

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

BAY DELTA REGION

2825 CORDELIA ROAD, SUITE 100

FAIRFIELD, CA 94534



**AMENDMENT NO. 1
(A Minor Amendment)**

**California Endangered Species Act
Incidental Take Permit No. 2081-2021-040-03**

Liberty Island Holdings II, LLC

North Delta (Liberty island II) Fish and Conservation Bank Project in Yolo County

INTRODUCTION

On August 27, 2025, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2021-040-03 (ITP) to Liberty Island Holdings II, LLC (Permittee), authorizing take of giant garter snake (*Thamnophis gigas*) and Swainson's hawk (SWHA, *Buteo swainsoni*) (Covered Species) associated with and incidental to the North Delta (Liberty island II) Fish and Conservation Bank Project in Yolo County, California (Project). The Project as described in the ITP as originally issued by CDFW includes removal of two existing levee sections and excavation of tidal channels, floodplain lowering, vegetation removal for tidal marsh creation/restoration, and revegetation of native tidal marsh and riparian habitat within a 32-acre construction footprint and approximately 811-acre Conservation Easement associated with the North Delta Fish Conservation Bank No. 1802-2012-008-03. In issuing the ITP, CDFW found, among other things, that Permittee's compliance with the Conditions of Approval of the ITP would fully mitigate Project impacts of the taking on the Covered Species and that issuance of the ITP would not jeopardize the continued existence of the Covered Species.

The Permittee has encountered limitations on how quickly they can remove material spoils offsite based on timing of the tides. Ongoing barge operations are restricted by daytime high tides, which, in this region of the Delta, are semidiurnal, and one-way barge traffic within the Project Area. Due to the logistical limitations of the tides in combination with Project delays, the Permittee has indicated that utilizing the nighttime high tide would allow for increased significant Project efficiency.

On September 2, 2026, CDFW received from the Permittee a request to conduct limited, aquatic nighttime barge operations during high tides within the Project Area within the year 2026. At the end of each day before sunset, barges will be fully loaded and ready to depart the Project Area. When the nighttime high tide comes in, the loaded barge will be moved by tugboat out to Prospect Slough, following existing barge transit routes. Barges and tugboats will take approximately 60 minutes to leave the Project Area. Once the loaded barge leaves the loading sites and clears the Prospect Slough waterway, an empty barge will be moved to the loading sites and docked, awaiting loading for the next workday during daylight hours. A maximum of four boats will be

utilized during nighttime barge staging activities; two filled barges moving out of the loading sites and two empty barges moving into the loading sites for activities the next day. There will be no land-side activities (i.e., construction, conveyor belt use, driving, lighting, etc.) during the night.

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

First, this Amendment allows nighttime barge and associated tugboat operations to occur in year 2026 and adds conditions for the nighttime work.

Second, this Amendment requires a Designated Biologist(s) to be on-site nightly during barge and associated tugboat operations during the SWHA nesting season, monitor the known SWHA active nest (Nest C) each morning following nighttime barge and associated tugboat operations, and report observations to CDFW within two calendar days.

AMENDMENT

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

1. The ITP Condition of Approval 8.1, pages 14 and 15, is amended to read:

- 8.1. Covered Species Daily Work Restriction. Permittee shall terminate all Covered Activities at sunset and shall not resume Covered Activities until sunrise ***except that in year 2026 barge and associated tugboat operations, limited to two filled barges moving out of the loading sites and two empty barges moving into the loading sites for activities the next day, may occur at night (between sunset and sunrise); however, no associated land-based activities (e.g., construction, conveyor belt use, driving, lighting, etc.) shall occur during the night.*** Permittee shall use sunrise and sunset times established by the U.S. Naval Observatory Astronomical Applications Department for the geographic area (<https://www.esrl.noaa.gov/gmd/grad/solcalc/sunrise.html>). Maintenance dewatering activities may be conducted after sunset. Vehicle fueling and maintenance activities may be conducted occasionally at night for up to 6 hours a week, between sunset and sunrise, within CDFW-approved designated staging areas or at the overnight parked locations of tracked heavy equipment.

8.1.1 Barge and Tugboat Nighttime Work. Nighttime barge and associated tugboat operations for year 2026 shall be minimized to the extent feasible.

8.1.2 Barge and Tugboat Artificial Lighting. Barge and associated tugboat deck lights shall be limited to U.S. Coast Guard navigation and safety minimums. All Project lights shall be shielded, downward-directed fixtures. Light fixtures shall be angled onto the deck such that the light does not spill onto adjacent land or water or shine upward. All Project lighting shall use amber or orange, low-wavelength lights (typically 560 nanometers to 610 nanometers), which are less visible to many animals and insects, unless otherwise approved in writing by CDFW.

2. The ITP Condition of Approval 8.27, page 20, is amended to read:

8.27. Daily Construction Surveys. A Designated Biologist(s) shall be on-site daily, **and nightly pursuant to Condition of Approval 8.1 unless otherwise approved in writing by CDFW**, for all Covered Activities occurring during the SWHA breeding season from March 15 to September 15. **Each morning immediately following nighttime barge and associated tugboat operations described in Condition of Approval 8.1, a Designated Biologist(s) shall monitor the known SWHA active nest (Nest C), follow the procedures outlined in Condition of Approval 8.30, and report observations to CDFW via email within two calendar days, unless otherwise approved in writing by CDFW.** If a SWHA nest within 0.25 miles of the Project Area is active beyond the nesting season, monitoring shall continue each day until the young have fledged.

All terms and conditions of the ITP and MMRP that are not expressly amended herein remain in effect and must be implemented and adhered to by the Permittee.

FINDINGS

Issuance of this Amendment will not increase the amount of take of the Covered Species compared to the Project as originally approved, nor will this Amendment increase other Project impacts on the Covered Species (i.e., "impacts of taking" as used in Fish and Game Code Section 2081, subd. (b)(2)).

Discussion: This Amendment makes two specific changes to the ITP as originally issued. The changes: 1) allow nighttime barge and associated tugboat operations in year 2026, and 2) require a Designated Biologist(s) to be on-site nightly during the SWHA nesting season and monitor the known SWHA active nest (Nest C) each morning following nighttime barge and associated tugboat operations and report observations to CDFW within two calendar days. The resulting impacts to the Covered Species, however, including the number of acres of habitat that will be lost as a result of the Project, will remain the same.

CDFW has determined that allowing nighttime barge and associated tugboat operations in year 2026 and increased monitoring and reporting by a Designated Biologist(s) will not increase the amount of take or the severity of other impacts of the taking on the Covered Species. Given the circumstances of this Project, CDFW believes that the changes to the Project or Conditions of the ITP described in this Amendment will not increase impacts to the Covered Species.

Issuance of this Amendment does not affect CDFW's previous determination that issuance of the ITP meets and is otherwise consistent with the permitting criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c).

Discussion: CDFW determined in August 2025 that the Project, as approved, met the standards for issuance of an ITP under CESA. This determination included findings that, among other things, the impacts of the taking would be minimized and fully mitigated and that the Project would not jeopardize the continued existence of the Covered Species. Those findings are unchanged with respect to this Amendment because the Project and ITP as amended: (1) will have no effect on the amount or severity of Project impacts on the Covered Species, as discussed above, and (2) does not substantively alter the measures that will be undertaken to minimize and mitigate previously authorized impacts on the Covered Species. Permittee's continued adherence to and implementation of the avoidance and minimization measures set forth in the ITP's Conditions of Approval and MMRP will minimize and fully mitigate impacts of the taking on the Covered Species.

None of the factors that would trigger the need for subsequent or supplemental environmental analysis of the Project under Public Resources Code section 21166 or California Code of Regulations, title 14, sections 15162 and 15163, exist as a result of this Amendment.

Discussion: CDFW issued the ITP in August 2025 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, considering the Mitigated Negative Declaration adopted by the Reclamation District 2093 as the lead agency for the Project. As explained in the findings below, CDFW finds for purposes of CESA that this Amendment is a minor change to the original ITP. CDFW finds for the same reasons under CEQA that approval of the Amendment will not result in and does not have the potential to create any new significant or substantially more severe environmental effects than previously analyzed and disclosed by Reclamation District 2093 during its lead agency review of the Project, particularly with respect to the impacts authorized by CDFW pursuant to the ITP as amended. As a result, CDFW finds that no additional subsequent or supplemental environmental review is required by CEQA as part of CDFW's approval of this Amendment.

CDFW finds that this Amendment is a Minor Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(4).

Discussion: This Amendment changes two conditions of approval to: 1) allow nighttime barge and associated tugboat operations to occur in year 2026 and, 2) require a Designated Biologist(s) to be on-site nightly during nighttime barge and associated tugboat operations during the SWHA nesting season, monitor the known SWHA active nest (Nest C) each morning following nighttime barge and associated tugboat operations, and report observations to CDFW within two calendar days. These changes to the ITP will not: (1) increase the level of take or other Project impacts on Covered Species previously analyzed and authorized by the ITP, (2) affect Permittee's substantive mitigation obligations under the ITP, (3) require further environmental review under CEQA, or (4) increase temporal impacts on the Covered Species. Therefore, this Amendment will not significantly modify the scope or nature of the permitted Project or activity, or the minimization, mitigation, or monitoring measures in the ITP. CDFW has determined that the change to the ITP constitutes a Minor Amendment as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(4).

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

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

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

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 9/3/2026 _____.

DocuSigned by:

Erin Chappell

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Erin Chappell, Regional Manager
Bay Delta Region

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Liberty Island Holdings II, LLC
North Delta (Liberty island II) Fish and Conservation Bank

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.

Signed by: Tim DeGraff Date: 9/9/2026
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Printed Name: Tim DeGraff Title: Vice President & Region GM, West

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