

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



AMENDMENT NO. 2
(A Minor Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2021-026-06
John Ohanian/ Silverwood Development Phase 1, LLC Silverwood Phase 1 Project in
San Bernardino County

INTRODUCTION

On March 23, 2022, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2021-026-06 (ITP) to Silverwood Development Phase 1, LLC (Permittee), authorizing take of western Joshua tree (*Yucca brevifolia*) (the Covered Species) associated with and incidental to the Silverwood Phase 1 Project in San Bernardino County, California (Project). The Project as described in the ITP as originally issued by CDFW includes the first phase of development of 1,033.1 acres of the Tapestry Specific Plan into residential uses as well as supporting public facilities and infrastructure, including off-site infrastructure improvements. 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 February 21, 2023, a Major Amendment (2081-2021-026-06-A1) was issued that:

- Reduced overall Project impacts by 18.2 acres, totaling 1,014.9 acres compared to 1,033.1 acres;
- Reduced impact to western Joshua tree habitat by 10.0 acres;
- Added an additional 1,000 linear feet to the Project area (water booster station and associated access road).

On August 7, 2023, CDFW received a minor amendment request to extend the timeline associated with compensatory mitigation specified in the amended ITP, an additional 12 months; from 18 months to 30 months.

DESCRIPTION

The Project is divided into 2 subphases (1A and 1B) for the first phase of the Project, as described in the ITP. To avoid certain impacts to Covered Species, Silverwood LLC has decreased their net impact acreage after beginning Phase 1.

In a letter dated October 21, 2022, Silverwood LLC requested an amendment to their ITP for changes that were made following the initial issuance of the ITP, including

decreases in the distance to daylight lines and subsequent reductions in the limits of grading, reductions in impacts to avoid easements, and minor essential design modifications. Reductions in the distance to daylight lines were made to decrease project impacts to sensitive biological resources within all of Phase 1. Avoidance of easements and minor essential design modifications were required to properly design Phase 1. Additional changes to project impact limits include decreases in the impacts following the removal of the temporary water storage pond for recycled water in the southern portion of the project that was no longer needed. The water booster station, analyzed during the initial California Environmental Quality Act review but not included in the initial ITP application, was added back to the project design. The water booster station will be in the southeastern part of the project area and was required to maintain consistent water pressure and adequate flows within the Phase 1 water distribution system. The booster station includes an extension of Silverwood Trail Road (approximately 1,000 linear feet) to allow access to the site. A single temporary brow ditch was also added to convey flows across the site construction and into a stormwater basin. The temporary water storage pond for recycled water is no longer needed as part of the project and has been removed.

A Major Amendment No. 1 (Amendment) was issued that made the following changes to the existing ITP:

First, the Amendment reduced overall Project impacts by 18.2 acres, totaling 1,014.9 acres compared to 1,033.1 acres.

Second, the Amendment reduced impact to western Joshua tree habitat by 10.0 acres due to the elimination of the temporary water storage pond in the southeastern portion of the Project.

Third, while the Amendment resulted in a net reduction in impacts, one additional area was added to the project (water booster station and associated access road).

In a letter dated August 7, 2023, CDFW received a minor amendment request to extend the timeline associated with compensatory mitigation specified in the ITP, an additional 12 months; from 18 months to 30 months. The change is to account for the introduction of the Western Joshua Tree Conservation Act (WJTCA) as part of Assembly Bill 1008, that resulted in uncertainties related to land values, mitigation options, and mitigation banks for western Joshua tree habitat. These uncertainties have resulted in challenges for the Permittee to fulfill the compensatory mitigation obligations associated with the Silverwood Phase 1 Project within the timeline specified in the ITP.

This Minor Amendment No. 2 (Amendment 2) would make the following change to the amended ITP:

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Amendment 2 would extend the timeline associated with compensatory mitigation specified in the amended ITP, an additional 12 months; from 18 months to 30 months.

AMENDMENT

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

1. The second paragraph in ITP Condition 8, page 15 (Habitat Management Land Acquisition) shall be amended to read:

To meet this requirement the Permittee shall either purchase Covered Species credits from a CDFW-approved mitigation or conservation bank pursuant to Condition of Approval 8.2 below OR shall provide for both the permanent protection and management of Habitat Management (HM) lands pursuant to Condition of Approval 8.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 8.4 below that correspond to their respective Phases in Table 2. Purchase of Covered Species credits OR permanent protection and funding for perpetual management of HM lands must be complete before starting Covered Activities within each Phase, or within ~~48~~ ***30*** months from the start of ground disturbance for each Phase if Security is provided pursuant to Condition of Approval 9.1 below for all uncompleted obligations.

MMRP:

The corresponding MMRP Measure 11, Page 3 shall be amended to read the same as above and the timing requirement in the Implementation Schedule column shall be amended to read:

“Before commencing ground- or vegetation-disturbing activities (or within ~~48~~ ***30*** months of issuance of the ITP if Security is provided)”

2. The paragraph in ITP Condition 8.2, page 17 (Covered Species Credits) shall be amended to read:

If the Permittee elects to purchase Covered Species credits to complete compensatory mitigation obligations, then Permittee shall purchase credits in the amounts according to Table 2 from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities within each Phase, or within ~~48~~ ***30*** months from the start of ground disturbance for each Phase ~~from issuance of this Amended ITP~~ if Security is provided pursuant to Condition of Approval 9 below. Prior to purchase of Covered Species credits, Permittee shall obtain CDFW approval to ensure the mitigation or conservation

bank is appropriate to compensate for the impacts of the Project. Permittee shall submit to CDFW a copy of the Bill of Sale(s) and Payment Receipt prior to initiating Covered Activities within each Phase or within ~~18~~ **30** months from the start of ground disturbance for each Phase ~~from issuance of this Amended ITP~~ if Security is provided.

MMRP:

The corresponding MMRP Measure 13, Page 4 shall be amended to read the same as above and the timing requirement in the Implementation Schedule column shall be amended to read:

“Before commencing ground- or vegetation-disturbing activities (or within ~~18~~ **30** months of issuance of the ITP if Security is provided)”

3. The last paragraph in ITP Condition 9.7, page 23 (Security Release) shall be amended to read:

... 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 no later than 18 months from the effective date of ~~this~~ **the** Amended **No.1** ITP or within ~~18~~ **30** months from the start of ground disturbance for 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.

MMRP:

The corresponding MMRP Measure 28, Page 10 shall be amended to read the same as above and the timing requirement in the Implementation Schedule column shall be amended to read:

“Before commencing ground- or vegetation-disturbing activities (or within ~~18~~ **30** 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 changes to the ITP as originally issued. The Permittee will have an additional 12 months to fulfil compensatory mitigation obligations, extending the original timeline of 18 months to 30 months. The resulting impacts to the Covered Species, however, as a result of the Project, will remain the same.

CDFW has determined that a time extension to complete compensatory mitigation 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 an extension of time allowed to fulfill compensatory mitigation obligations 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 March 2022, 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 not alter in 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 Silverwood LLC needs additional time to complete the compensatory mitigation measures requiring acquisition and permanent protection of HM Lands or purchase of credits at a CDFW-approved Bank. Silverwood LLC’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 March 2022, 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 Hesperia 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 Hesperia 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 compensatory mitigation timeline described in the original and amended ITP. This Amendment makes one limited change in the original and amended ITP, authorizing the Permittee additional time to satisfy compensatory mitigation obligations through acquisition and preservation of HM lands or through the purchase and acquisition of credits at a CDFW-approved Conservation Bank. 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

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APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 9/21/2023

DocuSigned by:
Heidi Calvert
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Heidi Calvert
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: John Ohanian
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Date: 9/26/2023

Printed Name: John Ohanian

Title: General Manager

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