

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

BAY DELTA REGION

2825 CORDELIA ROAD, SUITE 100

FAIRFIELD, CA 94534



AMENDMENT NO. 1

(A Major Amendment)

California Endangered Species Act

Incidental Take Permit No. 2081-2019-003-03

Pacific West Communities, Inc.

The Redwood Apartments Project in Sonoma County

INTRODUCTION

On December 16, 2019, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2019-003-03 (ITP) to Pacific West Communities, Inc., represented by Caleb Roope (Permittee) authorizing take of California tiger salamander (*Ambystoma californiense*) (the Covered Species) associated with and incidental to The Redwood Apartments Project in Sonoma County, California (Project). The Project as described in the ITP originally issued by CDFW includes the development of a 4.12-acre parcel, of which 3.83 acres are undeveloped, to construct a 96-unit affordable housing apartment complex including a parking areas, utilities, sidewalk, and landscaping. Project activities include grubbing and grading of the entire 3.83 acres of undeveloped land, trench digging, tree removal, and other activities within the approximately 4.12-acre Project footprint. 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.

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

1. This Amendment increases the impacts of taking on the Covered Species by increasing the acreage of undeveloped land the Project will impact from **3.83 acres** to **3.95 acres**.
2. This Amendment increases the impacts of taking on the Covered Species by adding the temporary loss of **0.12 acres** of Covered Species habitat.
3. This Amendment changes Condition of Approval 6.8 to require monthly reporting including an accounting of acres that have been temporarily disturbed and restored within the Project Area, both for the prior month and a total since ITP issuance.
4. This Amendment changes Condition of Approval 6.9 to require annual status reporting including an accounting of acres subject to temporary, both for the prior calendar year and a total since ITP issuance.

Rev. 2013.1.1

5. This Amendment adds Condition of Approval 7.16 defining temporary habitat impacts.
6. This Amendment increases the estimated cost of the purchase of credits at a conservation or mitigation bank OR acquisition, protection, and perpetual management of Habitat Management lands identified in Condition of Approval 8.1 from **\$746,850** to **\$773,250**, and adds a cost estimate for habitat restoration in the amount of **\$584**.
7. This Amendment increases the amount of Covered Species Credits the Permittee shall purchase identified in Condition of Approval 8.2 from **3.83 acres** to **3.95 acres**.
8. This Amendment adds Condition of Approval 8.6 requiring habitat restoration for temporary impacts to habitat.
9. This Amendment increases the security amount identified in Condition of Approval 9.1 from **\$746,850** to **\$773,834**.

AMENDMENT

1. The ITP Project Description, Page 2 is amended to read:

The Project includes the development of a 4.12-acre parcel, of which 3.83 acres are undeveloped, to construct a 96-unit affordable housing apartment complex including a parking areas, utilities, sidewalk, and landscaping. Project activities include grubbing and grading of the entire 3.83 acres of undeveloped land, trench digging, tree removal, and other activities within the approximately 4.12-acre Project footprint (Figure 2). **Additionally, the Project includes the installation of a 24-inch-diameter high density polyethylene storm drainpipe within a 0.12-acre area that is 10-foot-wide and approximately 502 feet long where it will connect to an existing 36-inch-diameter storm drain (Figure 3).** The Project will take approximately 12 to 16 months to complete.

2. The second and third paragraphs in the ITP Impacts on the Taking of Covered Species, Page 2 is amended to read:

Incidental take of individuals of the Covered Species in the form of mortality ("kill") may occur as a result of Covered Activities such as crushing of individuals during construction; entombing; cut and fill grading; parking area construction; **storm drainpipe installation**; vehicular access; installing vegetation; collapsing of burrows; translocation; and entrapment in excavated pits, trenches, storm drains, or within construction materials. Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of pursue, catch,

capture, or attempt to do so of the Covered Species from surveying and relocating operations. The area where authorized take of the Covered Species is expected to occur includes the entire **4.24-acre** ~~4.12-acre~~ Project site (Project Area).

The Project is expected to cause the permanent loss of 3.83 acres of habitat for the Covered Species **and the temporary loss of 0.12 acres of habitat for the Covered Species**. Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project's incremental contribution to cumulative impacts (indirect impacts). These impacts include: stress resulting from noise and vibrations from tunneling and capture and relocation, and long-term effects due to increased pollution, displacement from preferred habitat, increased competition for food and space, and increased vulnerability to predation, capture and relocation.

3. The ITP Condition of Approval 6.8, Page 7 (Monthly Compliance Report) is amended to read:

Monthly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Conditions of Approval 6.3 and 6.4 into a Monthly Compliance Report and submit them to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall also include an accounting of the number of acres that have been permanently **and temporarily** disturbed, **and restored**, within the Project Area both for the prior month and a total since ITP issuance, and estimate the expected number of acres to be disturbed in the successive month; a summary of all pre-activity surveys conducted; and the number of building pads, utility installations, pipelines, roads, and other ground disturbing activities authorized under the Covered Activities within the Project Area which occurred during the previous month. Monthly Compliance Reports shall be submitted to CDFW's Regional Office at the office listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative by the 5th working day of the following month. At the time of this ITP's approval, the CDFW Regional Representative Melanie Day, Senior Environmental Scientist (Specialist) (Melanie.Day@wildlife.ca.gov). CDFW may at any time increase or decrease the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.

4. The ITP Condition of Approval 6.9, Page 8 (Annual Status Report) is amended to read:

Annual Status Report. Permittee shall provide CDFW with an Annual Status Report no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in Condition of Approval 6.8; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; (6) an accounting of the number of acres subject to permanent **and temporary** disturbance, and restoration, both for the prior calendar year and a total since ITP issuance; and (7) information about other Project impacts on the Covered Species.

5. ITP Condition of Approval 7.16 (Temporary Impacts) is added to state:

Temporary Impacts. To be considered a temporary impact, Permittee shall recontour and seed all temporary impact areas by October 31 of the year of the impact, unless otherwise approved in writing by CDFW, and the impacted area soils must be suitable to support small mammal burrows. Heavily compacted soil is not considered suitable. Additionally, these areas shall be made available to fossorial mammals and shall not be surrounded by fencing that limits access. Impacted areas that do not meet these requirements will be considered permanent impacts, an Amendment will be required, and additional Habitat Management Lands pursuant to Condition of Approval 8 may be required.

6. The ITP Condition of Approval 8 Page 12 (Habitat Management Land Acquisition) is amended to read:

Habitat Management Land Acquisition and Restoration:

CDFW has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result with implementation of the Covered Activities. This determination is based on factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation.

To meet this requirement, the Permittee shall either purchase **3.95 acres** ~~3.83~~ acres of Covered Species credits from a CDFW-approved mitigation or

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conservation bank (Condition of Approval 8.2) OR shall provide for both the permanent protection and management of **3.95 acres** ~~3.83 acres~~ of Habitat Management (HM) lands pursuant to Conditions of Approval 8.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 8.4 below. Permanent protection and funding for perpetual management of compensatory habitat must be complete before starting Covered Activities, or within 18 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 9 below for all uncompleted obligations. **The Permittee shall also restore on-site 0.12 acres of temporarily impacted Covered Species habitat pursuant to Condition of Approval 8.6.**

7. The ITP Conditions of Approval 8.1, Page 13 (Cost Estimates) is amended to read:

Cost Estimates. CDFW has estimated the cost of the purchase of credits at a conservation or mitigation bank identified in Condition of Approval 8.2 OR acquisition, protection, and perpetual management of the HM lands identified in Condition of Approval 8.3 at \$195,000 per acre; therefore, for 3.83 acres, the estimated cost is \$746,850. **CDFW has estimated the cost of an additional 0.12 acres of HM lands at \$220,000 per acre; therefore, for 0.12 acres, the estimate cost is \$26,400. CDFW has estimated the cost of habitat restoration at \$4,436 per acre; therefore, for 0.12 acres the estimated cost is \$584.**

8. The ITP Condition of Approval 8.2, Page 13 (Covered Species Credits) is amended to read:

Covered Species Credits. Permittee shall: 1) purchase **3.95 acres** ~~3.83 acres~~ of Covered Species credits from a CDFW-approved mitigation or conservation bank, 2) provide copies of executed Bill(s) of Sale and Payment Receipt(s) to CDFW, and 3) obtain CDFW's written acceptance of the credits.

9. ITP Condition of Approval 8.6 (Habitat Restoration) is added to state:

Habitat Restoration. Permittee shall restore on-site the 0.12 acres of Covered Species habitat that will be temporarily disturbed during construction to pre-project or better conditions and ensure that a Vegetation Restoration Plan is successfully implemented by the contractor. No less than 14 days prior to conducting project activities resulting in temporary disturbance, the Permittee shall prepare and submit to CDFW for approval a Vegetation Restoration Plan to facilitate revegetation of the 0.12 acres. The Plan shall identify plant species damaged or removed during Project activities. For seeding and mulching exposed slopes, the seed blend shall include locally native grass species at a ratio appropriate to the site. The Plan shall include detailed specifications for restoring all temporarily disturbed areas, such as seed mixes and application

methods. The seed mix shall be a naturalized combination of non-invasive grasses and forbs. The Plan shall also indicate the best time of year for seeding to occur, three years of monitoring, and success criteria. Plantings undertaken during the dry season shall include regular watering to ensure adequate growth if necessary. Permittee shall complete seeding as soon as possible, but no later than October 15 of the year of impact, unless otherwise approved in writing by CDFW. At the discretion of CDFW, all exposed areas where seeding is unsuccessful after 90 days shall receive appropriate soil preparation and a second application of seeding, straw, or mulch as soon as is practical on a date mutually agreed upon.

10. The ITP Condition of Approval 9.1, Page 16 (Performance Security) is amended to read:

Security Amount. The Security shall be in the amount of **\$773,834** ~~\$746,850~~. This amount is based on the cost estimates identified in Condition of Approval 8.1 above.

11. ITP Condition of Approval 9.7 (Security Release) is added to state:

Security Release. The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by:

- Receipt of executed copies of Bill(s) of Sale; and
- Receipt of executed copies of Payment Receipt(s).

OR

- Written documentation of the acquisition of the HM lands;
- Copies of all executed and recorded conservation easements;
- Written confirmation from the approved Endowment Manager of its receipt of the full Endowment; and
- Timely submission of all required reports.

AND

- **Restoration of 0.12 acres of CTS habitat on-site.**

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.

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FINDINGS

Issuance of this Amendment will increase the amount of take of the Covered Species compared to the Project as originally approved; however, by increasing the amount of offsite habitat acquisition and protection in perpetuity, restoring temporarily impacted habitat, and with continued compliance with the Conditions of Approval in the ITP, it is not expected that this Amendment will increase Project impacts on these species [i.e., "impacts of taking" as used in Fish and Game Code section 2081, subdivision (b)(2)].

Discussion: This Amendment reflects an increase in the Project impact area and; therefore, an increase in the potential number of individuals of the Covered Species that Project activities may impact. To date, there has been no reports of mortality of the Covered Species; however, due to the estivation and burrowing activity the Covered Species exhibits, any estimations of mortality may be inaccurate. Therefore, CDFW has approved restoring temporarily impacted habitat and an increase in off-site habitat purchase and management in perpetuity for the additional Project impacts that may adversely affect 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 December 2019 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 substantively alter the measures that Permittee will undertake to minimize and mitigate impacts on Covered Species. Permittee's continued adherence to and implementation of the avoidance and minimization measures set forth in the ITP's Conditions of Approval and MMRP, the restoration of temporarily impacted habitat, and the increase in the amount offsite habitat that the Permittee will purchase and manage in perpetuity will minimize and fully mitigate impacts of the taking on the Covered Species.

CDFW conducted additional environmental analysis of the Project in order to issue this Amendment (Pub. Resources Code, § 21166; Cal. Code Regs., tit. 14, §§ 15162 and 15163). Sonoma County, as the lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) prepared a CEQA Addendum (Cal. Code Regs., tit. 14, § 15164).

Discussion: CDFW issued the original ITP in December 2019 as a responsible agency under CEQA after, among other things, considering the Mitigated Negative Declaration adopted by Sonoma County as the lead agency for the Project. As explained in the

findings below, CDFW finds for purposes of CESA that this Amendment represents a major change in the Project as originally approved. CDFW concluded that this Amendment was a change in the Project that had the potential to create a new significant effect not previously analyzed, and as a result CDFW found that additional environmental review was required by CEQA as part of CDFW's approval of this Amendment. Sonoma County therefore prepared and approved CEQA Findings and Addendum dated October 20, 2020 to the lead agency's Mitigated Negative Declaration for the Project.

CDFW finds that this Amendment is a Major Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

Discussion: This Amendment authorizes an increase of the amount of authorized take of, and habitat impacts to, the Covered Species constituting a significant change in the scope of the Project. However, this Amendment modifies the ITP to reflect the proportional increase in the Permittee's mitigation obligations by increasing the total amount of land acquisition for the Covered Species. Therefore, this Amendment will significantly modify the scope or nature of the permitted Project or activity, and the minimization, mitigation, or monitoring measures in the ITP. Additionally, this Amendment required CDFW to undertake additional environmental review pursuant to Public Resources Code section 21166 and California Code of Regulations, title 14, section 15162. CDFW has determined that the change to the ITP constitutes a Major Amendment as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

The authorization provided by this Amendment is not valid until Permittee signs and dates the acknowledgement below, and returns one original 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

Alternatively, you may return an electronic copy of the permit with digital signature to CESA@wildlife.ca.gov. Digital signatures shall comply with Government Code section 16.5.

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APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 10/30/2020

DocuSigned by:
Gregg Erickson
BE74D4C93C004EA...
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: 11-2-20

Printed Name: Caleb Roope Title: President