

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



AMENDMENT NO. 2
(A Minor 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 24, 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.

On April 1, 2015, CDFW issued Amendment 1(a major amendment) to the ITP to require annual San Joaquin kit fox surveys for Covered Activities that will occur over a duration of greater than one year and to authorize reductions to San Joaquin kit fox avoidance buffers with written approval from CDFW.

In issuing the ITP and Amendment 1 (collectively, the ITP, as amended), CDFW found, among other things, that Permittee's 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 the November 19, 2015, Metro Bakersfield Habitat Conservation Plan Trust Group (Trust Group) meeting, Trust Group member Jacquelyn R. Kitchen requested that the role of the CDFW-approved Qualified Biologist as described in the ITP be clarified to explicitly state that the CDFW-approved Qualified Biologist has the authority stop work occurring as an activity under the ITP, as amended. It has always been CDFW's intent for CDFW-approved Qualified Biologists, Tipton's Kangaroo Rat (TKR) Qualified Biologists, and Bakersfield Cactus Qualified Biologists to have stop-work authority, and CDFW agreed at the Trust Group meeting to provide the requested clarification through a second ITP amendment.

Amendment No. 2 (a minor amendment) makes the following changes to the existing ITP, as amended:

Amendment No. 2 adds language to Conditions of Approval 5.10, 5.11, and 5.12 to explicitly state that CDFW-approved Qualified Biologists, TKR Qualified Biologists, and Bakersfield Cactus Qualified Biologists have the authority to immediately stop any activity that does not comply with this ITP, as amended, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species.

AMENDMENT

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

1. On page 13 and 14, Condition of Approval number 5.10, is amended to add the following language after the last sentence:

To ensure compliance with the Conditions of Approval of this ITP, the CDFW-approved Qualified Biologist shall have authority to immediately stop any activity that does not comply with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species.

2. On page 14, Condition of Approval number 5.11, is amended to add the following language after the last sentence:

To ensure compliance with the Conditions of Approval of this ITP, the TKR Qualified Biologist shall have authority to immediately stop any activity that does not comply with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species.

3. On Page 14, Condition of Approval 5.12, is amended to add the following language after the last sentence:

To ensure compliance with the Conditions of Approval of this ITP, the Bakersfield Cactus Qualified Biologist shall have authority to immediately stop any activity that does not comply with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species.

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

FINDINGS

Issuance of Amendment No. 2 will not increase the amount of take of the Covered Species compared to the Project as originally approved, nor will Amendment No. 2 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: Amendment No. 2 makes three specific changes to the ITP, as amended. Amendment No. 2 adds language to Conditions of Approval 5.10, 5.11, and 5.12 to explicitly state that CDFW-approved Qualified Biologists have the authority to immediately stop any activity that does not comply with the ITP, as amended, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species. The resulting impacts to the Covered Species, however, including the duration of impacts and the number of acres of habitat that will be lost as a result of the Project, will remain the same.

CDFW has determined that clarifying the authority of the CDFW-approved Qualified Biologist, TKR Biologist, and Bakersfield Cactus Biologist 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 as described in Amendment No. 2, including the statement that CDFW-approved Qualified Biologists, TKR Biologists, and Bakersfield Cactus Biologists have the authority to immediately stop any activity that does not comply with this ITP, as amended, and/or to order any

reasonable measure to avoid the unauthorized take of an individual of the Covered Species, will not increase impacts to the Covered Species.

Issuance of Amendment No. 2 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 August 2014 and April 2015 that the Project, as approved, met the standards for issuance of an ITP and amendment 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 Amendment No. 2 because Amendment No. 2 only clarifies the stop work authority of the CDFW-approved Qualified Biologists, TKR Qualified Biologists, and Bakersfield Cactus Qualified Biologists. No new impacts or activities are authorized by Amendment No. 2, and no changes were made to the Take Minimization Measures or the required Habitat Management Land Acquisition.

Permittee's continued adherence to and implementation of the avoidance and minimization measures set forth in the ITP, as amended, 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 No. 2.

Discussion: CDFW issued the ITP in August 2014 and Amendment No. 1 in April 2015 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 No. 2 is a minor change to the ITP, as amended. CDFW finds for the same reasons under CEQA that approval of Amendment No. 2 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 City of Bakersfield 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 No. 2.

CDFW finds that Amendment No. 2 is a Minor Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(4).

Discussion: Amendment No. 2 changes ITP Conditions of Approval 5.10, 5.11, and 5.12 to explicitly state that CDFW-approved Qualified Biologists, TKR Qualified Biologists, and Bakersfield Cactus Qualified Biologists have the authority to immediately stop any activity that does not comply with this ITP, as amended, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species. 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, as amended, (2) affect Permittee's substantive mitigation obligations under the ITP, as amended, (3) require further environmental review under CEQA, or (4) increase temporal impacts on the Covered Species. Therefore, Amendment No. 2 will not significantly modify the scope or nature of the permitted Project or activity, or the minimization, mitigation, or monitoring measures in the ITP, as amended. CDFW has determined that the change to the ITP, as amended, 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 No. 2 is not valid until Permittee signs and dates the acknowledgement below, and returns one of the triplicate originals of this Amendment by registered first class mail to CDFW at:

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

6/2/14



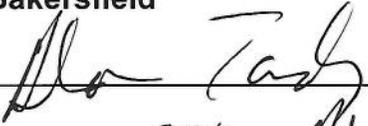
Julie A. Vance
Regional Manager
Central Region

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Incidental Take Permit 2081-2013-058-04
CITY OF BAKERSFIELD AND COUNTY OF KERN
Metropolitan Bakersfield Urban Development in Kern County

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: 6/8/16

Printed Name: ~~Alan Tardy~~ Alan Tardy Title: City Manager

County of Kern

By:  Date: 6-8-16

Printed Name: Lorelei H. Oratt Title: Director
Planning + Natural Resources