

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. 2081-2016-036-06

City of Victorville

Green Tree Boulevard Extension Project in San Bernardino County

INTRODUCTION

On May 5, 2017, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2016-036-06 (ITP) to City of Victorville (Permittee), authorizing take of Mohave ground squirrel (*Xerospermophilus mohavensis*) (collectively, the Covered Species) associated with and incidental to the Green Tree Boulevard Extension Project in San Bernardino County, California (Project). The Project as described in the ITP as originally issued by CDFW includes a roadway gap closure project that would connect Yucca Loma Road in the Town of Apple Valley with Hesperia Road and Green Tree Boulevard in the City of Victorville with cooperative agreement with San Bernardino County. The project provides approximately 1.5 miles of new roadway and a 600-foot-long bridge over the Burlington Northern Santa Fe (BNSF) Railroad, where no crossing currently exists. 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 Project requires an on-site Biological Monitor or Authorized Biologist to monitor compliance and inspect trenches during the implementation of Covered Activities as minimization measures to prevent the take of the Covered Species, as described in the ITP on pages 8 and 10.

In a letter dated February 2, 2021, the Permittee requested that they be allowed to reduce the level of monitoring effort, as already described in the ITP, that is comparable to the level of impact on the species in low impact construction activities that do not involve vegetation removal or grubbing.

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

First, this Amendment allows for reducing the requirement of compliance monitoring to one daily visit by the Biological Monitor or Authorized Biologist during the Covered Species inactive season when the Covered Activities are within hardscaped and/or areas of previous vegetation removal or grubbing that are outside of a 100-foot buffer around Covered Species habitat, and no open holes or trenches are present within the Project area. This Amendment will not change the requirement of daily full-time monitoring when the Covered Activities are taking place during the Covered Species active season, within Project areas Covered Species habitat, and Project areas within 100-feet of Covered Species habitat.

Second, this Amendment allows for reduced frequency of inspections of open holes and trenches to twice daily during the Covered Species inactive season when the Covered Activities are within hardscaped and/or areas of previous vegetation removal or grubbing that are outside of the 100-foot buffer around Covered Species habitat. This Amendment will not change the requirement of three daily inspections taking place during the Covered Species active season, within Project areas containing Covered Species, and Project areas within 100-feet of Covered Species habitat.

AMENDMENT

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

1. ITP Condition 7.3, page 8 (compliance monitoring) shall be amended to read:

Compliance Monitoring. The Biological Monitor(s) or Authorized Biologist(s) shall be on-site daily when Covered Activities occur. The Biological Monitor(s) or Authorized Biologist(s) shall conduct compliance inspections to (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, and that Covered Activities are only occurring in the Project Area. The Biological Monitor(s) or Authorized Biologist(s) shall prepare daily written observation and inspection records summarizing: (1) oversight activities and compliance inspections; (2) observations of Covered Species and their sign; (3) survey results; and (4) monitoring activities required by this ITP. ~~Once Covered Activities are completed the Biological Monitor(s) or Authorized Biologist(s) shall conduct compliance inspections a minimum of twice a day (once during the onset of the day's work and once at the conclusion of that day's work) during periods of inactivity and after clearing, grubbing, and grading are completed.~~ ***The Biological Monitor(s) or Authorized Biologist(s) shall conduct full-time monitoring of Covered Activities when (1) Covered Activities are being performed during the***

Covered Species active season; (2) Covered activities are being performed within Project areas containing Covered Species habitat; and/or (3) Covered Activities are being performed within 100-feet of Covered Species habitat. The Biological Monitor(s) or Authorized Biologist(s) may conduct once daily inspections when Covered Activities are performed during the Covered Species inactive season when all the following are met: (1) The Covered Activities are within hardscaped and/or areas of previous vegetation removal or grubbing that are outside of the 100-foot buffer around Covered Species habitat; and (2) no open holes or trenches are present within the Project area.

2. MMRP:

The corresponding MMRP Measure 38, Page 10 shall be amended to read the same as above.

3. ITP Condition 8.2, page 10 (trench inspection) shall be amended to read:

Trench Inspection. The Biological Monitor(s) or Authorized Biologist(s) shall inspect all open holes and trenches within the Project Area at the beginning, middle, and end of each day for trapped animals ***(1) during the Covered Species active season; (2) when the open holes and trenches are within Project areas containing Covered Species habitat; and (3) when the open holes and trenches Project areas are within 100-feet of Covered Species habitat. The Biological Monitor(s) or Authorized Biologist(s) shall inspect all open holes and trenches within the Project Area at the beginning and end of each day for trapped animals (1) during the Covered Species inactive season, and (2) in hardscaped Project areas and/or areas of previous vegetation removal or grubbing that are outside of the 100-foot buffer around Covered Species habitat.*** To prevent inadvertent entrapment of Covered Species or any other animals, the Biological Monitor(s) or Authorized Biologist(s) shall oversee the covering of all excavated, steep-walled holes or trenches more than two feet deep, or of any depth if they contain water or other material, at the close of each working day by plywood or other barrier materials such that animals are unable to enter and become entrapped. Permittee shall provide escape ramps in holes greater than two feet deep that do not hold water or other material, to allow animals to escape. Before holes or trenches are filled, the Biological Monitor(s) or Authorized Biologist(s) shall thoroughly inspect them for trapped animals. If any worker discovers that Covered Species have become trapped, they shall halt Project-related activities and notify the Authorized Biologist(s) immediately. Project workers and the Biological Monitor(s) or Authorized Biologist(s) shall allow the Covered Species to escape unimpeded if

possible, or the Authorized Biologist(s) shall move the Covered Species out of harm's way before allowing work to continue.

4. MMRP:

The corresponding MMRP Measure 42, Page 11 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.

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 (2) specific changes to the ITP as originally issued. The frequency of compliance monitoring and trench inspection in Project areas during the time of year in which take is likely to occur remains the same. The reduction of compliance monitoring and trench inspection is limited to areas where Covered Species habitat has already been removed and other take minimization measures as outlined in the ITP were already implemented. The resulting impacts to the Covered Species, however, including the 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 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 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 April, 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 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 May, 2017 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) After, among other things, considering the negative declaration adopted by Town of Apple Valley 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 Town of Apple Valley 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 modified the frequency of compliance monitoring and trench inspection based on the active season of the Covered Species, and the location of Covered Activities in relation to suitable habitat. Compliance monitoring and trench inspection (when applicable) are still required daily while Covered Activities are ongoing. 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:

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 10/29/2021

DocuSigned by:
Leslie MacNair
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Leslie MacNair
Regional Manager

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: Brian Gengler Date: 11-1-2021

Printed Name: Brian Gengler Title: City Engineer

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