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HABITAT CONSERVATION
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CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
NORTH CENTRAL REGION
1701 NIMBUS ROAD
RANCHO CORDOVA, CA 95670



AMENDMENT NO. 1
(A Major Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2013-059-02-A1
Greenbriar Project Owner, LP
Greenbriar Development Project in Sacramento County

INTRODUCTION

On December 21, 2017, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2013-059-02 (ITP) to Greenbriar Project Owner, LP (Permittee) authorizing take of giant garter snake (*Thamnophis gigas*) (collectively, the Covered Species) associated with and incidental to the Greenbriar Development Project in Sacramento County, California (Project). The Project as described in the ITP originally issued by CDFW includes development of 590 acres to create a residential subdivision, commercial property, and associated infrastructure. The Project also includes the creation/conversion of reserves. 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.

The Project is divided into two phases, as described in the ITP on pages 2 through 6 with groundbreaking scheduled for July 2019. To mitigate for impacts to Covered Species, Permittee was required to provide full mitigation through Habitat Management (HM) Lands or provide security for such mitigation prior to the start of Covered Activities or within 30 days of the effective date of the ITP, or whichever occurred first. Despite continued work to fully mitigate, Permittee did not provide either HM Lands or security within 30 days; thus, the Permittee, is not in compliance with the Conditions of Approval set forth in the ITP.

Following communication with CDFW throughout 2019, and an official request received on May 20, 2019, Permittee requested that the ITP be amended to revise the timing of mitigation and security requirements. For both phases, Permittee proposes to provide full mitigation or security 30 days prior to beginning Covered Activities within that phase and finalize mitigation funding and management within 24 months of beginning Covered Activities within a phase. Permittee proposes that with this amendment and continued coordination with CDFW to finalize HM Lands, compliance with CESA can be demonstrated.

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

1. This Amendment modifies the Security requirement from 30 days from the date of the ITP to 30 days prior to the start of Covered Activities.

Rev. 2013.1.1

2. This Amendment modifies the date when mitigation components such as conservation easements must be recorded to 24 months from the date Covered Activities commence.

AMENDMENT

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

1. The second paragraph in Section 9 of the ITP, page 17 (Habitat Management Land Acquisition and Restoration) shall be amended to read:

To meet this requirement and in accordance with the Greenbriar Conservation Strategy, the Permittee shall provide for both the permanent protection and management of 529.75 acres of Habitat Management (HM) lands pursuant to Condition of Approval 9.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 below. A minimum of 142 acres of the Spangler HM lands shall be established as managed marsh. Permanent protection and funding for perpetual management of compensatory habitat shall be achieved in two phases. Phase 1 consists of establishment of the Moody (74 acres), Spangler (235.4) and Lone Tree Canal (28.3 acres) HM lands; and Phase 2 consists of establishment of the North Nestor (219.1 acres) HM lands. Phase 1 provides compensatory mitigation for 320 acres of permanent impacts, with up to 80 acres of temporary impacts, and Phase 2 provides compensatory mitigation for 190 acres. Permanent protection and funding for perpetual management of Phase I compensatory habitat, including restoration of the 28.3 acres of temporarily impacted Covered Species habitat pursuant to Condition of Approval 9.6 below, must be complete before starting Covered Activities, or within 24 months of the ~~effective date of this ITP~~ ***start of Covered Activities*** if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations. Permanent protection and management of Phase 2 compensatory habitat must be completed prior to impacting the remaining 190 acres associated with Phase 2 or within 24 months of start of Phase 1 ~~impacts~~ ***2 Covered Activities*** if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations.

2. MMRP Measure 8, Page 2 shall be amended to read the same as above.

3. Condition of Approval 10.3, pages 22-23 shall be amended to read:

The Security ***for each Phase*** shall be provided to CDFW ***30 days*** before Covered Activities begin ~~or within 30 days after the effective date of this ITP, whichever occurs first.~~ ***within that Phase.***

4. MMRP Measure 21, Page 8 shall be amended to read the same as above (MMRP attached).

5. Condition of Approval 10.7, page 23 shall be amended to read:

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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 **for a Phase**, as evidenced by:

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

Even if Security is provided, the Permittee must complete the required acquisition, protection and transfer of all HM lands and record any required conservation easements **for a phase** no later than 24 months from the ~~effective date of this ITP~~ **start of Covered Activities within each Phase**. CDFW may require the Permittee to provide additional HM lands and/or additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the Permittee does not complete these requirements within the specified timeframe.

6. MMRP Measure 51, Page 15 shall be amended to read the same as above.
7. MMRP Implementation Schedule for Measures 8-21, Pages 2-8 shall be amended to reflect the above changes.

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, but this Amendment may 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 three (3) specific changes to the ITP and four (4) specific changes to the MMRP as originally issued including changes to the funding structure of the ITP. The resulting impacts to the Covered Species, however, including the timing, number of acres of habitat that will be lost, and amount of mitigation for of the Project, will 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 funding structure, 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 December 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: (1) will have no effect on the amount or severity of Project impacts on the Covered Species, as discussed above, and (2) does not substantively increase probability of take of the 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 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 December 2017 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) After, among other things, considering the 2008 Greenbriar Development Project EIR, (SCH No.: 2005062144), as well as the Addendum to the Greenbriar Development Project Final EIR, dated January 6, 2017, that the City of Sacramento, as the lead agency certified 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 Sacramento 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 Major Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

Discussion: This Amendment phases mitigation and security requirements and modifies mitigation implementation. As described above, these changes significantly modify the structure of the mitigation. Therefore, this Amendment will 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 Major

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Amendment as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

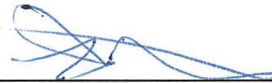
The authorization provided by this Amendment is not valid until Permittee signs and dates the acknowledgement below, and returns one of the duplicate originals of this Amendment by registered first class mail to CDFW at:

Department of Fish and Wildlife
Habitat Conservation Planning Branch
Attention: CESA Permitting Program
1416 Ninth Street, Suite 1260
Sacramento, California 95814

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on

6/20/19

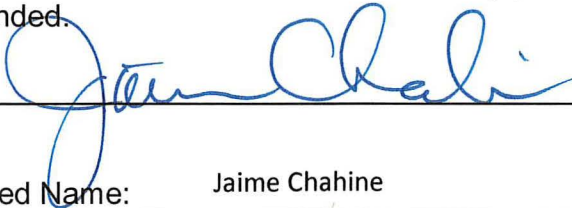


Kevin Thomas
Regional Manager
North Central Region

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.

By:



Date:

06/27/19

Printed Name:

Jaime Chahine

Title:

Authorized Representative

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