

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

CENTRAL REGION
1234 EAST SHAW AVENUE
FRESNO, CALIFORNIA 93710

**AMENDMENT NO. 17**

(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

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 31st to November 15th 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.

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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 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 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

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Amendment No. 15, and Major Amendment No. 16 (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 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.

This Major Amendment No. 17 (Amendment) makes the following changes to the ITP, as amended:

- 1) This Amendment allows for the ground and vegetation disturbing Covered Activities to occur without monitoring in specified areas within the City of Fresno which are outside the known range of CTS and provided a SJKF Designated Biologist has determined there is no sign of SJKF in the Work Area.
- 2) This Amendment allows for six months of inactivity in specified areas within the City of Fresno which are outside the range of CTS provided a SJKF Designated Biologist has determined there is no sign of SJKF in the Work Area and there are no SWHA occupied nests within 0.5-mile.
- 3) This Amendment clarifies that SWHA monthly survey results are due with the monthly reports and that the report is to be submitted by October 31 each year along with a copy of the CNDDDB Report.
- 4) This Amendment allows for an exemption from Condition of Approval 7.12 (submittal of HDD and jack and bore plans) in specified areas within the City of Fresno which are outside the range of CTS, provided a SJKF Designated Biologist has determined there is no sign of SJKF in the Work Area and there are no SWHA occupied nests within 0.5-mile.
- 5) This Amendment allows for an exemption from entrapment inspections in specified areas within the City of Fresno which are outside the range of CTS provided a SJKF Designated Biologist has determined there is no sign of SJKF in the Work Area.

- 6) This Amendment clarifies that the Monthly Survey for SWHA may be submitted in lieu of the pre-construction survey, provided the Monthly Survey was done within the prior 30 days.
- 7) This Amendment clarifies the 100-foot no work nest buffer and consultation with CDFW if a SWHA pair begins nesting within 100 feet of an already active work area.
- 8) This Amendment allows for a reduction in monitoring of occupied SWHA nests when the nest is more than 1,000 feet from Project related disturbance and allows for modified monitoring to be requested after at least three full days of monitoring if there is a visual and sound barrier between the work area and the nest tree.
- 9) This Amendment adds two new Conditions of Approval for reporting SWHA nest failure and probable nest relocation.
- 10) This Amendment clarifies that the SWHA surveys are to be done monthly and that the results are due within 30 days of the survey.
- 11) This Amendment adds a new Condition of Approval for SJKF surveys south of West Herndon Avenue which allows the Designated Biologist to make the determination that there is no sign of SJKF, and therefore that work can proceed absent implementation of Condition of Approval 8.15, provided Covered Activities do not lapse for more than six months.

AMENDMENT

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

1. Condition of Approval 6.2. (Biological Monitors) on page 53 of the ITP, as amended, shall be further amended to read as follows:
 - 6.2. ***Biological Monitor(s)***. Permittee shall submit to CDFW in writing the name(s), qualifications, business address(es), and contact information of each proposed Biological Monitor(s) [Designated Biologist(s) and General Biological Monitor(s)] at least 30 days before starting Covered Activities.

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Permittee shall obtain CDFW approval of the Biological Monitor(s) in writing before starting Covered Activities and shall also obtain written approval in advance if any of the Biological Monitor(s) must be changed. CDFW may approve Biological Monitor(s) for specific areas of the Project, for specific Covered Species, or for specific timeframes as applicable. The Biological Monitor(s) shall monitor all ground and vegetation disturbing Covered Activities, ***in Work Areas with identified habitat features suitable for Covered Species per Condition of Approval 7.4.1, as determined during pre-construction surveys except for areas excluded according to Conditions of Approval 8.11.2.***

2. Condition of Approval 6.2.1. (Designated Biologists) on page 53 of the ITP, as amended, shall be further amended to read as follows:

6.2.1. Designated Biologist(s). Permittee shall ensure that each Designated Biologist(s) is knowledgeable and experienced in the biology, natural history, collecting, and handling of the Covered Species. The Designated Biologist may be approved by CDFW on a species-specific basis, and in those cases will only be authorized to complete surveys and monitoring of the Covered Species for which they are specifically approved. The Designated Biologists shall be responsible for conducting all activities specific to a Covered Species including initial surveys and any handling or other actions necessary if individuals of Covered Species are found in the Project Area. The Designated Biologists shall be responsible for supervising the General Biological Monitors. At least one Designated Biologist for each Covered Species will be present within the Project Area during initial vegetation and soil disturbance ~~monitoring required by Condition of Approval 7.3~~ ***in Work Areas with identified habitat features suitable for Covered Species per Condition of Approval 7.4.1 as determined during pre-construction surveys, except for areas excluded according to Conditions of Approval 8.11.2.***

3. Condition of Approval 7.1.5. (Lapse in Continuity of Work Activities) on page 57 of the ITP, as amended, shall be further amended to read as follows:

7.1.5. Lapse in Continuity of Work Activities. Should an unplanned or planned lapse of Covered Activities occur at any Work Area for more than 30 calendar days, a new 14-Day Notification and pre-construction survey shall be performed and submitted per the above. Activities including, but not limited to, dust suppression per Condition of Approval 6.8, delineation per Conditions of Approval 6.10 and 6.11, and monitoring per Condition of

Approval 7.3 that do not involve vegetation- or ground-disturbance activity shall not preclude the requirement for subsequent re-surveys prior to resuming vegetation- or ground-disturbance Covered Activities in these Work Areas. ***For all areas south of West Herndon Avenue and outside the range for CTS as described in Condition of approval 7.4.1., the period of inactivity of Covered Activities may be extended to six months, provided that an approved SJKF Designated Biologist has determined there is no sign of SJKF per Conditions of Approval 8.15.1.1 and there is not an occupied SWHA within 0.5-mile.***

4. Condition of Approval 7.3. (Compliance Monitoring) on page 58 of the ITP, as amended, shall be further amended to read as follows:

7.3. Compliance Monitoring. The Designated Biologist(s) shall be on-site daily at each Work Area within the Project Area when vegetation and initial soil disturbance Covered Activities occur. The applicable Designated Biologist(s) shall also be on site for new subsequent vegetation and initial soil disturbing activities with the exception that for SJKF, a SJKF General Biological Monitor may serve as monitor. The Biological Monitor(s) shall conduct compliance inspections to: (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all ***applicable*** measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, delineation and fencing types are intact ***and that Covered Activities are only occurring in the Project Area, and*** (6) check all open and covered holes, sumps, trenches, or pipes ***according to Condition of Approval 8.7 and that Covered Activities are only occurring in the Project Area.*** During initial vegetation and soil disturbance, the Designated Biologist(s) shall conduct compliance inspections continuously within each of the Work Area(s) where Covered Activities are occurring. After initial vegetation and soil disturbance, the Biological Monitor(s) shall conduct compliance inspections a minimum of once per day within each of the Work Area(s) where Covered Activities are occurring ~~and shall be present during all periods of ground and vegetation disturbing activities per Condition of Approval 6.2.~~ The Designated Representative or Designated Biologist(s) shall prepare daily written observation and inspection records summarizing oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP. The Biological Monitor(s) shall conduct compliance inspections a minimum of once monthly during periods of inactivity unless the inactive Work Area has holes, sumps,

trenches, or pipes with long term covers or fencing which still must be checked daily per Condition of Approval 8.7. Monitoring does not make the site 'active'.

5. The first item under Condition of Approval 7.7. (Monthly Compliance Report) on page 61 of the ITP, as amended, shall be further amended to read as follows:

- 7.7 Monthly Compliance Report. For the duration of the Construction Footprint Activities and Lazy K Ranch Mitigation Site Activities, the Designated Representative or Designated Biologist(s) shall compile the observation and inspection records identified in Condition of Approval 7.3 into a Monthly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure as supported by the Monitoring Logs to be included in a separate attachment. Monthly Compliance Reports shall also include:

- 1) A table summarizing all pre-construction survey results **and all Monthly SWHA survey results**.

6. The first item under Condition of Approval 7.9. (CNDDDB Observations) on page 63 of the ITP, as amended, shall be further amended to read as follows:

- 7.9. CNDDDB Observations. The Designated Biologist(s) shall submit all observations of Covered Species except for SWHA to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist(s) shall include copies of the submitted forms with the next Monthly Compliance Report or ASR, whichever is submitted first relative to the observation. Because of the high numbers of SWHA found during surveys each year, all the SWHA observations and information may be submitted in a combined Report to the CNDDDB ~~and to CDFW's Regional Representative~~ after the end of the nesting season, but no later than October 31 following each nesting season for each year. **A copy of the CNDDDB Report and a kmz file of all SWHA nest locations for the year shall be provided to CDFW by October 31 each year.**

7. The first item under Condition of Approval 7.9. (CNDDDB Observations) on page 63 of the ITP, as amended, shall be further amended to read as follows:

- 7.12. Notification and Submission of an HDD and Jack and Bore Plan. Designated Representative shall notify CDFW at least 14 calendar days before starting HDD or jack and bore activities in the Construction Footprint and shall

document compliance with all pre-Project Conditions of Approval before starting such Covered Activities. Permittee shall also prepare an HDD and Jack and Bore Plan. The HDD and Jack and Bore Plan shall include, but not be limited to, a discussion (and map) of the portion of the Construction Footprint where the activities will occur, a description of the activities that will be completed, “take” minimization and avoidance measures for Covered Species, and any other pertinent information. The HDD and Jack and Bore Plan shall be submitted to CDFW for written approval (email will suffice) prior to starting such Covered Activities. Such Covered Activities may not proceed until the HDD and Jack and Bore Plan approval is received. ***For all areas south of West Herndon Avenue and outside the range for CTS as described in Condition of approval 7.4.1., this submission will not be required, provided that an approved SJKF Designated Biologist has determined there is no sign of SJKF per Conditions of Approval 8.15.1.1 and there is not an occupied SWHA within 0.5-mile.***

8. Condition of Approval 8.7 (Entrapment Prevention) on page 66-67 of the ITP, as amended, shall be further amended to read as follows:

8.7. ***Entrapment Prevention. The following measures shall be implemented in all areas with the potential for either CTS or SJKF as described in Condition of Approval 7.4.1.1 and 7.4.1.2, except where an approved SJKF Designated Biologist has determined there is no sign of SJKF south of West Herndon Avenue according to Condition of Approval 8.15.1.1.***

8.7.1. ***Daily Entrapment Inspections.*** The Biological Monitor(s) shall inspect all open and covered holes, sumps, trenches, and pipes within each Work Area at the beginning and end of each workday, and at least once on non-workdays, for trapped Covered Species excepting weekends and Holidays when no work is being done between June 15 to October 31.

8.7.2. ***Prevent Entry or Provide Escape.*** All trenches, holes, sumps, and other excavations with sidewalls steeper than a 1:1 (45 degree) slope and that are over eight inches deep shall be covered or secured with a non-climbable barrier in a manner that ensures the Covered Species cannot breach the perimeter of the trench, hole, sump or other excavation when workers or equipment are not actively working in the trench, hole, sump or other excavation, and at the end of each workday.

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Alternatively, an escape ramp of earth or a non-slip material with a less than 1:1 (45 degree) slope may be used where feasible.

8.7.3. Installation of Covers. To prevent inadvertent entrapment of Covered Species or any other animals, a Designated Biologist approved for CTS, in all areas with potential for CTS as described in Condition of Approval 7.4.1, and a Biological Monitor (one person may fill both roles) shall oversee the initial installation of all coverings and barriers to ensure that Covered Species are unable to breach the perimeter (e.g., dig or squeeze under the barrier and become entrapped). The outer two feet of excavation cover shall either conform to solid ground so that gaps do not occur between the cover and the ground and be secured with soil staples or other means to prevent gaps if a pliable material is used (e.g. hardware cloth or visqueen), or have any gaps filled in, if a hard cover is used, in such a manner that it will be visually evident if the fill has been disturbed (e.g. coat with tracking medium).

- ~~Immediately before backfilling, trenches, holes, sumps, or other excavations shall be thoroughly inspected for trapped Covered Species.~~

8.7.4. Inspection of Long-Term Covers. Trenches, holes, sumps, or other excavations that are covered long term by materials that could be moved by wildlife due to the covering weight or size shall be **opened and** inspected at the beginning of each working day to ensure inadvertent entrapment has not occurred. Immovable coverings (e.g., metal plating or very large plywood) shall be inspected daily for breaches around the edges and only if such evidence is found shall the covers be removed by the work crews so that the Biological Monitor may inspect inside.

- ~~If any worker discovers that Covered Species have become trapped, regardless of who created the hole (e.g., utility manholes), work crews shall cease all Covered Activities in the vicinity and notify the Designated Biologist(s) immediately.~~

8.7.5. Small pipes. All pipes ~~over one~~ **to three** inches in diameter laying on the ground or sticking up from the ground less than eight inches shall be capped to prevent CTS for entering and becoming trapped, in all areas with potential for CTS as described in Condition of Approval 7.4.1.1 and 7.4.1.2.

8.7.6. Backfilling. Immediately before backfilling, trenches, holes, sumps, or other excavations shall be thoroughly inspected for trapped Covered Species.

8.7.7. Trapped Animal Found. *If any worker discovers that Covered Species have become trapped, regardless of what entity created or maintains the hole (e.g., utility manholes), work crews shall cease all Covered Activities in the vicinity and notify the Designated Biologist(s) immediately.* Permittee, Biological Monitor(s), and Project workers shall allow the Covered Species to escape unimpeded if possible before Covered Activities are allowed to continue. If the Covered Species is **one (or more) CTS that cannot independently escape**, the Designated Biologist(s) shall capture and relocated the animal as per the CDFW-approved CTS Salvage and Relocation Plan described in Condition of Approval 8.13.1 including consultation with CDFW as warranted. ***If the Covered Species is a SJKF, and cannot escape on its own, the Biological Monitor(s) shall immediately contact CDFW, and work shall not resume until a solution specific to the circumstance has been agreed to and implemented.***

9. Condition of Approval 8.11. (Vegetation Removal Methods) on page 68 of the ITP, as amended, shall be further amended to read as follows:

8.11. Vegetation Removal Methods. Vegetative cover shall be removed prior to grading in Work Areas with identified habitat features suitable for Covered Species per Condition of Approval 7.4.1 as determined during pre-construction surveys. Where possible, hand tools (e.g., trimmer, chain saw, etc.) shall be used to trim or remove shrub vegetation. All vegetation removal in areas with identified habitat features suitable for Covered Species shall be monitored directly (e.g., directly observed) by the Designated Biologist(s) to minimize impacts to Covered Species.

8.11.1 Vegetation Removal After Inactivity. The applicable Designated Biologist(s) shall also be on site for new subsequent vegetation and initial soil disturbing activities with the exception that for SJKF, a SJKF General Biological Monitor may serve as monitor. This includes areas that may have been disturbed previously and may or may not have been suitable habitat at the time of initial disturbance, but due to the passage of time have converted into suitable habitat ***with potential for presence of Covered Species.***

8.11.2 Vegetation Removal Conditional Monitoring Exemption. Provided an approved SJKF Designated Biologist has determined that there is no sign of SJKF presence in the area per Condition of Approval 8.15.1.1., then monitoring of vegetation removal may be forgone in the areas excluded from CTS habitat within the City of Fresno, specifically: 1) south of North Dakota Avenue and west of SR 99; and 2) south of West Herndon Avenue and east of SR 99.

10. Condition of Approval 8.14.1. (Pre-construction SWHA Surveys) on page 73 of the ITP, as amended, shall be further amended to read as follows:

8.14.1. Pre-construction SWHA Surveys. The Designated Biologist(s) shall conduct pre-construction surveys during the SWHA nesting season (February 15th through September 15th), prior to conducting Covered Activities in each Work Area. Pre-construction surveys shall occur no more than 30 days prior to beginning Covered Activities and shall include a 0.5-mile **survey** buffer around each Work Area. The Designated Biologist(s) shall survey all suitable habitat/nest trees for nesting SWHA. The Designated Biologist(s) or Designated Representative shall provide the nesting season survey results to CDFW in a written report at least 14 days prior to commencement of Covered Activities within the Work Area. If no Covered Activities are initiated within the Work Area for over 30 days, or if Covered Activities were not initiated throughout the identified Work Area, ~~or if new Covered Activities will be conducted,~~ then a new pre-construction survey will need to be submitted. ***If no SWHA occupied nest is observed within 0.5-mile of the Work Area during monthly SWHA surveys (COA 8.14.4), those surveys may be referenced and provided with the pre-construction survey; in that instance, an additional SWHA pre-construction survey is not required. If the Monthly Survey was conducted more than 30-days prior, and covered activities are to begin within the nesting season, a supplemental survey shall occur within 0.5-mile of the Work Area and those results included in the pre-construction survey.***

11. Condition of Approval 8.14.2. (SWHA Annual Survey) on page 73 of the ITP, as amended, shall be further amended to read as follows:

8.14.2. SWHA **No Work** Nest Buffer. The Permittee and Designated Biologist(s) shall ensure that no Covered Activities occur **are initiated** within 100

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feet of an **occupied** SWHA nest during the nesting season (February 15th through September 15th). ***If a SWHA pair begins nesting inside or within 100 feet of an active Work Area, all work will stop immediately. CDFW shall be contacted and consulted regarding the current level of activity at the location when nesting was initiated, and any further Covered Activities planned during the nesting season. Work shall not resume without written approval (email can suffice) from CDFW.***

12. Condition of Approval 8.14.3. (SWHA Annual Survey) on page 73-74 of the ITP, as amended, shall be further amended to read as follows:

8.14.3. ~~SWHA Nest Buffer and Monitoring~~. If a nesting SWHA is found ***at any time*** in a Work Area, or the ***within*** 0.5-mile ***of an active*** Work Area buffer ~~(see or during surveys per~~ Condition of Approval 8.14.1), the Designated Biologist(s) shall be present daily for ***at least three full days*** ~~the entire duration of any Covered Activities within the Work Area~~ to monitor the behavior of the potentially affected SWHA ***to establish baseline behavior***. The Designated Biologist(s) shall have the authority to order the cessation of all Covered Activities if the bird(s) exhibits distress and/or abnormal nesting behavior (swooping/stooping, excessive vocalization [distress calls], agitation, failure to remain on nest, failure to deliver prey items for an extended time period, failure to maintain nest, etc.) which may cause reproductive failure (nest abandonment and loss of eggs and/or young). Permittee shall not resume Covered Activities until CDFW has been consulted by the Designated Biologist(s), and both the Designated Biologist(s) and CDFW confirm that the bird's behavior has normalized.

8.14.3.1. Monitoring within 100 - 1,000 feet of an active nest. If a nesting SWHA is found within 100 - 1,000 feet of an active Work Area, the Designated Biologist(s) shall be present daily for the entire duration of any Covered Activities within the Work Area to monitor the behavior of the potentially affected SWHA.

8.14.3.2. Monitoring within 1,000 feet - 0.5-mile of an active nest. If a nesting SWHA is found within 1,000 feet - 0.5-mile of an active Work Area, the Designated Biologist(s) shall be present for at least two 1-hour intervals at different times

every day and for at least one hour any time a new Covered Activity is initiated.

8.14.3.3. Modified Monitoring. If the Designated Biologist determines after the initial three days of nest observation, that Covered Activities are not likely to affect the nest due to objects or topography that might reduce potential noise disturbance and obstruct view of the Work Area from the nest, then a written request with documented observational data can be submitted to CDFW seeking a reduction of either the monitoring time and/or monitoring distance. CDFW will review the request and determine whether to grant the reduction, which if granted, would be provided in writing (email can suffice).

8.14.3.4. Nest Relocation. Any time a nest pair vacates one tree simultaneously with the start of a new nest nearby, indicating a high probability of nest relocation, CDFW shall be contacted immediately and all monitoring logs from the preceding seven days shall be provided to CDFW for review.

8.14.3.5. Nest Failure. Any time a nest becomes inactive prior to evidence of the young fledging and leaving the nest, CDFW shall be contacted immediately and all monitoring logs from the preceding 30 days shall be provided to CDFW for review.

13. Condition of Approval 8.14.4 (SWHA Monthly Survey) on page 74 of the ITP, as amended, shall be further amended to read as follows:

8.14.4. SWHA Annual Monthly Surveys. Each year during the nesting season, SWHA Designated Biologist(s) shall survey the entire alignment **once a month** for any arriving SWHA pairs and new nests. Permittee shall prepare a SWHA Survey Plan **detailing the methodology to be followed** and submit **it** to CDFW for written approval, **after which** prior to commencing with SWHA surveys. surveys shall be conducted annually in accordance with the approved SWHA Survey Plan. , and **†** The **survey** results **shall be** submitted to CDFW no later than 30 days after **each** surveys have **has** been completed **or with the next Monthly Compliance Report, whichever comes first.**

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14. Condition of Approval 8.15.1. (SJKF Survey) on page 74 of the ITP, as amended, shall be further amended to read as follows:

8.15.1. SJKF Survey. No more than 30 days prior to Permittee beginning Covered Activities in each Work Area, the Designated Biologist(s) with assistance (if such assistance is needed) from the General Biological Monitor(s) shall perform a pre-construction survey for SJKF dens (potential, known, active, atypical, and natal) in each Work Area. The pre-construction survey shall cover the Work Area and a buffer zone of 500 feet in size beyond the Work Area's boundaries. The Designated Biologist(s) shall submit a report documenting the results of the pre-construction survey to CDFW at least 14 days prior to commencement of Covered Activities within the particular Work Area. If no Covered Activities are initiated within the Work Area for over 30 days, or if ~~Covered A~~ ***initial vegetation and ground disturbing activities*** were not initiated ~~completed~~ throughout the ***entire*** identified Work Area, ~~or if new Covered Activities will be conducted,~~ then a new pre-construction survey will need to be submitted ***for all portions of the Work Area, where initial vegetation and ground disturbances were not completed.***

8.15.1.1. SJKF Surveys South of West Herndon Avenue. All initial pre-construction surveys shall be conducted by a SJKF approved Designated Biologist and submitted to CDFW at least 7 days prior to commencement of Covered Activities within the particular Work Area. Any indication of potential SJKF scat, footprints, prey remains, or burrows with either a classic 'keyhole shape' or vertical scratches above the entrance shall constitute potential presence and all other SJKF Conditions of Approval under 8.15. will need to be followed in that area. If the Designated Biologist determines there is no sign of SJKF presence in the area, then work can proceed absent implementation of the other SJKF specific Conditions of Approval provided Covered Activities do not lapse for more than six months.

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 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 eleven specific changes to the ITP, as amended.

- 1) This Amendment allows for the ground and vegetation disturbing Covered Activities to occur without monitoring in specified areas within the City of Fresno outside the range of CTS provided a SJKF Designated Biologist had determined there is no sign of SJKF in the Work Area.
- 2) This Amendment allows for six months of inactivity in specified areas within the City of Fresno outside the range of CTS provided a SJKF Designated Biologist has determined there is no sign of SJKF in the Work Area and there are no Swainson’s occupied nests within 0.5-mile.
- 3) This Amendment clarifies that SWHA monthly survey results are due with the monthly reports and a copy of the CNDDDB Report is to be submitted by October 31 each year.

This Amendment allows for an exemption from Condition of Approval 7.12 (submittal of HDD and jack and bore plans) in specified areas within the City of Fresno outside the range of CTS provided a SJKF Designated Biologist has determined there is no sign of SJKF in the Work Area and there are no SWHA occupied nests within 0.5-mile,

- 4) This Amendment allows for an exemption from entrapment inspections in specified areas within the City of Fresno outside the range of CTS provided a SJKF Designated Biologist has determined there is no sign of SJKF in the Work Area.
- 5) This Amendment clarifies that the Monthly Survey for SWHA may be submitted for the pre-construction survey provided the Monthly Survey was conducted within the prior 30 days.

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- 6) This Amendment clarifies the 100-foot no work nest buffer and consultation with CDFW if a SWHA pair begins nesting within 100 feet of an already active work area.
- 7) This Amendment allows for a reduction in monitoring of occupied SWHA when the nest is at a greater than 1,000 feet from the nest and allows for modified monitoring to be requested after at least three full days of monitoring if there is a visual and sound barrier between the work area and the nest tree.
- 8) This Amendment adds two new Conditions of Approval for reporting SWHA nest failure and probable nest relocation.
- 9) This Amendment clarifies that the SWHA surveys are to be done monthly and that the results are due within 30 days of the survey.
- 10) This Amendment adds new Conditions of Approval for SJKF south of West Herndon Avenue which allows the Designated Biologist to make the determination that there is no sign of SJKF, and therefore that work can proceed absent implementation of the Condition of Approval 8.15, provided Covered Activities do not lapse for more than six months.

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, and April 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, and Major Amendment No. 16 respectively, to the ITP met the standards

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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, and Major Amendment No. 16 in April 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 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

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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 for the ground and vegetation disturbing Covered Activities to occur without monitoring in specified areas within the City of Fresno outside the range of CTS provided a SJKF Designated Biologist has determined there is no sign of SJKF in the Work Area; allows for six months of inactivity in specified areas within the City of Fresno outside the range of CTS provided a SJKF Designated Biologist has determined there is no sign of SJKF in the Work Area and there are no SWHA occupied nests within 0.5-mile; clarifies that SWHA monthly survey results are due with the monthly reports and that a copy of the CNDDDB Report must be submitted by October 31 each year: is allows for an exemption from Condition of Approval 7.12 (submittal of HDD and jack and bore plans) in specified areas within the City of Fresno outside the range of CTS provided a SJKF Designated Biologist had determined there is no sign of SJKF in the Work Area and there are no SWHA occupied nests within 0.5-mile; allows for exemption from entrapment inspections in specified areas within the City of Fresno outside the range of CTS provided a SJKF Designated Biologist has determined there is no sign of SJKF in the Work Area; clarifies that the Monthly Survey for SWHA may be submitted for the pre-construction survey provide the Monthly Survey was done within the prior 30 days; clarifies the 100-foot no work nest buffer and consultation with CDFW if a SWHA pair begins nesting within 100 feet of an already active work area; allows for a reduction in monitoring of occupied SWHA nests when the nest is at a greater than 1,000 feet from the nest and allows for modified monitoring to be requested after at least three full days of monitoring if there is a visual and sound barrier between the work area and the nest tree; adds two new Conditions of Approval for reporting SWHA nest failure and probable nest relocation; clarifies that the SWHA surveys are to be conducted monthly and that the results are due within 30 days of the survey; adds new Conditions of Approval for SJKF surveys south of West Herndon Avenue which allows the Designated Biologist to make the determination that there is no sign of SJKF and therefore work can proceed absent implementation of Condition of Approval under 8.15, provided Covered Activities do not lapse for more than six months.

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).

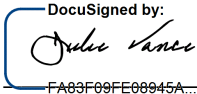
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The authorization provided by this Amendment is not valid until Permittee signs and dates the acknowledgement below, and returns one of the duplicate originals of this Amendment by registered first class mail to CDFW at:

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

Alternatively, the Permittee shall email the digitally signed amendment to CESA@wildlife.ca.gov. Digital signatures shall comply with Government Code section 16.5.

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on  9/7/2023
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Julie A. Vance
Regional Manager
Central Region

ACKNOWLEDGMENT

The undersigned: (1) warrants that they are 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: 9/8/2023
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Printed Name: Christine C. Inouye Title: Chief Engineer of Strategic Delivery

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