

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

CENTRAL REGION

1234 EAST SHAW AVENUE

FRESNO, CALIFORNIA 93710



AMENDMENT NO. 18

(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 (*Vulpes 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. 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 to protect and transfer all HM lands and record any required conservation easements.

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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.

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.

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 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. CDFW issued **Major Amendment No. 12** on September 1, 2020.

In a letter dated September 12, 2019, and in supplemental information received on June 16, 2020, the Permittee requested revision of the ITP to increase the Construction Footprint by 41.64 acres to accommodate 109 utility relocation modifications to drainage, electrical, gas, water, sewer, and telecommunication utilities at 106 locations as well as three access roads, staging areas, and a box culvert at Lateral 6.2 canal. Via e-mail on September 24, 2020, the Permittee also provided supplemental information needed to make corrections for elements inadvertently left out for the Shift request in Amendment No. 12, which will increase the footprint by an additional 16.58 acres. These two changes will increase the Construction Footprint by 58.22 acres. The Construction Footprint will change from 2,186.02 acres to a new total of 2,244.24 acres. In an e-mail dated October 20, 2020, the Permittee requested the San Joaquin kit fox (SJKF) den excavation language be amended to allow for den entrance blocking as an alternative to den destruction under specific circumstances. CDFW issued **Major Amendment No. 13** on November 4, 2020.

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In a letter dated February 19, 2019, and with supplemental GIS information received on February 26, 2020, the Permittee requested a new revision of the ITP to increase the Construction Footprint by 14.95 acres to accommodate utility relocation at 20 sites and access road work at two sites, one of which is also a utility relocation site, for a total of 21 work locations in Madera County. An additional 0.33 acres was requested to be added on July 27, 2021, for a total addition of 15.28 acres. CDFW is also initiating a change to remove the 2.19-acre area that overlaps with the California High-Speed Train Project Fresno to Bakersfield ITP, update Table 4, adds clarification for Condition of Approval 7.4, and revise Condition of Approval 8.13.2. The Construction Footprint will change from 2,244.24 acres to a new total of 2,257.33 acres. CDFW issued **Major Amendment No. 14** on September 1, 2021.

In a meeting on May 9, 2022, CDFW informed the Permittee of the intent to initiate an Amendment to this ITP for the purpose of providing clarification regarding several Conditions of Approval pertaining to the Pre-Construction Surveys required for Covered Species (CTS, SJKF, HaOrGr and Swainson's Hawk (SWHA)). In an e-mail on June 27, 2022, the Permittee requested changes to Condition of Approval 8.7 to allow for alternatives to current excavation coverings or ramping for animal escape. In an e-mail on July 18, 2022, the Permittee requested changes to Condition of Approval 7.4 to limit the area considered suitable for California tiger salamander. CDFW issued **Major Amendment No. 15** on October 10, 2022.

In a letter dated September 20, 2022, and received on October 3, 2022, and with supplemental GIS information received on January 17, 2023, the Permittee requested a new revision of the ITP, as amended, to increase the Construction Footprint by 82.60 acres to accommodate design variations including Madera County, Herndon Avenue, South of San Joaquin River, Roeding Park, Ninth Utility Work, Tenth Utility Work, Third Civil Work, Third Utility and Civil Work, Staging and Laydown, Fourth Utility and Civil Work, Sands Motel Restaurant Demolition, Avenue 9, and the Fifth Utility and Civil Work. Due to the increase in documented Swainson's hawk nests within and adjacent to the Construction Footprint, Tables 5A and 5B are being added as well as Conditions of Approval 8.14.4 and 8.14.5. CDFW is also initiating changes to Conditions of Approval 8.7, 9 and 9.2. The Construction Footprint will change from 2,257.33 acres to a new total of 2,339.93 acres. CDFW issued **Major Amendment No. 16** on April 11, 2023.

In a letter dated July 20, 2023, the Permittee requested a new revision of the ITP, as amended to change Conditions of Approval regarding SJKF and SWHA, lowering the level of minimization effort where there is a lower potential for impacts to these species. CDFW issued **Major Amendment No. 17** on September 9, 2023.

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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, Major Amendment No. 11, Major Amendment No. 12, Major Amendment No. 13, Major Amendment No. 14, Major Amendment No. 15, Major Amendment No. 16, and Major Amendment No. 17 (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 June 24, 2024, the Permittee requested an amendment to condition of approval 8.14.5 to allow for the submittal of a variance request for the nighttime work restriction buffer in the vicinity of a SWHA nest subject to the approval of CDFW.

This Major Amendment No. 18 (Amendment) makes the following changes to the ITP, as amended:

- 1) This Amendment allows the Permittee to request a variance to the nighttime work restriction buffer for SWHA nests under Condition of Approval 8.14.5.

## AMENDMENT

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

1. Condition of Approval 8.14.5. (SWHA Restrictions for Nightwork) on page 78 of the ITP, as amended, shall be further amended to read as follows:
  - 8.14.5. SWHA Restrictions for Nightwork. Permittee shall ensure that any nightwork done in the vicinity of an occupied SWHA is over 1,000 feet from the nest tree and that any lighting utilized is directed away from the nest tree, ***except with written concurrence (e-mail will suffice) from CDFW. Requests will be considered on a case-by-case basis when a compelling biological reason has been provided.***

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.

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## FINDINGS

*Issuance of this Amendment is not expected to increase the amount of take of the Covered Species compared to the Project as originally approved. 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 one specific change to the ITP, as amended.

- 1) This Amendment allows the Permittee to request a variance to the nighttime work restriction buffer for SWHA nests under Condition of Approval 8.14.5.

CDFW has determined that this Amendment will not 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. Accordingly, there will be no increase in Project impacts to the Covered Species with this Amendment.

*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, in June 2019, in August 2019, in February 2020, in September 2020, October 2020, September 2021, October 2022, April 2023 and Sept 2023 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, No. 11, No. 12, No. 13, No. 14, No. 15, No. 16, and Major Amendment No. 17 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 not result in increased impacts to the Covered Species or Covered Species habitat, (2) does not alter the Permittee’s continued adherence to and implementation of the avoidance and minimization



measures set forth in the Conditions of Approval of the ITP, as amended, 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 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, Major Amendment No. 11 in February 2020, Major Amendment No. 12 in September 2020, Major Amendment No. 13 in October 2020, Major Amendment No. 14 in September 2021, Major Amendment No. 15 in October 2022, Major Amendment No. 16 in April 2023, and Major Amendment No. 17 in September 2023 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 the 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 allows the Permittee to request a variance to the nighttime work restriction buffer for SWHA nests under Condition of Approval 8.14.5.

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

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

**on** 7/8/2024

DocuSigned by:  
*Krista Tomlinson*  
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**FOR** Julie A. Vance  
Regional Manager  
Central Region

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