

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**  
INLAND DESERTS REGION  
3602 INLAND EMPIRE BLVD. SUITE C-220  
ONTARIO, CA 91764



AMENDMENT NO. 1  
(A Minor Amendment)  
California Endangered Species Act  
Incidental Take Permit No. 2081-2017-052-06  
Palen Solar Holdings, LLC  
Palen Solar Photovoltaic Project in Riverside County

## INTRODUCTION

On December 18, 2018, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2017-052-06 (ITP) to Palen Solar Holdings, LLC (Permittee), authorizing take of Desert tortoise (*Gopherus agassizii*) (the Covered Species) associated with and incidental to the Palen Solar Photovoltaic Project in Riverside County, California (Project). The Project as described in the ITP as originally issued by CDFW includes construction of a 500-megawatt (MW) nominal capacity, AC solar photovoltaic (PV) energy-generating facility that will cover approximately 3,140 acres. The Project employs a single-axis tracking system (rotating east to west) and may use a variety of PV technologies, including, but not limited to Crystalline Silicon panels or copper Indium Gallium Selenide panels. Alternative 1 will have its solar arrays configured into two separate fields to avoid the desert wash woodland located in the center of the ROW with each solar field fenced separately. Development of the Project site will result in the permanent loss of 3,140 acres of habitat for the Covered Species. 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.

The Permittee has been working on securing Habitat Management (HM) lands since the permit was issued, however they will not be able to finish this requirement prior to the end of the 18 months specified in section 9.2. The permanent impacts to covered species in the ITP totaled 3,140 acres, which includes 40 acres of desert tortoise federally designated critical habitat. Through changes in design by the Permittee there will be a reduction of 140 acres in disturbance to the covered species. Impacts will now equal 3,000 acres, of which 3.1 acres would be located within desert tortoise federally designated critical habitat. Lastly, without desert tortoise fencing along the access roads crossing the desert wash the Permittee is required to have an authorized biologist or biological monitor along the road at all times during any activity within the wash during the duration of construction. Installing temporary desert tortoise fencing within the disturbance area of the two access roads crossing the desert wash will allow vehicles to

cross the wash area between the two solar array sites during construction without the need for constant monitoring.

In the amendment request dated July 31, 2020 (in addition to an additional memo submitted by email on September 16, 2020) Palen Solar Holdings, LLC has requested to change the completion date for compensatory mitigation to October 31, 2021, revise the acres impacted, revise the required mitigation acreage based on the reduced project impacts from redesign, and add a measure to allow temporary desert tortoise fencing along the access roads within the desert wash for 14 months during construction.

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

First, this Amendment will change the impact acreage from 3,140 acres to 3,000 acres.

Second, this Amendment will change the mitigation completion date by allowing an additional 15 months making the date of completion October 31, 2021.

Third, this Amendment will change the compensatory acreage due by the applicant from 3,300 acres to 3,012.4 acres.

Fourth, this Amendment will add a condition to allow for temporary desert tortoise fencing along the edge of each 24-foot wide road or along the outer limits of each underground utility disturbance area for approximately 14 months during construction to minimize potential harm to desert tortoises.

## AMENDMENT

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

1. The third paragraph in the Impacts of the Taking on Covered Species section shall be amended to read:

The Project is expected to cause the loss of ~~3,140~~ ***3,000*** acres of habitat (~~3,036~~ ***2,959*** acre solar field, 2 acre main access road, and ~~402~~ ***39*** acre gen-tie line) which includes ~~40~~ ***3.1*** acres of federally designated critical habitat. For the purposes of this ITP, all Project impacts are considered permanent. Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, increased predator presence in the construction vicinity (e.g., ravens), 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, disturbance to burrows, removal and/or damage of vegetation and increased vulnerability to predation.

2. The second paragraph in ITP Condition 9, page 23 (Habitat Management Land Acquisition) shall be amended to read:

To meet this requirement, the Permittee shall either purchase ~~3,300~~ **3012.4** acres of Covered Species credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2), OR shall provide for both the permanent protection and management of ~~3,300~~ **3012.4** 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. Permanent protection and funding for perpetual management of compensatory habitat must be complete before starting Covered Activities or within ~~48 months~~ **33 months** of the effective date of this ITP if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations.

3. Section 9.2 (Covered Species Credits) shall be amended to read:

Permittee shall purchase ~~3300~~ **3012.4** acres of Covered Species credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities or no later than ~~48~~ **33** months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 10 below.

4. Section 8.1 (Desert Tortoise) shall be amended to add measure:

***8.1.19. Covered Species Temporary Fencing and Maintenance. Temporary fencing shall be used along the edge of each 24-foot wide road or along the outer limits of each underground utility disturbance area for approximately 14 months during construction to minimize potential harm to desert tortoises. The temporary fence shall be constructed according to USFWS Field Manual and inspected at the end of each workday, during major rainfall events, and within 24 hours to ensure Covered Species is prohibited from entering the Project Area. The temporary fence shall be inspected by the Authorized Biologist(s) and/or Biological Monitor(s) approved by CDFW under Condition of Approval 6.2 of this ITP. If the fence is compromised, repairs shall be completed immediately, and clearance protocol level surveys shall be conducted as described in Condition of Approval 8.1.2.***

5. Project Description (second paragraph) shall be amended to read:

Alternative 1 will have its solar arrays configured into two separate fields to avoid the desert wash woodland located in the center of the ROW (Figure 2). Each solar field will be fenced separately. The wash area will be between 1,750 and 2,300 feet wide and will be undisturbed with the exception of ~~three~~ **two** roads, *with associated underground utility crossings*, connecting the two solar fields as well as the entrances to each field. ***The wash crossing disturbance area will be 210 feet wide in total (60 feet and 150 feet) and temporary desert tortoise exclusion fence will be installed either along the edge of each 24-foot wide road or along the outer limits of each underground utility disturbance area for approximately 14 months during construction.*** The solar fields will consist of approximately 200 power blocks with each power block consisting of four quadrants of 25 rows with 27 panels each, producing 2.5 MW AC electricity. Each block would require two 1.25 MW inverters, set along the access roads, in the middle of the panel array area

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 4 specific changes to the ITP as originally issued. The timeline for completion of compensatory mitigation has been extended from 18 months to 33 months; the impact acreage is reduced from 3,140 acres to 3,000 acres; and the compensatory mitigation has decreased from 3,300 acres to 3012.4 acres. Lastly, a measure was added to allow temporary desert tortoise fencing along the access roads that cross the desert wash during construction. The resulting impacts to the Covered Species, however, will not increase.

CDFW has determined that changes to timing of compensatory mitigation completion, reduction in impact and mitigation acreage, and temporary desert tortoise fencing 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 December 2018 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 alter the measures that will be undertaken to minimize and mitigate previously authorized impacts on 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 2018 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) After, among other things, considering the environmental impact report certified by Riverside County 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 Riverside County 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 timing of mitigation required by the original ITP. This Amendment makes two limited changes in the ITP; decreasing the acreage of compensatory mitigation required of the Permittee by 140 acres based on project refinements and allowing temporary desert tortoise fencing along the two roads within

the desert wash during the 14 months of construction. 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.

**APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

4/21/2021

on \_\_\_\_\_

DocuSigned by:

*Scott Wilson*

for \_\_\_\_\_

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Leslie MacNair  
Regional Manager  
Inland Deserts 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: *Devon Muto*  
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4/29/2021

Date: \_\_\_\_\_

Printed Name: Devon Muto

Title: Sr. Director

Minor Amendment No.1  
Incidental Take Permit 2081-2017-052-06  
PALEN SOLAR HOLDINGS, LLC  
Palen Solar Photovoltaic Project