

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

CENTRAL REGION

1234 EAST SHAW AVENUE

FRESNO, CALIFORNIA, 93710

**AMENDMENT NO. 12**

(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

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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

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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 31<sup>st</sup> to November 15<sup>th</sup> 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.

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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 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 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.

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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. CDFW issued **Major Amendment No. 11** on February 18, 2020.

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, Major Amendment No. 10, and Major Amendment No. 11 (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 March 31, 2020, with acreage refinements on June 10, 2020, July 10, 2020, and August 19, 2020, the Permittee requested revision to the ITP to: increase the Construction Footprint by 45.39 acres; shift the HST alignment approximately 50 feet west; address changes to public roads and access roads in three Road Modifications, drainage facilities, access-restricted fencing, soundwalls, culverts, signage and utilities to the east and west of the permitted alignment as a result of the shift; make improvements to an existing BNSF access road and shift one Dedicated Wildlife Crossing (DWC) approximately 700 feet southwest. In an Addendum dated April 10, 2019, the Permittee requested an additional 0.07-acre expansion of the footprint beyond what was requested in the February 25, 2019 letter for Amendment No. 10. That combined with the current request will increase the Construction Footprint from 2,140.56 acres by 45.46 acres to a new total of 2,186.02 acres.

This Major Amendment No. 12 (Amendment) makes the following changes to the ITP, as amended:

First, this Amendment increases the size of the entire Project Construction Footprint by 45.46 acres to a total of 2,186.02 acres of cumulative impact disturbance. The increase in the Construction Footprint acres is necessary to accommodate shifting the HST alignment approximately 50 feet west and addressing the changes to public roads,

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access roads, drainage facilities, access-restricted fencing, soundwalls, culverts, the bridge at Schmidt Creek, signage and utilities to the east and west of the permitted alignment resulting from the shift and for the extension of BNSF culverts at Schmidt Creek and Schmidt Creek Tributary as required to accommodate the all-weather access roads.

Second, this Amendment adds three Road Modification Locations and updates Table 3.

Third, this Amendment moves one DWC approximately 700 feet southwest and renames all six Madera County DWCs from north to south and updates Table 4.

Fourth, this Amendment increases the Covered Species impacts for Swainson's hawk, San Joaquin kit fox and California tiger salamander upland, each by 19.09 acres; and also increases impacts to potential California tiger salamander breeding (aquatic) habitat by 0.70 acre for indirect impacts and by 0.38 acre for direct impacts as a result of the modified Project Construction Footprint, and updates Table 5.

Fifth, this Amendment requires either the purchase of additional Covered Species credits or the permanent protection of additional HM lands and accompanying management costs to compensate for Covered Species impacts associated with the increase in the Construction Footprint as described in Condition of Approval 9.

Sixth, this Amendment separates Table 6 into Table 6 just for HaOrGr impact acreages and mitigation obligations and to Table 6A for Swainson's hawk, San Joaquin kit fox and California tiger salamander impact acreages and mitigation obligations. Table 6A will now also include mitigation completed and mitigation still outstanding.

Seventh, this Amendment increases the Performance Security amount required for the Permittee to proceed with Covered Activities commensurate with the increased impacts.

Eighth, this Amendment changes Condition of Approval 10, Security Timeline (10.3) to extend the deadline to complete the required acquisition, protection and transfer of all HM lands and recording of any required conservation easements by one year.

Ninth, this Amendment revises the Baseline Map Book, Exhibit 5, Map Book pages 36 through 39 (a total of 4 pages) to reflect the increased Project Footprint.

## AMENDMENT

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

1. The third paragraph of the section entitled "Project Description" on pages 2 and 3 of the ITP, as amended, shall be further amended to read as follows:  
The Project is 27.01 miles in length and includes construction and installation of all Project components (Exhibit 1). Construction and installation of all Project components will disturb up to ~~2,140.56~~ ***2,186.02*** acres (hereafter, Construction Footprint). Construction may occur at any point along the Construction Footprint, and construction may occur at multiple locations simultaneously. For purposes of this ITP, in addition to Construction Footprint activities (i.e., construction of the California HST), the Project also includes operations, maintenance, and inspection activities within the Construction Footprint (O&M); and Mitigation Site activities. The three types of general activities are described more fully in this Project Description. Also, each of the three general types of activities requires their own Conditions of Approval.
  
2. The section entitled "Roadway Modifications" on page 14 of the ITP, as amended, is further amended to read as follows:  
  
Roadway Modifications: Changes to existing roads along or crossing the HST ROW will be needed because the HST requires a fully dedicated grade-separated track alignment for public safety and to achieve the desired speeds. The Project will require 35 roadway modifications, ~~nineteen~~ ***22*** in Madera County and thirteen in Fresno County. Roadway modifications will occupy ~~909.95~~ ***919.61*** acres and will also result in temporary disturbance to ~~21.95~~ ***25.44*** acres (~~931.90~~ ***945.05*** total acres) of the Construction Footprint (Table 3). At some locations, there will be an option to perform the modification as either an undercrossing or an overcrossing of the HST ROW. In these instances, the more conservative impact in terms of acreage (e.g., higher acreage) has been included in this ITP. Handrails, fences, and walkways will be provided for the safety of pedestrians and bicyclists during roadway modification.
  
3. Table 3 entitled "Location and Size of Project Roadway Modifications" starting on page 15 of the ITP, as amended, is further amended to read as follows:

**Table 3. Location and Size of Project Roadway Modifications**

Street Modification	County	Activity	Area (acres)	
			Permanent	Temporary
<b>1) Hanover Drive / Ave 19 / Pickfair Way; 2) Hanover Dr. / Ridgedale Dr; 3) Hanover Dr. / Zelkova Drive</b>	<b>Madera</b>	<b>Realign Hanover Drive; improve three intersections and restore streets</b>	<b>1.72</b>	<b>3.06</b>
<b>Old Mill Drive</b>	<b>Madera</b>	<b>Construct cul-de-sac</b>	<b>1.95</b>	<b>0.43</b>
<b>Avenue 17</b>	<b>Madera</b>	<b>Extend east from new overcrossing to Road 28 1/2</b>	<b>5.99</b>	<b>0</b>
Road 26	Madera	Construct new overcrossing	26.96	
Road 27	Madera	Construct new overcrossing	26.81	
Parichan Farms	Madera	Construct new overcrossing	3.2	
W Herndon Avenue	Fresno	Lower grade of road	15.1	
Avenue 17	Madera	Construct new overcrossing	23.75	
Avenue 17	Madera	Connecting to Footprint to allow access to Project		1.14
Ellis Street	Madera	Access road being connected		0.41
Road 28 ½	Madera	Access road being connected		0.41
Watson Street	Madera	Access road being connected		0.41
Avenue 15 ½	Madera	Construct new overcrossing	30.16	1.16
Avenue 15	Madera	Construct new overcrossing	15.43	0.00
Avenue 15	Madera	Construct new access road to residence south of Avenue 15 and east of Santa Fe Drive	9.2	
Avenue 13	Madera	Construct new overcrossing	28.33	0.00
Road 30 ½	Madera	Shift Road	7.06	0.00
Avenue 12	Madera	Construct new overcrossing	27.98	0.00
Avenue 11	Madera	Construct new overcrossing	10.94	0.00
Avenue 10	Madera	Construct new overcrossing	27.51	0.00
Avenue 9	Madera	Construct new overcrossing	25.54	0.00
Avenue 8	Madera	Construct new overcrossing	37.7	0.70
Avenue 7	Madera	Replace overcrossing	31.15	0.89

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Street Modification	County	Activity	Area (acres)	
			Permanent	Temporary
North Golden State Boulevard	Fresno	Shift road 4.5 miles; close road between West Olive and West Belmont avenues; construct new Veterans Boulevard overcrossing connecting Golden State Boulevard and Bullard Avenue; construct new West Shaw Avenue overcrossing; close North Carnegie Avenue	119.22	39.21
SR 99	Fresno	Shift freeway 2.3 miles; replace West Ashlan Avenue overcrossing; replace West Clinton Avenue overcrossing; construct new West McKinley Avenue overcrossing or undercrossing; shift northbound SR 99 on-ramp	201.92	7.02
West Olive Avenue	Fresno	Construct new overcrossing	15.23	0.34
West Belmont Avenue	Fresno	Construct new overcrossing and parallel frontage road	15.18	5.24
North SR 180	Fresno	Connect to North Thorne Avenue	0.86	4.26
South SR 180	Fresno	Close Divisadero Street	0.20	0.00
Stanislaus Street	Fresno	Close Road	3.11	0.23
Tuolumne Street	Fresno	Replace overcrossing with new two-way overcrossing	1.66	0.00
Fresno Street	Fresno	Extend existing undercrossing	3.42	1.69
Tulare Street	Fresno	Construct new under or overcrossing	4.02	0.89
Kern Street	Fresno	Close road	0.02	0.00
Mono Street	Fresno	Close road	Acres are included with the Downtown Fresno Station	
Ventura Street	Fresno	Construct new under or overcrossing	3.49	1.27

4. Table 4 entitled "Location of Dedicated Wildlife Crossings" on page 22 of the ITP, as amended, is further amended to read as follows:

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**Table 1. Location of Dedicated Wildlife Crossings**

<b>Crossing</b>	<b>Location</b>	<b>Coordinates</b>
	<b><i>Dedicated Wildlife Crossings Associated with Madera (MAD)</i></b>	
<b>6 MAD-1</b>	Along HST alignment <del>1 mile southeast of Road 26</del> <b>0.13 mile south of Avenue 18</b> and <del>0.38</del> <b>0.24</b> -mile northwest of Road 27	<del>37.010425</del> <b>37.008977</b> , <del>-120.061086</del> <b>-120.059533</b>
<b>4 MAD-2</b>	Along Santa Fe Drive <del>0.6</del> <b>0.51</b> mile south of Avenue 15	36.959585, -120.006473
<b>2 MAD-3</b>	Along Santa Fe Drive <del>1.25</del> <b>1.01</b> miles south of Avenue 15	36.952295, -119.999939
<b>3 MAD-4</b>	Along Santa Fe Drive <del>0.75</del> <b>0.60</b> mile north of Avenue 13, just north of Cottonwood Creek	36.946687, -119.994995
<b>4 MAD-5</b>	Along private road <del>0.45</del> <b>0.46</b> mile north of Avenue 12 and <del>0.45</del> <b>0.44</b> mile east of Road 30½	36.929815, -119.983848
<b>5 MAD-6</b>	Along private road 0.5 mile south of Avenue 9 and 0.45 mile east of SR 99	36.873074, -119.960205

5. The first paragraph of the section entitled “Impacts of the Taking on Covered Species” on pages 32 and 33 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~~ **2,186.02** acres within the Construction Footprint, as well as 258.07 acres of Temporary Use Areas and 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

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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~~ **35** 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).

6. The first paragraph under the section titled "California Tiger Salamander," on page 33 of the ITP, is further amended to read as follows:

The Covered Activities are expected to result in the permanent loss of up to ~~154.26~~ **173.35** acres of upland refugia habitat, direct permanent loss of ~~6.57~~ **6.95** acres of aquatic breeding habitat, and indirect permanent loss of ~~6.05~~ **6.75** acres of aquatic breeding habitat for California tiger salamander (CTS) (Table 5). This determination was made based on an identification of baseline vegetation cover types within the Construction Footprint. Vegetation cover type acreage that could function as CTS upland refugia and breeding habitat were quantified and subsequently used as a habitat-based proxy to estimate the extent of incidental take in the form of mortality and indirect impacts that will occur as a result of Project build out.

7. The first paragraph of the section entitled "Swainson's Hawk" on page 34 of the ITP, as amended, shall be further amended to read as follows:

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Up ~~420.88~~ **439.97** acres of foraging habitat and one nest tree for Swainson's hawk (SWHA) could be permanently impacted as a result of Covered Activities (Table 5) and it is expected that all potentially suitable habitat would be permanently destroyed. Based on the results of baseline surveys conducted within the Construction Footprint in spring 2013, there is one known location of a SWHA nest tree within 0.5-mile of the Construction Footprint, on the west side of SR 99 south of the San Joaquin River. The foraging habitat impact acres were determined based on this one nest tree and the guidelines set forth in the Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*) in the Central Valley of California (California Department of Fish and Game, 1994).

8. The first paragraph of the section entitled "San Joaquin Kit Fox" on page 35 of the ITP, as amended, shall be further amended to read as follows:

Up to ~~532.41~~ **551.50** total acres, of habitat for San Joaquin kit fox (SJKF) could be permanently impacted as a result of Covered Activities (Table 5). This determination was based on an identification of baseline vegetation cover types and that all potentially suitable habitat would be permanently destroyed within the Construction Footprint. Vegetation cover type acres that could function as SJKF foraging, denning, and breeding habitat were quantified and subsequently used as a habitat-based surrogate to estimate the extent of incidental take in the form of mortality and indirect impacts that will occur as a result of Project build out.

9. Table 5 on page 36 of the ITP, as amended, shall be further amended to read as follows:

**Table 5. Covered Species Habitat Impacts**

Covered Species	Habitat Type	Impact Type	Impact Acres
California tiger salamander	Upland refugia (California annual grassland, pasture, barren, fallow field, inactive agriculture, and ruderal)	Permanent	<del>154.26</del> <b>173.35</b>
	Aquatic breeding (vernal pool, open water, seasonal wetland)	Permanent (Direct)	<del>6.57</del> <b>6.95</b>
		Permanent (Indirect)	<del>6.05</del> <b>6.75</b>

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Covered Species	Habitat Type	Impact Type	Impact Acres
Swainson's hawk	Foraging (California annual grassland, pasture, barren, fallow field, inactive agriculture, ruderal, field crops, row, crops, and irrigated hay crops)	Permanent	420.88 <b>439.97</b>
	Nesting (riparian and eucalyptus woodland)	Permanent	1 nesting tree(s)
San Joaquin kit fox	Upland (California annual grassland, pasture, barren, fallow field, inactive agriculture, ruderal, field crops, row crops, and irrigated hay crops)	Permanent (Preferred)	96.11 <b>97.55</b>
San Joaquin kit fox	Urban, transportation corridors, commercial/industrial, constructed watercourses, and residential rural	Permanent (Marginal)	436.30 <b>453.95</b>
Hairy Orcutt grass	vernal pool, seasonal wetland	Permanent (Direct)	1.85
		Permanent (Indirect)	3.35

10. Condition of Approval 9 (Habitat Management Land Acquisition) on page 71 of the ITP, as amended, shall be further amended to read as follows:

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 for all Covered Species other than hairy Orcutt grass, the Permittee ~~shall~~ **has** purchased 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~~

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been identified to hold water with sufficient duration to support breeding) of Covered Species **CTS Breeding** credits from the CDFW-approved Dutchman Creek Mitigation Bank (Condition of Approval 9.2); **however, these credits are pending demonstration of success to be applied toward the CTS breeding acres required (6.43 acres are currently released vernal pool fairy shrimp credits that are also designated as "future release" CTS aquatic breeding habitat and 0.47 acres are currently released CTS upland habitat that has been identified to hold water with sufficient duration to support breeding).**

The Permittee shall ~~has~~ also provided for the permanent protection and management of ~~418.92~~ **445.79** acres of Habitat Management (HM) lands within the ~~Preservation~~ **Mitigation Area under Conservation Easement** 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. ~~Of the~~ **445.79 mitigation acres**, 418.92 acres include the following to which currently 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 445.79-acre Mitigation Area at Lazy K also includes 8.19 acres of restored CTS breeding habitat, which is pending demonstration of success to be applied toward the required CTS breeding acres.**

The Permittee shall also either purchase an additional ~~40.67~~ **19.42** acres (**less up to 6.9 acres if CTS breeding is successful at Dutchman Creek Mitigation Bank and/or less 8.19 acres if CTS breeding habitat restoration at Lazy K is successful**) of Covered Species credit for CTS breeding habitat, an additional ~~40.14~~ **29.23** acres of Covered Species credit for SWHA foraging habitat, and an additional ~~3.72~~ **15.43** 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 all the additional **64.08** acreages (**19.42 CTS breeding and 44.66 upland**) 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.

11. Table 6 of the ITP, as amended, is amended as follows:

**Table 6. Compensatory Mitigation Acres for Covered Species**

<b>Impact Type</b>	<b>Acres</b>
<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
<b>Total Impacts</b>	<b>166.88</b>
Upland Compensatory Mitigation	308.52
Breeding Habitat Compensatory Mitigation	25.76
<b>Total Compensatory Mitigation</b>	<b>334.28</b>
<i>Swainson's Hawk</i>	
Direct Permanent Foraging Habitat	420.88
Direct Permanent Nesting Habitat	1 nest tree
<b>Total Impacts</b>	<b>420.88</b>
<b>Total Compensatory Mitigation</b>	<b>420.88</b>
<i>San Joaquin Kit Fox</i>	
Direct Permanent Preferred Foraging/Dispersal Habitat	96.11
Direct Permanent Marginal Dispersal Habitat	436.30
<b>Total Impacts</b>	<b>532.41</b>
<b>Total Compensatory Mitigation</b>	<b>401.37</b>
<i>Hairy Orcutt Grass</i>	
Direct Permanent	1.85
Indirect Permanent	3.35
<b>Total Impacts</b>	<b>5.20</b>
Compensatory Habitat Mitigation Lands	14.10
Enhancement Lands	1.37
<b>Total Compensatory Mitigation</b>	<b>15.47</b>

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12. Table 6A is added to the ITP, as amended, to read as follows:

**Table 6A. Compensatory Mitigation Acres for Covered Species other than hairy Orcutt grass**

Covered Species Type of Habitat Impacted	Project Impacts	Total Mitigation Required	Mitigation Completed	Pending Documented Breeding	Mitigation Requires Security
California Tiger Salamander					
Indirect Permanent Breeding Habitat	<del>6.05</del> 6.75	<del>6.05</del> 6.75			
Direct Permanent Breeding Habitat	<del>6.57</del> 6.95	<del>19.71</del> 20.85			
CTS Breeding Total	<del>12.62</del> 13.70	<del>25.76</del> 27.60	<del>8.18</del> 8.18	<del>15.09</del> 15.09	<del>10.68</del> 19.42
Direct Permanent Upland Refugia/ Foraging Habitat	<del>154.26</del> 173.25	<del>308.52</del> 346.50	<del>406.65</del> 406.65		- none
CTS Total	<del>321.14</del> 360.13	<del>334.28</del> 374.22	Not additive: Mitigation for Upland Habitat cannot count for Breeding		
Swainson's hawk					
Direct Permanent Nesting Habitat	- 1 nest	- 1 nest	- -		- none
Direct Permanent Foraging Habitat	<del>420.88</del> 439.97	<del>420.88</del> 439.97	410.74		<del>10.14</del> 29.23
San Joaquin kit fox					
Direct Permanent Preferred Foraging/ Dispersal Habitat	<del>96.11</del> 97.55	<del>192.22</del> 195.10			
Direct Permanent Marginal Dispersal Habitat	<del>436.30</del> 453.95	<del>218.15</del> 226.98			
SJKF Total	<del>532.41</del> 551.50	<del>410.37</del> 422.08	<del>406.65</del> 406.65		<del>3.72</del> 15.43
Total acres for which Security funding is still required					64.08

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13. Condition of Approval 9.1 (Cost Estimates) on pages 72 and 73 of the ITP, as amended, shall be further amended to read as follows:

9.1. Cost Estimates. CDFW has estimated the cost of acquisition, protection, and perpetual management of the HM lands for all Covered Species other than hairy Orcutt grass as follows:

- 9.1.1. Land acquisition costs for HM lands identified in Condition of Approval 9.3 below, estimated at \$5,025.93/acre for ~~392.40~~ **44.66** acres at Lazy K Ranch ~~upland~~: ~~\$1,972,174.93~~ **\$224,458.03**; Land acquisition costs are estimated at \$20,135.06/acre for the additional ~~40.68~~ **19.42** acres of CTS aquatic breeding habitat: ~~\$215,042.44~~ **\$391,022.87**; Land acquisition costs are estimated at \$5,025.93/acre for additional uplands including: ~~\$143,037.97~~ for the additional ~~28.46~~ acres of SHWA foraging habitat; ~~\$1,210,344.46~~ for the additional ~~89.86~~ acres of SJKF upland habitat; and ~~\$37,493.44~~ for ~~7.46~~ acres of additional CTS upland habitat, bringing the total land acquisition cost for CTS to ~~\$252,535.88~~. Land acquisition costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements.; ~~for a grand total of \$2,819,378.85~~;
- 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 ~~\$612,157.30~~ **\$99,966.97** for ~~392.40~~ **64.08** acres at Lazy K Ranch, ~~\$28,299.01~~ for ~~18.14~~ acres of additional CTS habitat, ~~\$44,398.56~~ for ~~28.46~~ acres of additional SWHA foraging habitat and ~~\$140,184.65~~ for ~~89.86~~ acres of additional SJKF upland habitat; ~~for a grand total of \$825,039.52~~;
- 9.1.3. Interim management period funding as described in Condition of Approval 9.3.6 below, estimated at ~~\$612,157.30~~ **\$15,341.09** for ~~392.40~~ **64.08** acres at Lazy K Ranch, ~~\$4,342.81~~ for ~~18.14~~ acres of additional CTS habitat, ~~\$6,813.47~~ for ~~28.46~~ acres of additional SWHA foraging habitat and ~~\$21,512.96~~ for ~~89.86~~ acres of additional SJKF upland habitat; ~~for a grand total of \$126,611.89~~;
- 9.1.4. Long-term management funding as described in Condition of Approval 9.4 below, estimated at \$5,806.00/acre for ~~392.40~~ **64.08** acres at Lazy K Ranch: ~~\$2,275,952.00~~ **\$372,048.48** and ~~\$105,320.84~~ for ~~10.39~~ ~~18.14~~ acres of additional CTS habitat and

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~~\$165,238.76 for 28.46 acres of additional SWHA foraging habitat and \$521,727.16 for 89.86 acres of additional SJKE upland habitat. Long term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management; for a grand total of \$3,070,561.16.~~

- 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 ~~\$48,000.00~~ **\$36,000.00**.

14. Condition of Approval 10.1 (Performance Security) on page 77 of the ITP, as amended, shall be further amended to read as follows:

Security Amount. The Security shall be in the amount of ~~\$4,968,549.27~~ **\$1,138,837.44** for ~~392.40~~ **44.66** acres **of additional uplands and** at Lazy K Ranch; ~~\$402,498.55 for 18.14~~ **19.42** acres of additional CTS **aquatic breeding** habitat; and ~~\$371,488.77 for 28.46 acre of additional SWHA foraging habitat and \$1,147,054.84 for 89.86 acre of additional SJKE upland habitat for a grand total of \$6,889,591.42.~~ These amounts are based on the cost estimates identified in Condition of Approval 9.1 above and are Security only for **the additional HM lands** for Covered Species **mitigation not already completed** other than hairy Orcutt grass.

15. Condition of Approval 10 of the ITP, as amended, on page 78 (Performance Security) is further amended to read as follows:

Even if Security is provided under this Condition of Approval 10, the Permittee must complete the required acquisition, protection and transfer of all HM lands and record any required conservation easements by December 31, ~~2020~~ **2021**. CDFW may require the Permittee to provide additional HM lands and/or additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the Permittee does not complete these requirements within the specified timeframe.

16. Exhibit 5 ("Baseline Map Book") in the list of attachments on page 115 of the ITP, as amended, is amended to include the replacement of Map Book pages 36 through 39 (a total of 4 pages) with the corresponding pages included in Attachment 1 of this Amendment, to reflect the increased Project Footprint.

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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 nine specific changes to the ITP, as amended.

First, this Amendment increases the size of the entire Project Construction Footprint by 45.46 acres to a total of 2,186.02 acres of cumulative impact disturbance. The increase in the Construction Footprint acres is necessary to accommodate shifting the HST alignment approximately 50 feet west and addressing the changes to public roads, access roads, drainage facilities, access-restricted fencing, soundwalls, culverts, the bridge at Schmidt Creek, signage and utilities to the east and west of the permitted alignment resulting from the shift and for the extension of BNSF culverts at Schmidt Creek and Schmidt Creek Tributary as required to accommodate the all-weather access roads.

Second, this Amendment adds three Road Modification Locations and updates Table 3.

Third, this Amendment moves one DWC approximately 700 feet southwest and renames all six Madera County DWCs from north to south and updates Table 4.

Fourth, this Amendment increases the Covered Species impacts for Swainson's hawk, San Joaquin kit fox and California tiger salamander upland, each by 19.09 acres; and also increases impacts to potential California tiger salamander breeding (aquatic) habitat by 0.70-acre for indirect impacts and by 0.38-acre for direct impacts as a result of the modified Project Construction Footprint and updates Table 5.

Fifth, this Amendment requires either the purchase of additional Covered Species credits or the permanent protection of additional HM lands and accompanying

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management costs to compensate for Covered Species impacts associated with the increase in the Construction Footprint as described in Condition of Approval 9.

Sixth, this Amendment separates Table 6 into Table 6 just for HaOrGr and Table 6A for Swainson's hawk, San Joaquin kit fox and California tiger salamander. Table 6A will now also include mitigation completed and mitigation still outstanding.

Seventh, this Amendment increases the Performance Security amount required for the Permittee to proceed with Covered Activities commensurate with the increased impacts.

Eighth, this Amendment changes Condition of Approval 10, Security Timeline (10.3) to extend the deadline to complete the required acquisition, protection and transfer of all HM lands and recording of any required conservation easements by one year.

Ninth, this Amendment revises the Baseline Map Book, Exhibit 5, Map Book pages 36 through 39 (a total of 4 pages) to reflect the increased Project Footprint.

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.

*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, No. 10, and No. 11, 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 increase the habitat compensation in proportion to the increase in impact due to the increase in habitat impact so 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

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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, Major Amendment No. 10 in August 2019, and Major Amendment No. 11 in February 2020 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 size of the entire Project Construction Footprint by 45.46 acres to a total of 2,186.02 acres of cumulative impact disturbance. The increase in the Construction Footprint acres is necessary to accommodate shifting the HST alignment approximately 50 feet west and addressing the changes to public roads, access roads, drainage facilities, access-restricted fencing, soundwalls, culverts,

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the bridge at Schmidt Creek, signage and utilities to the east and west of the permitted alignment resulting from the shift and for the extension of BNSF culverts at Schmidt Creek and Schmidt Creek Tributary as required to accommodate the all-weather access roads; adds three Road Modification Locations and updates Table 3; moves one DWC approximately 700 feet southwest and renames all six Madera County DWCs from north to south and updates Table 4; increases the Covered Species impacts for Swainson's hawk, San Joaquin kit fox and California tiger salamander upland, each by 19.09 acres; and also increases impacts to potential California tiger salamander breeding (aquatic) habitat by 0.70 acre for indirect impacts and by 0.38 acre for direct impacts as a result of the modified Project Construction Footprint and updates Table 5; requires either the purchase of additional Covered Species credits or the permanent protection of additional HM lands and accompanying management costs to compensate for Covered Species impacts associated with the increase in the Construction Footprint as described in Condition of Approval 9; separates Table 6 in to Table 6 just for HaOrGr and Table 6A for Swainson's hawk, San Joaquin kit fox and California tiger salamander which will now also include mitigation completed and mitigation still outstanding; increases the Performance Security amount required for the Permittee to proceed with Covered Activities commensurate with the increased impacts; changes Condition of Approval 10, Security Timeline (10.3) to extend the deadline to complete the required acquisition, protection and transfer of all HM lands and recording of any required conservation easements by one year; revises the Baseline Map Book, Exhibit 5, Map Book pages 36 through 39 to reflect the increased Project Footprint.

As described above, these changes to the ITP, as amended, will increase 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


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**Attachment:**

ATTACHMENT 1 EXHIBIT 5 Baseline Map Book pages 36-39

**APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

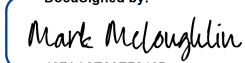
on 9/1/2020

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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:   
437AA2E68E7842B

Date: 9/24/2020

Printed Name: Mark A. McLoughlin

Title: Director of Environmental Services

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