

Memorandum

Date: October 28, 2019

To: Habitat Conservation Planning Branch
California Department of Fish and Wildlife
1416 Ninth Street, Suite 1260
Sacramento, CA 95814

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HABITAT CONSERVATION
PLANNING BRANCH

From: Arthur Hinojosa, Chief
Division of Integrated Regional Water Management
California Department of Water Resources

Subject: Incidental Take Permit for 2081-2012-014-03 Dutch Slough Tidal Marsh Restoration Project, Contra Costa County, Amendment No. 1, Signed

Enclosed is the original signed Incidental Take Permit Amendment for the above referenced project, which have been signed by California Department of Fish and Wildlife (CDFW) and California Department of Water Resources.

Enclosures

cc: California Department of Fish and Wildlife
Habitat Conservation Planning Branch, Sacramento

Melissa Farinha—Bay Delta Region, Napa

James Starr—Bay Delta Region, Stockton

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



AMENDMENT NO. 1
(A Minor Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2012-014-03
California Department of Water Resources
Dutch Slough Tidal Marsh Restoration Project in Contra Costa County

INTRODUCTION

On April 17, 2017, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2012-014-03 (ITP) to Department of Water Resources (Permittee) authorizing take of longfin smelt (*Spirinchus thaleichthys*), Delta smelt (*Hypomesus transpacificus*), spring-run Chinook salmon (*Oncorhynchus tshawytscha*), winter-run Chinook salmon (*Oncorhynchus tshawytscha*), giant garter snake (*Thamnophis gigas*), and Swainson's hawk (*Buteo swainsoni*) (collectively, the Covered Species) associated with and incidental to the Dutch Slough Tidal Marsh Restoration Project in Contra Costa County, California (Project). The Project as described in the ITP originally issued by CDFW includes restoration activities on Emerson, Gilbert, and Burroughs parcels for the purpose of restoring tidal marsh, riparian habitat enhancement and preservation, levee maintenance, infrastructure development and protection for public access. The creation and restoration area is 1,178 acres and includes the following major components: creation of 560 acres of tidal marsh; creation of 26 acres of riparian forest; creation of 76 acres of managed non-tidal marsh; creation of 97 acres of subtidal open water habitat; creation of 4 acres of native grassland; enhancement of approximately 26 acres of managed non-tidal marsh and 173 acres of irrigated pasture.

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.

Since then, several changes to the Project have occurred.

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

First, this Amendment modifies the Project Description by omitting the temporary Marsh Creek crossing and widening of Little Dutch Slough activities.

Second, this Amendment modifies the Project Description to accommodate for borrow of fill at deeper elevations up to 20 feet below existing grade from the Emmerson Parcel borrow site in the future subtidal open water area.

Third, this Amendment modifies the Project Description by reducing the number of levee breaches on the Gilbert Parcel from four to one and movement of the planned cross levee northward.

AMENDMENT

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

Project Description, page 5, the following language shall be struck:

~~Little Dutch Slough Enlargement~~

~~The southern reach of Little Dutch Slough will be enlarged to allow full tidal exchange in the restored marshes on the Gilbert and Burroughs parcels. The bottom of the slough will be deepened and the slough will be widened toward the Gilbert parcel. Approximately 2,500 feet of the Gilbert levee will be removed and a low berm set back an average of 50 feet from the existing channel will be constructed. Once the new berm is breached in multiple locations, constructed channel networks will convey tidal flows onto the restored marsh plains.~~

~~Enlarging Little Dutch Slough will require removal of about 13,000 CY of material from the slough and excavation of 45,000 CY of upland material to remove the existing levee. The material will be used as fill in the tidal marsh restoration areas on the Burroughs and Gilbert parcels.~~

~~Enlargement of the northern reach of Little Dutch Slough is not anticipated to be needed because it is wide enough to accommodate increased tidal flow. The channel is expected to enlarge passively due to tidal scour once the Gilbert parcel is breached.~~

Project Description, page 7:

~~Temporary Marsh Creek Crossing~~

~~A temporary crossing will be constructed across Marsh Creek to allow transport of material through the ISD parcel to the Emerson parcel. The crossing will be near the southern end of the parcel and within the disturbance area for the proposed levee breach. The temporary crossing will be constructed of an earthen embankment with 3 culverts up to 4 feet in diameter. The crossing will require 2,000 CY of temporary fill of the Marsh Creek channel during low flows, and will be removed prior to the onset of the rainy season. The Contra Costa Flood Control and Water Conservation District requires that flows to Marsh Creek be returned prior to October 1, and that the Marsh Creek crossing be removed by that date. As a result, to allow for transport of the necessary material from the soils borrow area, this temporary crossing will be installed (and removed) twice during two consecutive construction seasons. At the end of each construction season, all temporary crossing materials (earth embankment, culverts, gravel, and rock slope protection) will be removed, and the channel will be graded to match pre-construction grades.~~

Emmerson Parcel Borrow Site:

Fill will be borrowed at deep elevations up to 20 feet below existing grade from the Emmerson Parcel borrow site located within the future subtidal open water area (Figure 2).

Finally, Figure 2 in the original ITP shall be replaced with a new Figure 2, dated 2018. In addition, Figures 2a and 2b will be added to establish placement of levees in relation to the Future Dutch Slough Community Park.

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 three specific changes to the ITP as originally issued. The resulting impacts to the Covered Species, however, including the timing and number of acres of habitat that will be impacted as a result of the Project, will remain the same.

CDFW has determined that changes to circumstances and the Project Description 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 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 April 2017 that the Project, as approved, met the standards for issuance of an ITP under CESA. This determination included findings that, among other things, the impacts of the taking would be minimized and fully mitigated and that the Project would not jeopardize the continued existence of the Covered Species. Those findings are unchanged with respect to this Amendment because the Project and ITP as amended do not change the quantity of impacts to Covered Species contemplated previously when issuing the ITP. 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 April 2017 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, considering the Dutch Slough Tidal Marsh Restoration Project Final Supplemental Environmental Impact Report (State Clearinghouse No. 2006042009) certified by Department of Water Resources 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 Department of Water Resources 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 redirects Covered Activities and associated impacts entirely within the Project footprint previously contemplated in the ITP. No Conditions of Approval in the ITP have been altered as a result of this Amendment. 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 that the change to the ITP constitutes a Minor Amendment as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(4).

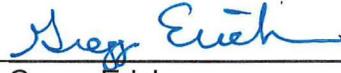
The authorization provided by this Amendment is not valid until Permittee signs and dates the acknowledgement below, and returns one of the duplicate originals of this Amendment by registered first class mail to CDFW at:

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

Minor Amendment No. 1
Incidental Take Permit 2081-2012-014-03
DEPARTMENT OF WATER RESOURCES
Dutch Slough Tidal Marsh Project

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

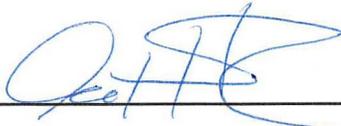
on 9-13-19.



Gregg Erickson
Regional Manager
Bay Delta Region

ACKNOWLEDGMENT

The undersigned: (1) warrants that he or she is acting as a duly authorized representative of the Permittee, (2) acknowledges receipt of the original ITP and this Amendment, and (3) agrees on behalf of the Permittee to comply with all terms and conditions of the ITP as amended.

By: 

Date: 10/1/19

Printed Name: ARTHUR HINOJOSA

Title: Chief Div. Regional Assistant

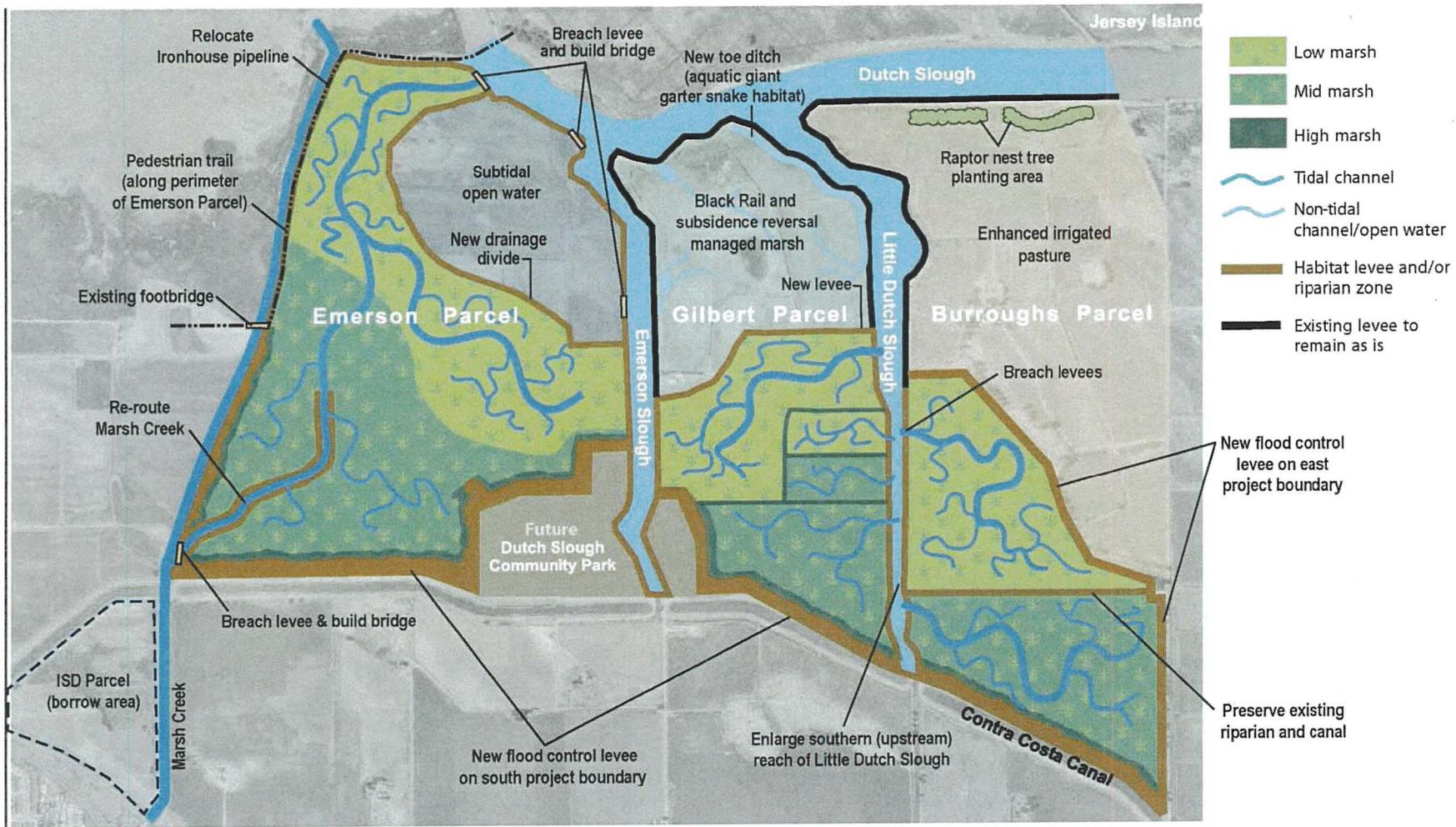


Figure 1. Dutch Slough Tidal Marsh Restoration Project design from 2012 permit applications.



Figure 2a. Location of southeast Emerson levee in permit applications and as currently located in Final project designs (2019).



Figure 2b. Location of southeast Emerson levee as described in 2018 letters about project changes at that time. This design is no longer applicable.