

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
CENTRAL REGION
1234 EAST SHAW AVENUE
FRESNO, CALIFORNIA, 93710



AMENDMENT NO. 1
(A Major Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2013-058-04
City of Bakersfield and County of Kern
Metropolitan Bakersfield Urban Development in Kern County

INTRODUCTION

On August 20, 2014, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2013-058-04 (ITP) to the City of Bakersfield and County of Kern (Permittees) authorizing take of Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), San Joaquin kit fox (*Vulpes macrotis mutica*), San Joaquin antelope squirrel (*Ammospermophilus nelsoni*), and Bakersfield cactus (*Opuntia basilaris* var. *treleasei*) (collectively, the Covered Species) associated with and incidental to Urban Development (as defined in the ITP) in the Metropolitan Bakersfield 2010 General Plan Area in Kern County, California (Project). The Project as described in the ITP originally issued by CDFW includes the urban development of up to 14,200 acres of Natural Lands or 33,400 acres of Open Lands within the 261,120-acre Metropolitan Bakersfield Habitat Conservation Plan (MBHCP) area, as defined in Figure 2 of the MBHCP, dated April 1994. The Project as defined in the ITP is specifically conditioned by the MBHCP, associated Implementation/Management Agreement dated August 15, 1994, and a federal incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act issued by the United States Fish and Wildlife Service on August 24, 1994. The 14,200 acres of Natural Lands or 33,400 acres of Open Lands that can be developed includes all MBHCP authorized development since 1994; as a result, only a portion of the development acreage contemplated in the 1994 MBHCP remains; as of December 31, 2012, there were 3,116.67 acres converted from Natural Lands to Urban Development, and 18,405.5 acres converted from Open Land to Urban Development. The ITP specifically authorizes development as contemplated in the MBHCP from the time of issuance of the ITP to ITP expiration in 2019.

In issuing the ITP, CDFW found, among other things, that Permittees' compliance with the Conditions of Approval of the ITP would fully mitigate impacts to the Covered Species and would not jeopardize the continued existence of the Covered Species.

During implementation of the ITP, CDFW determined that San Joaquin kit fox (SJKF) den surveys need to occur on an annual basis for long term activities. Multiple Developers have reported that SJKF have moved into their project sites during construction activities and after biological clearance surveys have been completed. Adding annual SJKF den surveys as a take minimization measure for long term activities will inform the Designated Biologist(s) and CDFW if SJKF dens have been established after Covered Activities have started and appropriate minimization measures can be implemented in response. In addition, CDFW has determined that in some instances SJKF den avoidance buffers may be reduced without impacts to SJKF. SJKF den avoidance buffer reductions may occur with written approval by CDFW when CDFW has determined that buffer reductions will not impact SJKF.

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

First, this Amendment adds the requirement of annual SJKF Den Surveys for activities that extend beyond one (1) year to complete and are not concluded by January 1st of the applicable calendar year.

Second, this Amendment adds the option to allow the reduction of SJKF avoidance buffers with written approval by CDFW.

AMENDMENT

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

1. On page 20, Condition of Approval number 7.4, is amended to add after the last sentence:

In addition to the Biological Clearance Survey as required in Condition of Approval 7.1, SJKF den surveys shall be annually conducted each January if Covered Activities are not completed at a Project site, to identify any SJKF that may have occupied the site after completion of the Biological Clearance Survey and to maximize detection of potential natal dens. The Developer shall provide CDFW and Permittees with a written report by February 5th that includes at a minimum the following information: (1) project location, including a map and major cross streets; (2) project name; (3) Developer name and contact information (phone, email, and mailing address); (4) name of the Designated Biologist that conducted the SJKF den survey; (5) a copy of the Biological Clearance Survey as required in Condition of Approval 7.1; and (6) written information submitted to

demonstrate compliance with Conditions of Approval 7.2, 7.5, 7.6 and 7.8 through 7.13, as applicable. Developer should keep as a record proof of their notification to CDFW. Each Developer shall bear the costs of implementing the SJKF Den Surveys.

2. On page 21, Condition of Approval number 7.5, is amended to add after the last sentence:

A reduced SJKF den avoidance buffer may be authorized with written approval by CDFW. Buffer reduction requests shall be submitted by the Designated Biologist and describe why a reduced buffer will not impact SJKF. CDFW may add additional minimization measures as a condition of any buffer reduction approval; these additional CDFW specified minimization measures shall be followed by the Developer that proposed the buffer reduction.

The corresponding measures in the MMRP shall be amended to read the same as above.

All terms and conditions of the ITP and Mitigation Monitoring and Reporting Program (MMRP) that are not expressly amended herein remain in effect and must be implemented and adhered to by the Permittees.

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 will increase Project impacts on these species (i.e., "impacts of taking" as used in Fish and Game Code Section 2081, subd. (b)(2)).

Discussion: This Amendment adds an additional SJKF den survey for Projects that require more than one year to complete and gives an option to reduce the specified SJKF den avoidance buffers with written approval from CDFW. This Amendment will not increase Project impacts on SJKF because additional SJKF den surveys will reduce Project-related impacts to SJKF and buffer reductions will only be approved by CDFW under special situations when buffer reductions would not impact the 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 2014 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 2014 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, considering the Environmental Impact Report certified by the City of Bakersfield as the lead agency for the Project. As explained in the findings below, CDFW finds for purposes of CESA that this Amendment represents a major change in the Project as originally approved. However, for the reasons explained above, CDFW concludes this Amendment is not a change in the Project that has the potential to create a new significant effect not previously analyzed, a substantial change in the circumstances under which the Project is being undertaken requiring major revisions to previous CEQA documents, or new information of substantial importance. 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 Major Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

Discussion: This Amendment modifies two minimization measures, and adds an additional SJKF den survey requirement and gives an option to reduce the specified SJKF den avoidance buffers with written approval from CDFW. As described above, these changes significantly modify the two mitigation measures within the ITP. Therefore, this Amendment will 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 Major Amendment as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

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

California Department of Fish and Wildlife
Habitat Conservation Planning Branch
Attention: CESA Permitting Program
1416 Ninth Street, Suite 1260
Sacramento, California 95814

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 4/11/15



Jeffrey R. Single, Ph.D.
Regional Manager
Central Region

ACKNOWLEDGMENT

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

City of Bakersfield

By: 

Date: 4/14/15

Printed Name: Alan Tandy

Title: City Manager

County of Kern

By: 

Date: 4/15/15

Printed Name: Lonela Horvath

Title: Planning Director
Kern County