

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
BAY DELTA REGION
2825 CORDELIA ROAD, SUITE 100
FAIRFIELD, CA 94534

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HABITAT CONSERVATION
PLANNING BRANCH



AMENDMENT NO. 3
(A Minor Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2013-031-03
Joy Kane
Zero Todd Road CTS Mitigation Site in Solano County

INTRODUCTION

On November 12, 2015, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2013-031-03 (ITP) to Joy Kane (Permittee), authorizing take of California tiger salamander (*Ambystoma californiense*) (Covered Species) associated with and incidental to the Zero Todd Road CTS Mitigation Site in Solano County, California (Project). The Project as described in the ITP as originally issued by CDFW includes creation of CTS breeding pools within existing seasonal wetland swales on a 63.50-acre site and construction of CTS tunnels across Todd Road to provide connectivity to CTS habitat. 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.

On November 17, 2016, CDFW received from the Permittee a request to renew the ITP and conduct Covered Activities after the 2016-2017 construction season.

On December 28, 2016, CDFW issued Minor Amendment No. 1 to the ITP. Minor Amendment No. 1 changed the ITP expiration date from December 31, 2016 to December 31, 2018.

On November 26, 2018, CDFW received from the Permittee a request to renew the ITP and conduct Covered Activities during the 2019 construction season.

On March 4, 2019, CDFW issued Minor Amendment No. 2 to the ITP. Minor Amendment No. 2 changed the ITP expiration date from December 31, 2018 to December 31, 2020.

On June 11, 2019, CDFW received from the Permittee a request to: 1) modify the Grading and Clearing work period, 2) modify the performance security amounts to reflect the 1.9 acres of Habitat Management land required by the ITP, and 3) correct the restoration of on-site temporary effects acreage.

This Minor Amendment No. 3 (Amendment) makes the following changes to the existing ITP:

1. This Amendment changes the Grading and Clearing work period start date identified in Condition of Approval 7.4 from **April 15** to **June 15**. It also allows for a work period extension by a CDFW representative on a week-by-week basis after the work period end date.

2. This Amendment increases the land acquisition cost estimate for HM lands identified in Condition of Approval 8.1.1 from **\$47,500.00** to **\$163,050.40**.
3. This Amendment decreases the start-up cost estimate for HM lands identified in Condition of Approval 8.1.2 from **\$573,888.00** to **\$40,161.00**.
4. This Amendment decreases the contingency security funding cost estimate identified in Condition of Approval 8.1.3 from **\$114,777.00** to **\$4,016.10**.
5. This Amendment increases the restoration of on-site temporary effects cost estimate identified in Condition of Approval 8.1.7 from **\$4,037.00** to **\$4,081.12** and corrects the restoration of on-site temporary effects acreage in this condition and Condition of Approval 8.5 from **0.91** acres to **0.92** acres to be consistent with the ITP Impacts of the Taking on the Covered Species section (third paragraph) and Habitat Management Land Acquisition and Restoration section (second paragraph).
6. This Amendment decreases the security amount identified in Condition of Approval 9.1 from **\$775,203.00** to **\$246,310.62**.

AMENDMENT

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

1. The ITP Condition of Approval 7.4, Page 8 (Take Minimization Measures) is amended to read:

Grading and Clearing. Grading and clearing shall be conducted between April 15 ***June 15*** and October 15 only when the vernal pools and swales are dry.

If more time is needed to complete ground disturbing activities, the work period may be modified in writing on a week-by-week basis by a CDFW representative. Requests for a work period extension shall: 1) describe the extent of work already completed; 2) detail the activities that remain to be completed; 3) detail the time required to complete each of the remaining activities; 4) provide photographs of both the current work completed and the proposed site for continued work; and 5) include an assessment of additional biological impacts as a result of the work extension. An extension of the period may require an Amendment if additional impacts to Covered Species will occur.

2. The ITP Condition of Approval 8.1.1, Page 10 (Habitat Management Land Acquisition and Restoration) is amended to read:

Land acquisition costs for HM lands identified in Condition of Approval 8.2 below, estimated at ~~\$25,000.00~~ ***\$85,816.00***/acre for 1.9 acres: ~~\$47,500.00~~ ***\$163,050.40***;

3. The ITP Condition of Approval 8.1.2, Page 10 (Habitat Management Land Acquisition and Restoration) is amended to read:

Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 8.2.5 below, estimated at ~~\$573,888.00~~ **\$40,161.00**;

4. The ITP Condition of Approval 8.1.3, Page 10 (Habitat Management Land Acquisition and Restoration) is amended to read:

Contingency security funding as described in Condition of Approval 8.2.6, estimated at ~~\$114,777.00~~ **\$4,016.10**;

5. The first sentence of the ITP Condition of Approval 8.1.7, Page 11 (Habitat Management Land Acquisition and Restoration) is amended to read:

Restoration of on-site temporary effects to Covered Species habitat as described in Condition of Approval 8.5, calculated at \$4,436.00/acre for ~~0.94~~ **0.92** acres: ~~\$4,037.00~~ **\$4,081.12**.

6. The first sentence of the ITP Condition of Approval 8.5, Page 15 (Habitat Management Land Acquisition and Restoration) is amended to read:

Habitat Restoration. Permittee shall restore on-site the ~~0.94~~ **0.92** acres of Covered Species habitat that will be temporarily disturbed during construction to pre-project or better conditions.

7. The ITP Condition of Approval 9.1, Page 15 (Performance Security) is amended to read:

Security Amount. The Security shall be in the amount of ~~\$775,203.00~~ **\$246,310.62**. This amount is based on the cost estimates identified in Condition of Approval 8.1 above.

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

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 seven specific changes to the ITP as originally issued. Changes includes modification of construction timing (i.e., the seasonal work period) and security amounts, and a correction to the restoration of on-site temporary effects acreage. The resulting impacts to the Covered Species, however, including the construction timing and

restoration of on-site temporary effects acreage as a result of the Project, will be minimized or remain the same.

CDFW has determined that changes to the conditions of approval 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, including construction timing and restoration of on-site temporary effects acreage, 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 November 2015 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 will not increase the amount or severity of Project impacts on the Covered Species, as discussed above. 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 November 2015 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 by Sonoma County Permit and Resource Management Department 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 Sonoma County Permit and Resource Management Department 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 modifies the construction timing (i.e., the seasonal work period) and the security amounts, and corrects the restoration of on-site temporary effects acreage. 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

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 8-7-19



Gregg Erickson
Regional Manager
Bay Delta 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.

By: J. Kane

Date: 8/20/19

Printed Name: Joy Kane

Title: _____

Minor Amendment No. 3
Incidental Take Permit 2081-2013-031-03
JOY KANE
ZERO TODD ROAD CTS MITIGATION SITE