

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

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AMENDMENT NO. 1
(A Minor Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2013-019-03
Civic Aviano, LLC
Aviano Development Project in Contra Costa County

INTRODUCTION

On July 7, 2017, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2013-019-03 (ITP) to Aviano Farms, LLC (Permittee) authorizing take of California tiger salamander (*Ambystoma californiense*), Swainson's hawk (*Buteo swainsoni*), and San Joaquin kit fox (*Vulpes macrotis mutica*), (collectively, the Covered Species) associated with and incidental to the Aviano Development Project in Contra Costa County, California (Project). The Project as described in the ITP originally issued by CDFW includes development of approximately 151.9 acres of undeveloped land into a residential development, which included 533 single-family units, a recreation facility, parks, landscaped areas, associated parking, and arterial road and utility improvements.

In issuing the ITP, 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.

Since then, the Permittee requested transfer of the permit from Aviano Farms, LLC to Civic Aviano, LLC and a change to the Project Description and Conditions of Approval in the ITP to authorize the Project to construct permanent wildlife exclusion fencing to reduce the potential for San Joaquin kit fox and California tiger salamander entry into the residential development portion of the Project Area. The Permittee also requested a reduction in the effort of compliance and biological monitoring after construction of the permanent wildlife exclusion fencing.

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

First, this Amendment transfers the permit from Aviano Farms, LLC to Civic Aviano, LLC.

Second, this Amendment modifies the Project Description with the addition of permanent wildlife exclusion fencing construction.

Third, this Amendment modifies Condition of Approval 7.3 to reduce the frequency of compliance monitoring by a Designated Biologist.

AMENDMENT

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

Project Description, page 3:

A **temporary** wildlife exclusion fence will be maintained north of Sand Creek and south of the development envelope for the duration of the Project.

Following mass grading, permanent wildlife exclusion fence will be installed in order to prevent wildlife from entering the work areas, and to discourage the public from entering the creek buffer area (see Figures 3 and 4).

Condition of Approval 7.3 Compliance Monitoring, page 8:

The Designated Biologist shall spend at least two hours ***be present*** on-site twice a week during Covered Activities ***to conduct compliance inspections. Once the permanent wildlife exclusion fence is installed, the Designated Biologist shall perform on-site compliance inspections twice a month unless otherwise approved in writing by CDFW. This approval can occur after confirmation that the entirety of the Project Area has been improved to a degree whereby the Covered Species habitat could no longer passively develop if the project were to become inactive for a long period of time.*** The Designated Biologist shall conduct compliance inspections to ***Compliance inspections shall be done to achieve the following:*** (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, ***(6) take representative photos of Project Area conditions, and (7) ensure*** that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare written observation and inspection records for each monitoring inspection summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP.

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 has three specific changes to the ITP as originally issued. The resulting impacts to the Covered Species, however, including the timing and number of acres of habitat that will be impacted as a result of the Project, will remain the same.

CDFW has determined that changes to circumstances and the Project Description 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 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 July 2017 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 do not change the quantity of impacts to Covered Species contemplated previously when issuing the ITP. 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 July 2017 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, considering the Aviano Adult Community Project Final Environmental Impact Report (State Clearinghouse No. 2006072024) certified the City of Antioch 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 the City of Antioch 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 redirects Covered Activities and associated impacts entirely within the Project footprint previously contemplated in the ITP. 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 12-26-19.



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: 

Date: 12-26-19

Printed Name: Michael Evans

Title: Director