

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**  
MARINE REGION  
1933 CLIFF DRIVE, SUITE 9  
SANTA BARBARA, CA 93109



AMENDMENT NO. 2  
(A Minor Amendment)  
California Endangered Species Act  
Incidental Take Permit No. 2081-2020-009-07-A2  
Pacific Shops Inc./Alameda Marina LLC  
Alameda Marina Shoreline Improvement Project in Alameda County

## INTRODUCTION

On August 10, 2020, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2020-009-07 (ITP) to Pacific Shops, Inc./Alameda Marina, LLC (Permittee), authorizing take of Sacramento River Winter-Run Chinook Salmon (*Oncorhynchus tshawytscha*), Central Valley Spring-Run Chinook Salmon (*O. tshawytscha*), and Longfin Smelt (*Spirinchus thaleichthys*) (collectively, the Covered Species) associated with and incidental to the Alameda Marina Shoreline Improvement Project in Alameda County, California (Project). The Project as described in the ITP as originally issued by CDFW includes redevelopment and improvement of 20.87 acres of the Alameda Marina to address climate resiliency and to rehabilitate the existing marina. In-water work includes pile removal and installation utilizing vibratory and impact hammers. The Project also estimated 0.20 acres of new solid fill specifically from shoreline protection and an outfall installation. 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.

On November 23, 2020, the permit was amended to allow for additional time to complete the project and include methods to allow work to meet the Projects timeline. Due to delays in starting construction related to permitting and the COVID-19 pandemic and associated regional shelter in place orders, the beginning of work started later than anticipated. To meet the Projects timeline, impact hammering was allowed to take place year-round, as needed, for all piles smaller than 30 inches. Although vibratory pile driving year-round was already included in the original permit, the applicant requested to include impact hammering to complete driving piles to the necessary depth in the event the vibratory hammer was not sufficient.

In a letter dated February 25, 2022, the Permittee requested one change to the permit to allow for additional time to meet their mitigation requirements. Due to a delay in final approval of a CDFW approved mitigation bank, mitigation credits were not able to be purchased within 18 months of signature as required within the original ITP. The

applicant has requested an additional 18 months to complete their required purchase of 0.20 acres of mitigation credits, which will occur as soon as the approved bank is able to receive credit purchases. Given that the current permit expiration date is less than 18 months from the time of the second amendment application, this amendment will only grant an extension of 9 months until November 30, 2022.

This Minor Amendment No. 2 (Amendment) makes the following changes to the existing ITP:

This Amendment will add 9 months to the date for which the required mitigation credits will need to be purchased granting an extension until November 30, 2022.

## **AMENDMENT**

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

1. ITP condition 7, page 9-10 (Habitat Management Land Acquisition and Restoration)

**7. 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 purchase 0.20 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 7.1). Purchase of the Covered Species credits must be complete before starting Covered Activities, or within ~~48~~ **27** months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 8 below for all uncompleted obligations.

**7.1. Covered Species Credits.** Permittee shall purchase 0.20 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank prior to completing Covered Activities, or no later than ~~48~~ **27** months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 8 below.

2. Last paragraph of ITP condition 8, page 11 (Performance Security).

Even if Security is provided, the Permittee must complete the required acquisition of covered species credits no later than ~~18~~ **27** months from the effective date of this ITP. CDFW may require the Permittee to provide 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.

3. MMRP:

The corresponding MMRP Measure 6, Page 2 and Measure 26, Page 5, and Measure 27, Page 5 shall be amended to read the same as above and the timing requirement in the Implementation Schedule column shall be amended to read:

During Construction or within ~~18~~ **27** months of issuance of the ITP if Security is provided.

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 1 specific change to the ITP as originally issued. This Amendment is extending the time in which mitigation credits must be purchased to satisfy the mitigation requirements of the ITP from 18 months to 27 months after issuance of the ITP. The resulting impacts to the Covered Species, however, including the timing and impacted area 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, including the extension of time to purchase mitigation credits, 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 August 2020 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. This Amendment acknowledges that the Permittee needs additional time to complete the Project and would need additional flexibility in methods used during the entire year to complete the Project within the extended Project timeframe. 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 August 2020 and the ITP Amendment No. 1 in November 2020 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 the City of Alameda 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 Alameda 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 extends the timeline for the Permittee to purchase the required mitigation credits from a CDFW approved mitigation bank. This change 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

**ATTACHMENTS:**

ATTACHMENT 1 Amended Mitigation Monitoring and Reporting Form

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


on May 16, 2022



Dr. Craig Shuman  
Regional Manager  
Marine 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:  \_\_\_\_\_  
D19B66314DF24BA...

Date: 5/16/2022

Printed Name: Sean Murphy

Title: Principal

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PACIFIC SHOPS INC./ALAMEDA MARINA LLC  
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