



California Department of Fish and Game
1416 NINTH STREET
SACRAMENTO, CALIFORNIA 95814
California Endangered Species Act
Amendment to Incidental Take Authorization
No. 2081-1995-086-02-A1
CITY OF SACRAMENTO
2003 NATOMAS BASIN HABITAT CONSERVATION PLAN

Authority:

The California Endangered Species Act ("CESA") prohibits the take¹ of any species of wildlife that is included in the list of endangered species, the list of threatened species, or the list of candidate species.² However, the Department of Fish and Game ("Department") may authorize, by permit, the take of such species if the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c) are met.

Purpose and Effect of the Amendment:

The Department issued a CESA take authorization in the form of a Memorandum of Understanding to the City of Sacramento ("City" or "permittee") on December 31, 1997. That permit, No. 2081-1995-086-02, authorized incidental take that occurred during land use activities consistent with the Natomas Basin Habitat Conservation Plan dated 1997, and was "grandfathered" pursuant to Fish and Game Code section 2081.1 when amendments to CESA took effect on January 1, 1998. This Incidental Take Permit Amendment ("amendment" or "amended permit") is issued pursuant to Fish and Game Code section 2081, subdivisions (b) and (c), and California Code of Regulations, Title 14, subdivision 3, chapter 6, article 1, commencing with section 783, for the purpose of revising the permit issued in 1997 to reflect and incorporate changes made to the Natomas Basin Habitat Conservation Plan dated April 2003 ("2003 NBHCP"), as

¹Pursuant to Fish and Game Code section 86, "'Take' means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill."

²"Candidate species" are species of wildlife that have not yet been placed on the list of endangered species or the list of threatened species, but which are under formal consideration for listing pursuant to Fish and Game Code section 2074.2.

well as terms of an Implementation Agreement for the Natomas Basin Habitat Conservation Plan ("IA") signed by the City in June 2003. The 1997 NBHCP was updated and modified to address deficiencies under federal law identified by the United States District Court for the Eastern District of California. The 2003 NBHCP also reflects participation in the revision effort by the County of Sutter and the Natomas Basin Conservancy, among other parties.

This amended permit is a "major amendment" to the City's 1997 authorization and is issued pursuant to the process set forth in section 783.6, subdivision (c)(5), of Title 14 of the California Code of Regulations. The amended permit and the IA have been drafted to serve as a complete, stand-alone revision to the City's 1997 authorization. This amended permit shall supersede the City's 1997 authorization, including the associated implementation agreement executed at the same time by the City, Department, and U.S. Fish & Wildlife Service. In the event of a successful legal challenge invalidating this amended permit, the City's 1997 authorization shall remain in effect under State law.

Permittee:

City of Sacramento

Contact person: Carol Shearly, North Natomas Manager
Mailing address: 2101 Arena Blvd., Suite 200
Sacramento, CA 95834.

Agent for service of process: Carol Shearly

Project Location:

The 2003 NBHCP is a conservation plan covering 53,537 acres of the Natomas Basin in northern Sacramento County and southern Sutter County. The area covered by the 2003 NBHCP is bounded on the west by the Sacramento River levee, on the north by the Natomas Cross Canal, on the east by the Natomas East Main Drainage Canal, and on the south by the American River levee. Where the Natomas Basin is defined by a levee, it extends from the toe of the levee away from the waterway. In this amendment, the terms "Natomas Basin" or "Basin" are used as a specific reference to the land that is included in the 2003 NBHCP plan area as defined.

The Department is issuing two new incidental take permits concurrently with this permit amendment, one to Sutter County and one to the Natomas Basin Conservancy. This permit amendment is limited to that portion of the NBHCP area that is within the

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jurisdictional boundaries of the City and to approximately 10 acres in the unincorporated area of Sacramento County where the City will undertake work to widen the West Drain. These areas are collectively referred to in this amendment as the "City permit area."

The 2003 NBHCP and IA describe in greater detail the location of the Natomas Basin and the City permit area; these descriptions are incorporated by reference into this permit.

Project Description:

The 2003 NBHCP is a multi-jurisdictional, multi-species, 50-year plan intended to protect 22 Covered Species and other biological resources within the Natomas Basin by minimizing and mitigating impacts on those species and their habitats. The conservation strategy detailed in the 2003 NBHCP and this amended permit are based on a limitation of urban development within the Basin to 17,500 acres, including a limit on City development within the Basin of 8,050 acres. To fund protection of habitat, a mitigation fee will be paid by developers and landowners when they obtain development permits from the City, with revenue from the fees used to acquire, enhance and manage habitat for the Covered Species. The operating conservation program, along with the activities by the City covered by this permit, are fully described in the 2003 NBHCP and IA, and these descriptions are incorporated here by reference.

Covered Species:

This amended permit covers the following species that are listed under CESA as threatened or endangered:

Name	Status ³
<u>Birds</u>	
1. Bank swallow (<i>Riparia riparia</i>)	ST
2. Swainson's hawk (<i>Buteo swainsoni</i>)	ST
<u>Reptiles and amphibians</u>	
1. Giant garter snake (<i>Thamnophis gigas</i>)	ST

³Refers to status under CESA. Under CESA, a species may be on the list of endangered species, the list of threatened species, or the list of candidate species. All other species are "unlisted."

Plants

- | | |
|---|----|
| 1. Boggs Lake hedge-hyssop (<i>Gratiola heterosepala</i>) | SE |
| 2. Sacramento Orcutt grass (<i>Orcuttia viscida</i>) | SE |
| 3. Slender Orcutt grass (<i>Orcuttia tenuis</i>) | SE |

The following species are also covered in the 2003 NBHCP and this amended permit, but are not presently protected under CESA: Aleutian Canada Goose (*Branta canadensis leucopareia*), tricolored blackbird (*Agelaius tricolor*), northwestern pond turtle (*Clemmys marmorata marmorata*), white-faced ibis (*Plegadis chihi*), loggerhead shrike (*Lanius ludovicianus*), burrowing owl (*Athene cunicularia*), western spadefoot toad (*Scaphiopus hammondi*), Valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), Midvalley fairy shrimp (*Branchinecta mesovallensis*) Vernal pool fairy shrimp (*Branchinecta lynchi*), Vernal pool tadpole shrimp (*Lepidurus packardii*), california tiger salamander (*Ambystoma californiense*), Colusa grass (*Neostaphia colusana*), Delta tule pea (*Lathrus Jepsonii* ssp. *Jepsonii*), Legenere (*Legenere limosa*), and Sanford's arrowhead (*Sagittaria Sanfordii*).

The species listed above, including both those listed under CESA and those that are not presently listed, are referred to in this permit amendment as "Covered Species."

Impacts to Covered Species:

Land use development in the City permit area could result in impacts to as many as 8,050 acres of habitat for the Covered species. Individuals of the Covered Species may be incidentally taken as a result of mortality during construction; project-caused habitat losses; project-caused changes in the habitat that make the species more vulnerable to competition, disease or predation; take during trapping and relocation of individuals from the project site; and take during habitat restoration and management activities and monitoring. Impacts to these species are more fully described in the 2003 NBHCP and the Final Environmental Impact Report/Environmental Impact Statement dated April 2003, and these descriptions are incorporated here.

Effective Date and Expiration Date of the Amendment:

This amended permit shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by applicant (see below) and returned to the Department's Office of the General Counsel, and upon execution of the IA by the Department. Unless renewed by the Department, this amended permit's authorization to take the Covered Species shall expire on July 10, 2053.

Incidental Take Authorization:

The Department authorizes the City and its employees, contractors, and agents to incidentally take Covered Species within the City permit area in carrying out activities identified in the IA and in Chapter 1, Section N.1, of the 2003 NBHCP, subject to the limitations described in this section and the conditions of approval identified below. This authorization also applies to landowners and developers with land use projects within the City permit area, subject to the conditions and limitations on such use that are set forth in the 2003 NBHCP and IA. The amended permit does not authorize any intentional take of Covered Species, take of Covered Species from activities outside the scope of the project as described above, or take of Covered Species resulting from a violation of the amended permit.

The amended permit authorizes the incidental take of each Covered Species that is currently listed as a threatened or endangered species pursuant to CESA, or is a candidate for such listing. For any Covered Species that is not listed or a candidate for listing under CESA at the time this amendment is issued ("unlisted Covered Species"), incidental take will be authorized as of the date the species is accepted as a candidate species pursuant to Fish and Game Code section 2074.2, or is listed as threatened or endangered pursuant to Fish and Game Code section 2076.5, provided the Department confirms in writing that substantial evidence demonstrates the amended permit continues to meet the standards in Fish and Game Code section 2081(b) and (c), and in the California Code of Regulations, Title 14, section 783.4 for that species. In the event the Department confirms there is evidence demonstrating the standards are still being met, no further amendment of the permit will be required and incidental take of the previously unlisted Covered Species is authorized by this amended permit. If the Department cannot confirm that permit issuance standards are still being met, the City will need to apply for an amendment to this amended permit or for a new or amended permit if it needs to obtain take authorization for the previously unlisted Covered Species. In considering such an application, the Department will accept and give due consideration to the minimization and mitigation measures in this amended permit, and will make reasonable efforts to review and process the application to ensure, to the extent it can consistent with CESA, that take authorization for the previously unlisted Covered Species is provided in a timely manner. To the extent permitted under CESA, the Department shall consider this amended permit when determining whether to recommend that an unlisted Covered Species be listed as threatened or endangered under CESA.

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Conditions of Approval:

The Department's issuance of this amendment and permittee's authorization to take the Covered Species are subject to permittee's compliance with and implementation of the following conditions of approval:

- 1) Permittee shall comply with all applicable state, federal, and local laws in existence on the effective date of this amendment or adopted thereafter.
- 2) Permittee shall fully implement and adhere to the 2003 NBHCP and the IA signed by the City. Except as provided in these conditions of approval, in the event of a conflict between the requirements of the 2003 NBHCP and the IA, the terms of the IA shall control as provided in section 8.10 of the IA.
- 3) Permittee shall implement and adhere to requirements in Attachment 3, the Mitigation Monitoring and Reporting Program ("MMRP"). The MMRP is a tool to assist the Department in determining whether the mitigation measures contained in the 2003 NBHCP are being implemented successfully, and as such it summarizes requirements of the 2003 NBHCP and IA, identifies the party responsible for implementing each requirement, and sets forth the time period for implementation of the requirements. In the event of any conflict between a requirement set forth in the MMRP and the terms of the IA and 2003 NBHCP, the IA and 2003 NBHCP shall control. Furthermore, an omission from the MMRP of certain requirements from the IA and 2003 NBHCP does not relieve the permittee of its obligation to comply with all the terms of the IA and 2003 NBHCP.
- 4) Permittee shall provide Department representatives with reasonable assistance in gaining access to lands within the 2003 NBHCP and shall otherwise fully cooperate with Department efforts to verify compliance with or effectiveness of the amendment's mitigation measures and other requirements of the 2003 NBHCP and IA.
- 5) Pursuant to section 783.6, subdivision (c)(2), of Title 14, of the California Code of Regulations, the Department may revise the amended permit at any time without the concurrence of the City if the Department determines that further amendment is required by law. Circumstances that would trigger such an amendment include, but are not limited to, those that result in a Department determination that continued use of the amended permit will jeopardize the continued existence of a Covered Species. Revision of the amended permit in response circumstances triggering an amendment by the Department as a matter of law may include, but is not limited to, a requirement that the City convert habitat reserve land in rice production under the

2003 NBHCP to upland habitat reserves.

- 6) The City shall limit urban development in the Basin within its permit area to 8,050 acres as described in the 2003 NBHCP.

Compliance with Other Laws

This amendment contains the Department's requirements of the City for specified land use changes within the City permit area. This amendment does not necessarily create an entitlement for the City or landowners and developers within the City permit area to proceed with activities covered by this amended permit. The permittee is responsible for complying with all other applicable state, federal, and local laws.

Notices

Written notices, reports and other communications relating to this amendment shall be delivered to the Department by first class mail at the following addresses, or at addresses the Department may subsequently provide the permittee. Notices, reports, and other communications should state the name of the permittee, the project, and the permit number (2081-1995-86-02-A1).

Original with all attachments to:

Regional Manager
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670
(916) 358-2900
(916) 358-2912 (fax)

Copies of notice/correspondence without attachments to:

Office of the General Counsel
Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

And:

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Chief
Habitat Conservation Planning Branch
Department of Fish and Game
1416 Ninth Street, Suite 1260
Sacramento, CA 95814

Unless the City is notified otherwise, the Department's Regional Representative for purposes of addressing issues that arise during implementation of permit conditions is the Habitat Conservation Planning Supervisor, who can be reached at (916) 358-2382.

Attachments:

ATTACHMENT 1	Department CESA Findings
ATTACHMENT 2	Department CEQA Findings
ATTACHMENT 3	Mitigation Monitoring and Reporting Program

**ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND GAME ON
JULY 10, 2003.**


for RON REMPEL, DEPUTY DIRECTOR
Habitat Conservation Division

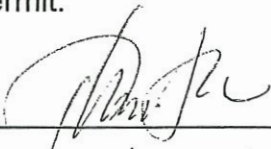
APPROVED AS TO FORM:

MICHAEL R. VALENTINE, General Counsel

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ACKNOWLEDGMENT

The undersigned: 1) warrants that he or she is acting as a duly authorized representative of the permittee, 2) acknowledges receipt of this amendment, and 3) agrees on behalf of the permittee to comply with all terms and conditions of the amended permit.

Signed:  Date: July 10, 2003

Printed Name: Thomas V. Lee Title: Deputy City Manager