north of the SR-84/I-680 interchange. 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 June 13, 2022, CDFW issued Incidental Take Permit No. 2081-2019-059-03 Major Amendment No. 1. Major Amendment No. 1 including the following changes to the Project ITP: First, to update the Contact Person; Second, to update the Project Description; Third, to update the impacts section to reflect an increase on the taking of Covered Species within the Project limits for temporary impacts; Fourth, update Condition of Approval 9 as it pertains to Habitat Management Land Acquisition and Restoration; Fifth, update to the On-Site Restoration/Habitat Enhancement Plan for Temporary Impacts; Sixth, update to Condition of Approval 10 as it pertains to Security Performance; Seventh, to update the Findings Pursuant to CESA.

On September 30, 2022, CDFW received your request for a Major Amendment, pursuant to Fish and Game Code section 2081(b), to incidentally take California tiger salamander (*Ambystoma californiense*) a species designated as threatened pursuant to the California Endangered Species Act (CESA) (Fish and Game Code, § 2050 et seq.). The request included additional impacts to Covered Species habitat to plant 1,030 oak trees; *Quercus argifolia* and *Quercus lobata* (*Quercus* spp.) and install the associated **above ground**

irrigation lines at the Eagle Ridge Preserve East over an area of 6.4 acres. The temporary impacts will occur over 0.17 acres to Covered Species habitat. No permanent impacts will occur from covered activities under this Major Amendment.

This Major Amendment No. 2 (Amendment) makes the following changes to the existing ITP:

First, this Amendment updates the Project Description;

Second, this Amendment updates the Project impacts section to reflect an increase on the taking of Covered Species within the Project limits from temporary impacts;

Third, this Amendment updates Condition of Approval 9 as it pertains to Habitat Management Land Acquisition and Restoration;

Fourth, this Amendment updates the Cost Estimates as it relates to Habitat Mitigation Lands and Restoration;

Fifth, this Amendment updates the Covered Species Credit amounts as it relates to Covered Species impacts;

Sixth, this Amendment updates the On-Site Restoration/Habitat Enhancement Plan;

Seventh, this Amendment updates the Aquatic Breeding Habitat Restoration and Enhancement plan;

Eighth, this Amendment updates the Performance Security amounts;

Ninth, this Amendment updates the Findings Pursuant to CESA.

AMENDMENT

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

1. The Project Description shall be amended to read:

1,030 trees oak trees (Quercus spp.) will be planted and irrigation lines installed at Eagle Ridge Preserve East over an area of 6.4 acres. Each tree will be planted using hand-tools. Tree planting will temporarily disturb a maximum area of up to 3 feet in diameter and 3 feet in depth per tree, a total of 7,282 square feet (0.17 acre). Varying container sizes will be used to allow diversity of tree size. Smaller trees will be fitted with browse cages/tree guards to eliminate rodent browse and girdling.

Major Amendment No. 2
Incidental Take Permit 2081-2019-059-03
CALIFORNIA DEPARTMENT OF TRANSPORTATION
State Route 84 Expressway Widening and SR-84/I-680 Improvements Project

Hand weeding will be performed within the cage/tree guards and, where guards are not used, 12 inches around the planted oak trees. String trimming will be used up to 24 inches from each tree to reduce shading and competition for nutrients. Three to four years after the trees are planted, grazing will be gradually introduced for ongoing vegetation management.

19,500 feet of above ground polyvinyl chloride (PVC) irrigation lines will be placed on the ground surface. Irrigation lines will consist of a bubbler riser system connected to irrigation lines that draw water from two existing wells on-site. Bi-weekly on-foot inspections of the irrigation system will be performed to ensure adequate watering during the establishment period. All repairs will occur immediately to avoid plant loss.

Upon completion of the tree establishment period, a work crew will remove and dispose of all irrigation lines, cages, t-posts and any other materials from the planting area. This work will be performed with hand crews.

2. The second paragraph of the Impacts of the Taking on Covered Species section, page 8; shall be amended to read:

The Project is expected to impact 98.26 acres of suitable habitat for Covered Species (Figure 2 and 4) within the SR-84/I-680 corridor, impacts to California tiger salamander (CTS) suitable habitat include the permanent loss of 40.33 acres, the temporary loss of 38.46 acres, and 15.095 acres of indirect impact resulting from additional light source installations (Figure 2 and 3). Within Collier Canyon Preserve, impacts to CTS suitable habitat resulting from aquatic breeding habitat creation include the permanent loss of 1.32 acres and the temporary loss of 3.06 acres (Figure 4). Impacts to Alameda whipsnake (AWS) suitable habitat include the permanent loss of 16.38 acres and the temporary loss 20.32 acres within the SR-84/I-680 corridor. All impacts to AWS suitable habitat overlap with CTS suitable habitat with the exception of 0.04 acres of Covered Species habitat of additional temporary impacts notified in Major Amendment No. 1 that applies to CTS Covered Species only. **Within the Eagle Ridge Preserve East a total of 0.17 acres of temporary impact will occur to CTS suitable habitat. No permanent impacts will occur from tree planting activities associated with this ITP Major Amendment No. 2.**

3. The second and third paragraph of Condition of Approval 9 Habitat Management Land Acquisition and Restoration, page 23 and 24 shall be amended to read:

To meet this requirement, the Permittee shall either purchase ~~178.925~~ **179.095** acres of Covered Species credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2) OR shall provide for both the permanent protection

and management of ~~178.925~~ **179.095** acres of 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. No less than 69.50 acres or credits shall support both AWS and CTS. ~~(0.04 0.21 acres of the 69.50 69.50 acres is Covered Species Habitat for CTS and not concurrent with AWS).~~

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 10 below for all uncompleted obligations. The Permittee shall also restore on-site ~~41.51~~ **41.68** acres of temporarily impacted Covered Species habitat pursuant to Condition of Approval 9.6 below.

The Permittee has fulfilled the AWS compensatory habitat requirement of 69.50 acres from a CDFW-approved mitigation or conservation bank with the purchase of 70 AWS/CTS multi-species credits from the Ohlone West Conservation Bank, as specified in Attachment 2 (Bill of Sale and Purchase Agreement). The Permittee has partially fulfilled the CTS compensatory habitat requirement of the total ~~178.925~~ **179.095** acres from a CDFW-approved mitigation or conservation bank with the purchase of 70 AWS/CTS multi-species credits from the Ohlone West Conservation Bank, as specified in Attachment 2 (Bill of Sale and Purchase Agreement). To meet the remaining requirement, the Permittee shall either purchase ~~108.889~~ **109.095** acres of CTS credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2) OR shall provide for both the permanent protection and management of ~~108.889~~ **109.095** acres of 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. 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 10 below for all uncompleted obligations.

The corresponding MMRP Measure 10 for Condition 9, Page 3 shall be amended to read the same as above.

4. Condition of Approval 9.1 Cost Estimates, and sub-sections, page 24 shall be amended to read;

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 \$31,645.00 per acre; for ~~108.889~~ **109.095** acres:

Major Amendment No. 2
Incidental Take Permit 2081-2019-059-03
CALIFORNIA DEPARTMENT OF TRANSPORTATION
State Route 84 Expressway Widening and SR-84/I-680 Improvements Project

~~\$3,445,792.00~~ **\$3,452,311.00**. 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 ~~\$147,238.00~~ **\$147,516.00**;
- 9.1.3. Interim management period funding as described in Condition of Approval 9.3.6 below, estimated at ~~\$283,611.00~~ **\$284,148.00**;
- 9.1.4. Long-term management funding as described in Condition of Approval 9.4 below, estimated at ~~\$7,306.00~~ **\$7,304.00** per acre; for ~~408-889~~ **109.095**: ~~\$795,543.00~~ **\$796,829.00**. 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 ~~41.51~~ **41.68** acres: ~~\$90,197.00~~ **\$90,566.00**.

The corresponding MMRP Measure 11 for Condition 9.1, Page 4 shall be amended to read the same as above.

5. Condition of Approval 9.2 Covered Species Credits, page 25 shall be amended to read;

Covered Species Credits. Permittee shall purchase ~~408-889~~ **109.095** acres of CTS 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 10 below.

The corresponding MMRP Measure 12 for Condition 9.2, Page 4 shall be amended to read the same as above.

6. Paragraph 1 of condition of Approval 9.6 On-Site Restoration/Habitat Enhancement Plan, page 28 and 29 shall be amended to read;

On-Site Restoration/Habitat Enhancement Plan for Temporary Impacts. The plan shall be prepared by a Qualified Biologist or Habitat/Stream Restoration Specialist and submitted for CDFW review and approval in writing a minimum of 30 days prior to the initiation of construction. The plan shall address restoration or enhancement of at least ~~41.54~~ **41.68** acres of Covered Species Habitat. The Permittee shall restore 3.06 acres of annual grassland habitat at Collier Creek Preserve, **0.17 acre of annual grassland habitat at Eagle Ridge Preserve East**, and 38.45 acres of Covered Species habitat shall be restored within the SR-84/I-680 corridor. The 38.45-acre total at the SR-84/I-680 corridor shall include a minimum of 35.31 acres of annual grassland restoration, 2.93 acres of riparian and woodland restoration and 0.21 acres of aquatic habitat restoration as follows:

The corresponding MMRP Measure 16 for Condition 9.6, Page 7 shall be amended to read the same as above.

7. Condition of Approval 9.6.3 Aquatic Breeding Habit Restoration and Enhancement, page 30 shall be amended to read;

Aquatic Breeding Habitat Restoration and Enhancement. The aquatic breeding habitat section of the restoration and enhancement plan shall include a plant pallet for emergent freshwater vegetation to an area of 0.21 acres that shall be based on the native species of vegetation that currently exist on-site. Plantings shall occur along or above the top of bank within areas of temporary impact to aquatic habitat. The emergent freshwater vegetation shall be subject to a 50% ground cover success criteria over 10 years within the 0.21-acre restoration area. Verification that the restoration areas can hold water through the appropriate hydroperiods for Covered Species by using satellite imagery of past seasons and on-site photographic image comparisons of before and after construction during the rainy season from multiple angles shall be analyzed to determine if the areas are successfully holding water. If success criteria are not achieved within 10 years. Removal of invasive plant species designated by the California Invasive Plant Council as "High" shall be removed from the site to achieve a 10% or less ground cover within the restoration area over a period of 10 years. All success criteria shall be subject to additional management actions occurring over additional years, if milestones are not achieved as noted herein. **All irrigation lines shall be installed at the surface level only and shall be removed upon completion of the planting and success criteria monitoring period. No fencing is authorized for installation bordering the tree planting zones without written authorization from CDFW.**

Site Investigation for CTS Movement. The proponent shall submit a study proposal for Site Investigation for CTS Movement for review and approval by CDFW prior to the initiation of the additional work described in this Amendment. The proposal shall install twenty-four (24) cover-boards around

the proposed tree planting area and throughout the mitigation parcel to determine if tree planting infrastructure creates any potential impact or barrier to movement for the Covered Species. The study design should also record the physical characteristics and obtain genetic samples of any individuals captured. If the study determines the planting area is a barrier to CTS movement, additional compensatory mitigation may be required. The Study should be conducted over the course of two years at minimum. The Final proposal shall be designed in coordination with CDFW staff.

Oak Planting Maintenance Plan. The proponent shall submit a planting plan for CDFW review and acceptance prior to planting oak trees. The tree planting plan shall describe the methods to be undertaken to maintain the 1,030 trees proposed for planting. This include proposed fencing locations, chemical application schedules (as applicable), grazing schedules (as applicable) and other methods of maintenance, personal and equipment necessary to maintain the tree plantings. The proponent will also be required to submit a Sudden Oak Death screening and management protocol to avoid introducing infected nursery stock to the Project location. Please reference the following for protocols; United States Department of Agriculture - Trace Forward Protocol for Infected Nursery Stock (<https://www.cdffa.ca.gov/plant/pe/InteriorExclusion/SuddenOakDeath/pdfs/TraceForwardProtocol.pdf>).

The corresponding MMRP Measure 16 for Condition 9.6.3, Page 7 shall be amended to read the same as above.

8. Condition of Approval 10.1; Performance Security, Security Amount, shall be updated to read:

Security Amount. The Security shall be in the amount of ~~\$4,765,468.00~~ **\$4,774,483.00**. This amount is based on the cost estimates identified in Condition of Approval 9.1 above.

The corresponding MMRP Measure 17 for Condition 10.1, Page 8 shall be amended to read the same as above.

9. The Findings Pursuant to CESA, Second Finding (2), page 34 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 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 ~~178.925~~ **179.095** 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;

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 Condition of Approval 9 and 10 for Habitat Mitigation Lands, On-Site Enhancement and the Performance Security of the additional 0.17 acres of 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: This Amendment reflects a change to increase the area of disturbance which may result in an increase of the take of individuals for the Covered Species. This change in take assessment is based on (1) habitat analysis for suitable habitat for the Covered Species On-Site. This Amendment will not increase other Project impacts on these species because, in all other respects, the types of remediation activities authorized by the ITP remain unchanged, or in some cases, specific allowable techniques have been dropped.

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 September 2020 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) implements additional habitat mitigation land acquisition and restoration on-site of 0.17 acres of Covered Species habitat and (2) does not substantively alter the conditions of approval previously authorized 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 September, 2020 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, considering the SR-84 Expressway Widening and SR-84/I-680 Interchange Improvements Project Rehabilitation Project Environmental Impact Report (SCH No. 2016052033) dated April 2018 that the California Department of Transportation adopted for the SR-84 Expressway Widening and SR-84/I-680 Interchange Improvements Project on June 5, 2018 prepared 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 increases the impacts to Covered Species habitat by 0.17 acres to implement the planting of 1,030 trees (*Quercus* spp. and the associated excavation necessary to complete the task. As a result of the implementation of the Covered Activities proposed in Amendment No. 2, the conditions of the ITP for Conditions of Approval 9 and 10 as they pertain to Habitat Mitigation Lands and the Performance Security have been amended. As described above, these changes have increased the Covered Species impacts by 0.17 acres and the Habitat Mitigation Lands requirements and Performance Security have increased as a result of the impacts in Covered Species habitat. 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:

Major Amendment No. 2
Incidental Take Permit 2081-2019-059-03
CALIFORNIA DEPARTMENT OF TRANSPORTATION
State Route 84 Expressway Widening and SR-84/I-680 Improvements Project

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

Alternatively, the Permittee shall email the digitally signed ITP to CESA@wildlife.ca.gov. Digital signatures shall comply with Government Code section 16.5. Digital signatures facilitated by CDFW will be automatically returned.

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 12/4/2023.

DocuSigned by:
Erin Chappell
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Erin Chappell, 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: Caitlin De La Torre Date: 12/4/2023
8B2DA3C035E84B0...
Printed Name: Caitlin De La Torre Title: Branch Chief

Major Amendment No. 2
Incidental Take Permit 2081-2019-059-03
CALIFORNIA DEPARTMENT OF TRANSPORTATION
State Route 84 Expressway Widening and SR-84/I-680 Improvements Project