

RESOLUTION NO. _____(N.C.S.)

**RESOLUTION AMENDING MITIGATION MONITORING AND
REPORTING PROGRAM FOR WEST AREA SPECIFIC PLAN
(WASP Mitigation Measures 3.2-1 through 3.2-4 and 3.2-7)**

WHEREAS, on December 19, 2019, the City Council of the City of Salinas (“City Council”) certified a Final Environmental Impact Report (“Final EIR”) for, and approved, the West Area Specific Plan (“WASP” or “the Project”); and

WHEREAS, in doing so, the City Council also adopted a Mitigation Monitoring and Reporting Program (“MMRP”) for the WASP via Resolution No. 21758 (N.C.S.) (see Exhibit C thereto, pp. 4.0-6 – 4.8-8); and

WHEREAS, the MMRP included mitigation measures addressed to the Project’s potential adverse effects on the California tiger salamander (“CTS”) and the California red-legged frog (“CRLF”) and their habitats (see Mitigation Measures 3.2-1 through 3.2-4); and

WHEREAS, the MMRP also included a mitigation measure addressing the anticipated disturbance of “the irrigation ditches and/or roadside ditches,” which might possibly be subject to the regulatory jurisdiction of the United States Army Corps of Engineers (“USACE”) or the California Department of Fish and Wildlife (“CDFW”); and

WHEREAS, the CTS is listed as “threatened” under both the federal Endangered Species Act (“ESA”) (16 U.S.C. § 1531 et seq.) and the California Endangered Species Act (“CESA”) (Fish & G. Code, § 2050 et seq.); and

WHEREAS, the CRLF is listed as threatened under ESA but is not listed under CESA; and

WHEREAS, in their final form as set forth in the MMRP, the mitigation measures directed at the CTS assumed the need for formal consultation and permitting under both the ESA and CESA; and

WHEREAS, the mitigation measures directed at the CRLF assumed the need for consultation and permitting under the ESA; and

WHEREAS, the relevant federal agency for ESA consultation and permitting is the United States Fish and Wildlife Service (“USFWS”), and the relevant state agency under CESA is the CDFW; and

WHEREAS, the City of Salinas (“City”) staff has recently learned that it is not certain that such ESA and CESA consultations will actually be necessary, as the City staff and the City’s environmental consultants had assumed in 2019; and

WHEREAS, this new information suggests that there are at least some areas within the WASP in which development could occur without adverse effects on either CTS or CRLF or viable habitat for the species; and

WHEREAS, City staff has therefore recommended that the relevant mitigation measures be modified to require such ESA and/or CESA consultation only if a qualified biologist determines that habitat for CTS and CRLF is actually present, or potentially present, within areas subject to discrete proposed “development projects” within the overall WASP; and

WHEREAS, City staff has also identified possible improvements to the sole mitigation measure directed at the irrigation ditches and/or roadside ditches within the WASP; and

WHEREAS, this measure currently requires the WASP developers to impose on USACE and CDFW by seeking from them formal determinations as to whether the two agencies exercise any regulatory authority over the filling or destruction of the ditches; and

WHEREAS, the WASP developers would likely save substantial amounts of time and money if such determinations could initially be made by a qualified wetland consultant; and

WHEREAS, the mitigation measure dealing with the ditches would also be improved if the qualified wetland consultant also reached a determination regarding the possible regulatory authority of the Regional Water Quality Control Board over the ditches; and

WHEREAS, the recommended changes to Mitigation Measures 3.2-1 through 3.2-4 could facilitate the development of housing within the WASP, which has already been delayed for four years due to litigation over the WASP and its EIR filed in January 2020 by the Santa Rita Union School District (“SRUSD”) and the Salinas Unified High School District (“SUHSD”); and

WHEREAS, the Monterey County Superior Court ruled against the City and the WASP developers in a judgment entered in January 2022; and

WHEREAS, this judgment was later overturned by a decision of the Court of Appeal for the Sixth Appellate District in August 2023 (see *Santa Rita Union School Dist. v. City of Salinas* (2023) 94 Cal.App.5th 298), resulting in a new final judgment in favor of the City and the WASP

developers in November 2023; and

WHEREAS, during the pendency of the litigation, the WASP developers were unable to proceed with steps to develop their properties due to the chilling effect of the litigation, as investments in engineering, infrastructure, and other development-related undertakings would have been financially risky and imprudent given the inherent uncertainties associated with litigation filed under the California Environmental Quality Act (“CEQA”) (Pub. Resources Code, § 21000 et seq.); and

WHEREAS, the four-year delay from the litigation has already adversely affected the City’s planning and economic objectives favoring the construction of much-needed new housing within the City; and

WHEREAS, the City Council is interested in taking reasonable actions to assist the WASP developers in their efforts to bring new housing to the market, thereby benefiting City residents who are interested in purchasing, renting, or leasing such new housing; and

WHEREAS, the litigation over the WASP EIR focused entirely on issues relating to the provision of school facilities for future students living within the WASP, such that the legal adequacy and environmental sufficiency of the mitigation measures for biological resource impacts were never issues in dispute; and

WHEREAS, the City Council, as a legislative body, has the inherent authority to modify its legislative action approving the MMRP for the WASP; and

WHEREAS, CEQA case law recognizes that adopted mitigation measures may be modified, and even deleted entirely, where an agency’s decision-making body has a “legitimate reason” for taking such action (see, e.g., *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 358-360); and

WHEREAS, the City Council believes it has a legitimate reason for modifying WASP mitigation measures for CTS, CRLF, and the irrigation and/or roadside ditches in a manner that does not weaken them from an environmental standpoint, in that such changes, by possibly avoiding unnecessary consultations under ESA, the Clean Water Act (“CWA”), CESA, and other provisions of the Fish and Game Code could result in bringing much-needed new housing to the market Salinas sooner than might otherwise be the case; and

WHEREAS, the changes to WASP Mitigation Measures 3.2-1 through 3.2-4 do not represent a weakening of the measures, in that the measures as modified will:

(i) include a performance standard by which, if qualified biologists, after surveying properties within the WASP, find the presence of suitable CTS habitat or CRLF habitat, development must be mitigated in a manner resulting in “no net loss of habitat values and functions (though not necessarily acreage)”;

(ii) leave in place all avoidance and minimization measures previously required to address potential impacts to CTS or CRLF, provided that suitable habitat is identified; and

(iii) require a qualified wetland biologist to ascertain whether the filling and/or destruction of the irrigation and/or roadside ditches within the WASP are subject to the regulatory jurisdiction of USACE, CDFW, or RWQCB under the CWA or the Fish and Game Code; and

WHEREAS, such changes to WASP Mitigation Measures 3.2-1 through 3.2-4 would not result in any new significant environmental effects or a substantial increase in the severity of previously identified significant effects within the meaning of section 15162, subdivision (a)(1), of the CEQA Guidelines, found in Title 14 of the California Code of Regulations; and

WHEREAS, such changes to WASP Mitigation Measures 3.2-1 through 3.2-4 are “within the scope” of the WASP EIR (see CEQA Guidelines section 15168, subdivision (c)(2) and Draft EIR, pp. 1.0-2 through 1.0-4) and thus may be approved without additional documentation under CEQA;

NOW, THEREFORE, BE IT RESOLVED that the City of Salinas City Council finds and determines the following:

1. The foregoing recitals are true and correct and are included herein by reference as findings.

2. The residents of the City of Salinas will benefit from changes to WASP Mitigation Measures 3.2-1 through 3.2-4 in that, without weakening them from an environmental standpoint, such changes may contribute to facilitating the earlier development of new housing for those citizens in need of new housing.

3. The WASP EIR, without any need for augmentation, provides sufficient support for the changes to WASP Mitigation Measures 3.2-1 through 3.2-4, as set forth below.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Salinas City Council hereby:

a. Authorizes the amendment of the WASP MMRP, as approved by Resolution No. 21758 (N.C.S.) on December 19, 2019, so that Mitigation Measures 3.2-1 through 3.2-4 will now read as follows (with additions shown in underlining and deletions shown in ~~striketrough~~):

Mitigation Measure 3.2-1: Prior to ~~issuance~~ commencement of initial grading ~~and/or building permits~~ activities for any individual development project in the Specific Plan area, the project applicant, assisted by shall retain a qualified biologist, shall consult with the USFWS and CDFW to obtain conduct pre-construction surveys for the appropriate regulatory approvals and authorizations regarding presence of CTS and suitable habitat for CTS. The project applicant's qualified biologist shall report ~~the its~~ conclusions reached through such consultation to the City's Community Development Director. ~~If either USFWS, CDFW, or~~ If these surveys indicate the presence of suitable CTS habitat, impacts to this habitat shall be mitigated in a manner that results in no net loss of habitat value and functions (though not necessarily acreage), as determined by the City's Community Development Director determines that an with input from the applicant's qualified biologist and any other knowledgeable individual whose advice the Community Development Director seeks. This performance standard can be achieved through a combination of conservation, enhancement, restoration, or re-creation of habitat, either on-site, off-site, or a combination of both, or through the purchase of mitigation credits at a USFWS and/or CDFW-approved conservation bank, and must be satisfied prior to any grading within the impacted portion of the property. One means of achieving this "no net loss" performance standard is to demonstrate to the Community Development Director that a sufficient mitigation program has already been required by any approved incidental take permit is required, the project applicant shall obtain such a permit before engaging in any grading or other site treatment activities in areas deemed to be viable CTS habitat authorization issued by the USFWS pursuant to the Endangered Species Act and/or by the CDFW pursuant to the California Endangered Species Act.

Mitigation Measure 3.2-2: ~~Prior to issuance of grading and/or building permits, in order to avoid and minimize impacts to California tiger salamander, the proposed project activities~~ The following actions shall be compliant with all Avoidance and Minimization

~~Measures imposed by the USFWS and CDFW during Construction Activities. Examples of standard avoidance and minimization measures include:~~ taken to minimize or avoid any adverse effects on suitable CTS habitat that may be identified through the pre-construction surveys required by Mitigation Measure 3.2-1: 1) conducting environmental education training for all construction personnel, 2) having a biologist with a scientific collecting permit for CTS to be responsible for overseeing any hand excavation of burrows using hand-trowels and spades per the regulatory agency protocols, 3) erecting drift fencing around the work areas if occurring during the migration/breeding season, 4) inspection of drift fencing by a biologist with a scientific collecting permit every 72 hours during the ~~igration~~ migration/breeding season, 5) installation of pit traps to capture CTS migrating during the rain events with a check twice daily (morning prior to construction start and evening after construction ends), 6) relocation of any CTS found immediately to a site designated by the USFWS and CDFW per protocol; and 7) post construction report.

Mitigation Measure 3.2-3: ~~Prior to issuance~~ commencement of initial grading and/or building permits activities for any individual development project in the Specific Plan area, the project applicant, ~~assisted by~~ shall retain a qualified biologist, ~~shall consult with the USFWS and CDFW to obtain~~ conduct pre-construction surveys for the appropriate regulatory approvals and authorizations regarding presence of CRLF and suitable habitat for CRLF. The project applicant's qualified biologist shall report ~~the~~ its conclusions ~~reached through such consultation~~ to the City's Community Development Director. ~~If either USFWS, CDFW, or~~ If these surveys indicate the presence of suitable CRLF habitat, impacts to this habitat shall be mitigated in a manner that results in no net loss of habitat values and functions (though not necessarily acreage), as determined by the City's Community Development Director ~~determines that an~~ with input from the applicant's qualified biologist and any other knowledgeable individual whose advice the Community Development Director seeks. This performance standard can be achieved through a combination of conservation, enhancement, restoration, or re-creation of habitat, either on-site, off-site, or a combination of both, or through the purchase of mitigation credits at a USFWS-approved conservation bank, and must be satisfied prior to any grading within the impacted portion of the property. One means of achieving this "no net loss" performance standard is to demonstrate to the Community Development Director that a

sufficient mitigation program has already been required by any approved incidental take permit is required, the project applicant shall obtain such a permit before engaging in any grading or other site treatment activities in areas deemed to be viable CRLF habitat authorization issued by the USFWS pursuant to the Endangered Species Act.

Mitigation Measure 3.2-4: ~~Prior~~The following actions shall be taken to issuance of grading and/or building permits, in order to avoid and minimize impacts to or avoid any adverse effects on suitable CRLF habitat that may be identified through the proposed project activities shall be compliant with all Avoidance and Minimization Measures imposed pre-construction surveys required by the USFWS and CDFW during Construction Activities. Examples of standard avoidance and minimization measures include: Mitigation Measure 3.2-3: 1) conducting environmental education training for all construction personnel, 2) having a biologist with a scientific collecting permit for CRLF to be responsible for overseeing any hand excavation of burrows using hand-trowels and spades per the regulatory agency protocols, 3) erecting drift fencing around the work areas if occurring during the migration/breeding season, 4) inspection of drift fencing by a biologist with a scientific collecting permit every 72 hours during the migration/breeding season, 5) installation of pit traps to capture CRLF migrating during the rain events with a check twice daily (morning prior to construction start and evening after construction ends), 6) relocation of any CRLF found immediately to a site designated by the USFWS and CDFW per protocol; and 7) post construction report.

Mitigation Measure 3.2-7: ~~Prior to grading/building permit issuance~~Prior to the commencement of initial grading activities for any individual development project in the Specific Plan Area and in an area that would disturb the irrigation ditches and/or roadside ditches, the project applicant shall retain a qualified wetland consultant to evaluate whether such ditches may be subject to the regulatory authority of either the USACE, RWQCB, or CDFW. If the qualified wetland consultant determines that any or all of these agencies are likely to have regulatory authority over these ditches, then the project applicant shall obtain a jurisdictional determination from the USACE and CDFW appropriate agencies for the ditches that are proposed to be disturbed. If these regulatory agencies concur that these facilities are exempt, then no further mitigation is necessary. If

it is determined that these facilities are not ~~exempt~~, subject to any such regulatory authority, then no further mitigation is necessary. If it is determined that these facilities are subject to such regulatory authority and will be impacted, then authorization for fill from the regulatory agencies (for example, USACE-404 permit, RWQCB-401 certification, or 1600 Streambed Alteration Agreement) will be necessary and ~~a permit~~ shall be adhered to throughout the construction phase. ~~At~~ If such authorization is required, then at a minimum, the project applicant shall replace on a “no net loss” basis (minimum 1:1 ratio) the acreage and function of all wetlands and other waters that would be removed, lost, or degraded as a result of project implementation or operations, ~~although a higher mitigation measure may be~~ or as otherwise required by the USACE, RWQCB, and CDFW through their permitting processes. Wetland habitat shall be replaced at acreage and location agreeable to the USACE, RWQCB, and CDFW and as determined during the Section 401, 404, and 1600 permitting processes. Alternatively, if authorized pursuant to any such permitting processes, the applicant may satisfy these mitigation requirements by purchasing credits at an approved USACE, RWQCB, and/or CDFW mitigation bank, as applicable.

b. Directs the City Community Development Department, within five (5) days of the enactment of this Resolution, to file with the Clerk of the County of Monterey and the Governor’s Office of Land Use and Climate Innovation, pursuant to Public Resources Code section 21152, subdivision (a), a Notice of Determination indicating that, in approving the Resolution, the City Council relied on the WASP EIR, as originally certified on December 19, 2019.

c. Directs City Community Development Department to prepare a modified official version of the WASP MMRP reflecting the wording changes set forth above and to make said document readily available to the WASP developers and any interested members of the public.

PASSED AND APPROVED this 9th day of December 2025, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Dennis Donohue, Mayor

ATTEST:

Patricia M. Barajas, City Clerk