

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



AMENDMENT NO. 3
(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

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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 nitratoide nitratoide*), 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 Major Amendment No. 1 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.

On June 2, 2016, CDFW issued Minor Amendment No. 2 to the ITP to explicitly state that CDFW-approved Qualified Biologists, Tipton kangaroo rat 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.

In issuing the ITP, Major Amendment No. 1 and Minor Amendment No. 2 (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.

On December 26, 2018, the Permittees requested a revision to the ITP, as amended, to extend the expiration date. On July 26, 2019, the Permittees also requested to also include language that establishes deadlines for projects seeking a Permittee Authorization and Covered Species take authorization under the ITP, as amended. New projects will be required to request Permittee Authorization and pay their Habitat Mitigation Fee (HMF) no later than August 31, 2021. For new projects that pay the HMF by no later than August 31, 2021, Covered Species take authorization will extend 180 days until the expiration date of the ITP, as amended. Therefore; all Covered Activities must be completed by the expiration date of February 28, 2022, and any take that occurs within the Project Area as a result of the continuation of activities past the expiration date will not be covered under the ITP, as amended.

This Minor Amendment No. 3 (Amendment) makes the following changes to the ITP, as amended:

First, this Amendment extends the expiration date of the ITP, as amended.

Second, this Amendment adds language to establish a timeline for paying the HMF and for completion of ground-disturbing activities for new projects requesting Covered Species take authorization under this ITP, as amended.

AMENDMENT

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

1. The paragraph entitled "Effective Date and Expiration Date of this ITP" on page 1 of the ITP, as amended, shall be further amended to read as follows:

This ITP shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by signature of the Permittees on the

last page of this ITP and returned to CDFW's Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. Unless renewed by CDFW, this ITP's authorization to take the Covered Species shall expire on **September 1, 2019 February 28, 2022.**

2. Condition of Approval 5.6 (Habitat Mitigation Fee (HMF)) on page 12 of the ITP, as amended, shall be further amended to read as follows:

5.6 Habitat Mitigation Fee (HMF). During the ITP term, both Permittees shall collect a Habitat Mitigation Fee (HMF), as described in Condition of Approval 8 prior to the issuance or approval of any Permittee Authorization in the Project Area. ***To ensure take of the Covered Species does not occur after the expiration date of this ITP, the HMF must be paid no later than August 31, 2021, and all Covered Activities shall be completed by the ITP expiration date on February 28, 2022. Permittee Authorization terminates on the expiration date of this ITP; therefore, any take that occurs within the Project Area as a result of the continuation of activities past the expiration date will not be covered under this ITP.*** If no Permittee Authorization is required for a Covered Activity (such as for Permittees' projects), the HMF shall be paid prior to initiation of vegetation- or ground-disturbing activities for said project. The current HMF is \$2,145 per acre (\$1,198.25 per acre for HM land acquisition costs, \$159.99 per acre for HM land fencing and improvement, \$477.72 per acre for HM land endowment, and \$309.81 per acre for Permittee MBHCP implementation costs.)

The corresponding measures in the Mitigation Monitoring and Reporting Program (MMRP) (Attachment 1 of the ITP, as amended) shall be further amended to read the same as above. 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 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 amended. This Amendment modifies the "Effective Date and Expiration Date of Permit" by extending the existing permit expiration date to February 28, 2022, and establishes deadlines for

HMF payment and for completion of Covered Activities for projects authorized by the Permittees. 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 extending the existing permit expiration date and establishing deadlines for HMF payment and completion of Covered Activities 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 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, 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 previously determined in August 2014, April 2015, and June 2016 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 this Amendment because this Amendment only extends the expiration date and establishes a deadline for paying HMF fees and completion of Covered Activities. No new impacts or activities are authorized by this Amendment, 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.

Discussion: CDFW issued the ITP in August 2014, Amendment No. 1 in April 2015, and Amendment 2 in June 2016 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, considering the in the MBHCP Section IV Final Environmental Impact Report (State Clearinghouse No. 1989020264) dated July 1993 certified by the City of Bakersfield as the lead agency for the Project in August 1993. As explained in the findings below,

CDFW finds for purposes of CESA that this Amendment is a minor change to the ITP, as amended. CDFW finds for the same reasons under CEQA that approval of this 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 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.

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 "Effective Date and Expiration Date of Permit" in the ITP, as amended, by extending the existing permit expiration date. It also establishes a timeline for HMF payment and completion of Covered Activities. These changes to the ITP, as amended, 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, 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, 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).

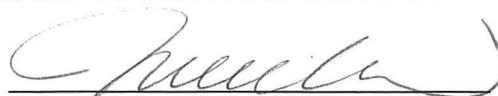
The authorization provided by this Amendment is not valid until Permittees sign and date the acknowledgement below, and return one of the triplicate originals of this Amendment by registered first class mail to CDFW at:

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

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CITY OF BAKERSFIELD AND COUNTY OF KERN
Metropolitan Bakersfield Urban Development in Kern County

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 8/22/19



Julie A. Vance
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: Jacqueline Kitchen

Date: 8/29/19

Printed Name: Jacqui Kitchen

Title: Assistant City Manager

County of Kern

By: Lordei Oviatt

Date: 8/30/19

Printed Name: Lordei Oviatt

Title: Director Kern County
Planning and
Natural Resources