

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

MARINE REGION

1933 CLIFF DRIVE, SUITE 9

SANTA BARBARA, CA 93109



AMENDMENT NO. 1

(A Minor Amendment)

California Endangered Species Act

Incidental Take Permit No. 2081-2020-009-07-A1

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 0.22 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.

In a letter dated October 1, 2020 the Permittee requested two changes to the permit to allow for additional time to complete the project and include methods to allow work to meet this current 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. Additionally, to meet the timeline, the Permittee has requested that impact hammering be 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 is not sufficient.

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

First, this Amendment changes the Project completion date from May 31, 2022 to November 30, 2022.

Second, this Amendment will change the work window for impact hammering piles under 30" to allow for limited impact hammering year round.

AMENDMENT

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

1. The second paragraph on page 1 (Effective Date and Expiration Date of this ITP) shall be amended to read:

This ITP shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by signature of the Permittee on the last page of this ITP and returned to CDFW's Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. Unless renewed by CDFW, this ITP's authorization to take the Covered Species shall expire on ~~May 31, 2022~~ ***November 30, 2022.***

2. ITP Condition 6.1, page 8 (Work Window) and corresponding condition #18 within the Monitoring, Mitigation and Reporting Plan (MMRP) shall be amended to read:

Permittee shall conduct in-water work between June 1 and November 30 with the exception of vibratory pile driving ***and impact pile driving of piles less than 30" in diameter*** which may occur as needed for the duration of the Project.

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 2 specific changes to the ITP as originally issued. The Amendment is extending Project completion date by 7 months and allowing more flexibility for the types of in-water activities that can occur outside of the specified work

window. 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 the changes to the Project completion date and 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 extending the Project completion date and allowing limited impact hammering outside of the specified work window, 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 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 Project completion date and allows for additional flexibility in impact hammering piles during construction. The changes described within the Amendment make only minor changes to the ITP and the conditions of the ITP. These changes to the ITP will not: (1) significantly 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

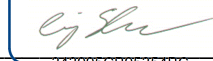
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PACIFIC SHOPS INC./ALAMEDA MARINA LLC
Alameda Marina Shoreline Improvement Project

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

11/23/2020

on _____

DocuSigned by:




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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.

DocuSigned by:



D19B66314DF24BA...

By: _____

11/24/2020

Date: _____

Sean Murphy

Manager

Printed Name: _____

Title: _____

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