

California High-Speed Rail Authority



RFP No.: HSR 14-32

**Request for Proposal for Design-Build
Services for Construction Package 4**

**Reference Material, Part E.9 – Section 404
Permit for Construction Package 1C**



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

JUN 17 2015

DEPARTMENT OF THE ARMY PERMIT

Permittee: California High-Speed Rail Authority
Attn: Mark McLoughlin
770 L Street, Suite 800
Sacramento, California 95814-3359

Permit Number: SPK-2009-01482

Issuing Office: U.S. Army Engineer District, Sacramento
Corps of Engineers
1325 "J" Street
Sacramento, California 95814-2922

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below. A notice of appeal options is enclosed.

Project Description:

Construct the approximately 5-mile Construction Phase (CP) 1C of the Fresno to Bakersfield Section of the California High-Speed Train (HST) system (Figures 1 and 2). The project consists of constructing two fully grade-separated tracks within a 60 to 120-foot right-of-way, associated facilities, and portions of existing surface streets that would be realigned or modified to cross the alignment. The alignment would consist of portions at-grade (2.04 miles), below grade (1.28 miles), above grade on retained-fill embankment (0.41 mile), and elevated structures (1.21 miles) (Figure 3). Associated facilities consist of 9,600-sf switching stations, and 8,000-sf paralleling stations. The project would result in permanent impacts to approximately 0.004 acre of wetlands, and 0.54 acre of other waters of the U.S. and temporary impacts to approximately 3.01 acres of other waters of the U.S. (Attachment 4).

This section starts at-grade for approximately 0.65 mile before descending below grade for 1.28 miles. The alignment then rises to grade, and a retained-fill embankment before a 1.21-mile elevated structure over State Route 99. The alignment then transitions to a retained-fill embankment before returning to an at-grade alignment for approximately 1.13 miles.

Final design plans are being prepared by the design-build contractor and will be submitted to the Corps for approval prior to initiation of construction activities within waters of the U. S.

Project Location:

The approximately 5-mile project is the northern end of the approximately 114-mile Fresno to Bakersfield Section of the California HST (Figure 2). CP 1C is the last and southern portion of construction package 1 consisting of the previously permitted CP 1A and 1B, located within the Merced to Fresno Section. The alignment begins on the south side of State Route (SR) 41, adjacent to Monterey Street in Fresno, Fresno County (Latitude 36.723794° N, Longitude -119.784306° W), and travels southeast along the west side of the UPRR right-of-way. South of East Jensen Avenue, the alignment curves to the south, joining the west side of the BNSF Railway corridor at East Malaga Avenue south of Fresno. CP 1C ends approximately 1,000 feet south of East American Avenue in Fresno County, California (Latitude 36.66070°, Longitude -119.750645°). The project footprint is shown in Attachment 4.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on **June 15, 2020**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 3 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
4. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. No less than 15 days prior to the initiation of construction, you shall submit to the Corps, for review and approval, a plan-view drawing of the work proposed to be conducted within waters of the U.S., and cross-section view drawings of all crossings of waters. In addition, you shall include a description of any deviations from the authorized work, including the amount and type of waters that would be impacted, and the amount and type of compensatory mitigation.

2. Within 60 days following completion of the authorized work or at the expiration of this permit, whichever occurs first, you shall submit as-built drawings and a description of the work conducted on the project site and within the on-site and off-site compensatory mitigation areas to the Corps for review. The drawings shall be signed and sealed by a registered professional engineer and include the following:

- a. The Department of the Army Permit number.
- b. Plan view drawings of the locations of the authorized work footprint (as shown on the permit drawings) with an overlay of the work as constructed. The drawings should show all "earth disturbance," wetland impacts, structures, and the boundaries of any on-site and off-site mitigation areas. The drawings shall contain appropriate topographic contours of the entire site.
- c. Ground and aerial photographs of the completed work. The camera positions and view-angles of the ground photographs shall be identified on a map, aerial photograph, or project drawing.
- d. A description and list of all deviations between the work as authorized by this permit and the work as constructed. Clearly indicate on the as-built drawings the location of any deviations.

3. To compensate for unavoidable impacts to 0.544 acre of waters of the United States, you shall construct 0.55 acre of vernal pools within the 60.92-acre wetland restoration area at the Lazy K Ranch mitigation site and fully implement the approved *Permittee-Responsible Mitigation Plan for Onsite and Offsite Mitigation for Permitting Phase 1 of the Fresno to Merced Section of the California High-Speed Train Project*, dated March 2014, prepared by AECOM, CH2M Hill, and ECORP Consulting, Inc. You shall submit monitoring reports for the created wetlands by December 31st of each year following the construction of mitigation. You shall monitor the mitigation area for at least five (5) consecutive growing seasons after construction, and/or until the Corps determines the success criteria are met for three years without human intervention.

4. Within one year of the initiation of impacts to waters of the U.S. in Construction Package 1C of Permit Phase 1, as identified on the enclosed *Attachment 4, Project Impact Mapbook maps 1 to 17, of the Section 404 Permit Application, October 2013 Modification Package, Permitting Phase 1 Segment, Merced to Fresno Section, California High Speed Train Project*, dated October 8, 2013, you shall:

a. Establish a fully-funded endowment to provide for maintenance and monitoring of off-site mitigation. Information on the proposed endowment holder and the proposed endowment agreement shall be provided to the Corps for approval prior to establishment.

b. Designate an appropriate conservation-oriented third-party entity to function as preserve manager and to hold the required conservation easements. Information on the proposed conservation easement holder shall be provided to the Corps for approval prior to designation.

c. Record permanent conservation easements maintaining all mitigation areas as wetland preserve and wildlife habitat in perpetuity. Copies of the proposed conservation easement language shall be provided to the Corps of Engineers for approval prior to recordation.

d. Provide copies of the recorded documents to the Corps of Engineers within one year of the initiation of impacts authorized by this permit.

5. Within 60 days following completion of construction activities, you shall restore all temporary impacts to waters of the U.S. and adjacent upland areas to their original contour and condition and submit as-built plans, as identified in Section 5.1 of the approved plan.

6. You shall develop a final long-term management plan for the Lazy K Ranch mitigation site, which must be approved, in writing, by the Corps prior to recordation of documents required in Special Condition 4. You shall ensure the required long-term management plan shall include all of the mitigation components summarized in the mitigation plan.

7. You shall notify the Corps in writing of any intention to assign rights or obligations of the conservation easements to a new grantee and no such assignment shall be made without the Corps' written approval of the Grantee. Any assignment of the rights and obligations under the conservation easement(s) shall only be made to an organization/individual qualified to hold such interests under the applicable laws and who is committed to holding these easements exclusively for conservation purposes. Any assignment of the conservation easement shall be in writing and a copy of the assignment shall be provided to the Corps. The conservation easements shall then be re-recorded and indexed in the same manner as any other instrument affecting title to real property. A copy of the newly recorded conservation easements shall be furnished to the Corps within 90 days of recordation.

8. You shall comply with all terms and condition of the attached June 12, 2015 (SB13001IN, RM # 391375) Section 401 Water Quality Certification.

9. You shall implement the attached May 14, 2014, Memorandum of Agreement (MOA), titled *Memorandum of Agreement Among the Federal Railroad Administration, the California High-Speed Rail Authority, The Surface Transportation Board, The U.S.*

Army Corps of Engineers, Sacramento District, the California State Historic Preservation Officer, and the Advisory Council on Historic Preservation, Regarding the Fresno to Bakersfield Section of the California High-Speed Train System in Fresno, Kings, Tulare, and Kern Counties, and signed by these entities, in its entirety. The FRA is the lead federal agency responsible for implementing and enforcing the Memorandum of Agreement, as signed. If you fail to comply with the implementation and associated enforcement of the MOA, the Corps may determine that you are out of compliance with the conditions of your Department of the Army permit and suspend the permit.

a. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. You must comply with Stipulation VII of the MOA, *Unanticipated Discoveries During Construction*, and notify this office of compliance with this stipulation prior to continuing work.

10. This Corps permit does not authorize you to take an endangered species, in particular the San Joaquin kit fox (*Vulpes macrotis mutica*), Tipton Kangaroo Rat (*Dipodomys nitratooides nitratooides*), California tiger salamander (*Ambystoma californiense*), blunt-nosed leopard lizard (*Gambelia sila*), vernal pool fairy shrimp (*Branchinecta lynchi*), vernal pool tadpole shrimp (*Lepidurus packardii*), Valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), California jewelflower (*Caulanthus californicus*), Kern mallow (*Eremalche kernensis*), San Joaquin woolly threads (*Monolopia congdonii*), and Hoover's spurge (*Chamaesyce hooveri*), or designated critical habitat. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (e.g., an Endangered Species Act Section 10 permit, or a Biological Opinion under Endangered Species Act Section 7, with "incidental take" provisions with which you must comply). The enclosed Fish and Wildlife Service Biological Opinion (Number 08ESMF00-2012-F-0247, dated April 1, 2014), contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the Biological Opinion. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with "incidental take" of the attached Biological Opinion, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the Biological Opinion, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The U. S. Fish and Wildlife Service is the appropriate authority to determine compliance with the terms and conditions of their Biological Opinion, and with the Endangered Species Act. You must comply with all conditions of the Biological Opinion, including those ascribed to the FRA.

11. You shall notify the Corps of the start and completion dates within 10 calendar days prior to initiation of construction activities within waters of the U.S. and 10 calendar days following completion of construction activities.

12. You are responsible for all work authorized herein and ensuring that all contractors and workers are made aware of and adhere to the terms and conditions of this permit authorization. You shall ensure that a copy of the permit authorization and associated drawings are available for quick reference at the project site until all construction activities are completed.

13. You shall clearly identify the limits of disturbance in the field with highly visible markers (e.g. construction fencing, flagging, silt barriers, etc.) prior to commencement of construction activities in waters of the U.S. You shall maintain such identification properly until construction is completed and soils have been stabilized. You are prohibited from any activity (e.g. equipment usage or materials storage) that impacts waters of the U.S. outside of the permit limits.

14. You shall use only clean and nontoxic fill material for this project. The fill material shall be free from items such as trash, debris, automotive parts, asphalt, construction materials, concrete with exposed reinforcement bars, and soils contaminated with any toxic substance, in toxic amounts in accordance with Section 307 of the Clean Water Act.

15. You shall conduct all work within natural watercourses and temporary impacted waters when the project area is naturally dewatered, or is dewatered in accordance with a Corps approved dewatering plan. No work shall be conducted in flowing water.

16. Prior to initiation of construction activities within waters of the U.S., you shall employ construction best management practices (BMPs) onsite to prevent degradation to avoided on-site and off-site waters of the U.S. Methods shall include the use of appropriate measures to intercept and capture sediment prior to entering waters of the U.S., as well as erosion control measures along the perimeter of all work areas to prevent the displacement of fill material. All BMPs shall be in place prior to the initiation of construction and shall remain until construction activities are completed. You shall maintain erosion control methods until all on-site soils are stabilized. You shall submit a description of and photo-documentation of your BMPs to our office within 10 days of commencement of construction. Photos may be submitted electronically to *regulatory-info@usace.army.mil*. The project file number (SPK-2009-01482) shall be included with each submittal.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

- () Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal projects.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant.

Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

June 17, 2015
Date

Name Mark A. McLoughlin
Title Director of Environmental Services
Permittee

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below

17 JUN 2015
Date

Michael J. Farrell
Colonel, U.S. Army
District Commander

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

Name _____
Title _____
Transferee

Date