



## **CITY OF SALINAS COUNCIL STAFF REPORT**

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**DATE:** DECEMBER 9, 2025

**DEPARTMENT:** CITY ATTORNEY'S OFFICE

**FROM:** CHRISTOPHER A. CALLIHAN, CITY ATTORNEY  
JAMES MOOSE, OUTSIDE LEGAL COUNSEL

**TITLE:** MODIFICATIONS TO BIOLOGICAL RESOURCE MITIGATION  
MEASURES FOR WEST AREA SPECIFIC PLAN  
(WASP Mitigation Measures 3.2-1 through 3.2-4 and 3.2-7)

### RECOMMENDED MOTION:

A motion to approve a Resolution amending the Mitigation Monitoring and Reporting Program ("MMRP") for the West Area Specific Plan ("WASP") to make modifications to mitigation measures for potential impacts to the California tiger salamander ("CTS"), the California red-legged frog ("CRLF"), and irrigation ditches and roadside ditches potentially subject to federal or state regulatory jurisdiction.

### EXECUTIVE SUMMARY:

The proposed Resolution amends the MMRP for the WASP by making modifications to Mitigation Measures 3.2-1 through 3.2-4 and 3.2-7. Mitigation Measures 3.2-1 through 3.2-4 relate to the process required for addressing potential impacts to the California tiger salamander and California red-legged frog and their habitats. Mitigation Measure 3.2-7 relates to the process required for addressing potential impacts to irrigation and roadside ditches. The recommended changes to the affected mitigation measures would benefit the City as a whole because the mitigation measures as revised could facilitate the more prompt 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"). That litigation was not resolved in the City's favor until November 2023.

### BACKGROUND:

In December 2019, when the City Council approved the WASP, the Council also approved an MMRP committing the WASP developers to carry out various mitigation measures developed in the Environmental Impact Report ("EIR") for the WASP. The mitigation measures for the CTS assumed the need for formal inter-agency consultation and permitting under both the federal

Endangered Species Act (“ESA”)<sup>1</sup> and the California Endangered Species Act (“CESA”)<sup>2</sup>; and the mitigation measures for CRLF assumed the need for consultation and permitting under the ESA. The mitigation for impacts to irrigation and roadside ditches called for inter-agency consultation and (possibly) permitting under the federal Clean Water Act (“CWA”) and under California Fish and Game Code provisions governing the alteration of the bed, channel, or banks of rivers, streams, and lakes.

City staff have recently learned that it is not certain that the assumed ESA and CESA consultations for CTS and CRLF will be necessary, as City staff and the City’s environmental consultants had assumed in 2019. It now appears that, at least in some areas within the WASP, development can occur without any adverse effects on CTS, CRLF, or their habitats. The City Attorney is therefore recommending that the relevant mitigation measures be modified to require such consultation only if CTS and CRLF are determined to be actually present within the WASP. The proposed changes would allow the approval of discrete “development projects” within the larger WASP area to proceed without the need for ESA and/or CESA consultations on the entire WASP, so that areas free of CTS and CRLF and their habitats can proceed without such consultations. The changes might also allow the entire WASP to avoid consultations if future surveys show an absence of any suitable habitat for the two species.

City staff have also reviewed the mitigation measure dealing with the “irrigation ditches and/or roadside ditches” within the WASP area. The adopted mitigation language requires the WASP developers to obtain “jurisdictional determinations” from both the United States Army Corps of Engineers (“USACE”) and the California Department of Fish and Wildlife (“CDFW”). These determinations would address whether USACE has authority over the ditches under the CWA and whether CDFW has authority over them under the Fish and Game Code.

Obtaining such jurisdictional determinations from these two agencies would likely be quite time-consuming, even if the agencies were to ultimately determine they do not have any regulatory jurisdiction over the ditches. Proposed new language would save the WASP developers time by assigning the initial task of assessing possible USACE and CDFW jurisdiction over the ditches to a “qualified wetland consultant,” who would also consider the possible jurisdiction of the Regional Water Quality Control Board (“RWQCB”), which also participates in wetland permitting. If such a qualified wetland consultant finds that these three agencies have no jurisdiction over the ditches, the WASP developers could save substantial amounts of time and money in their efforts to build new housing in the City.

Although approved by the City Council in late 2019, the WASP was tied up in litigation for nearly four years in litigation filed by the SRUSD and SHUSD. During that time period, the WASP

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<sup>1</sup> 16 U.S.C. § 1531 et seq.

<sup>2</sup> Fish & G. Code, § 2050 et seq.

developers were unable to proceed with steps to develop their properties due to the ongoing litigation. As is typical, financial institutions (banks and other lenders) will not provide construction loans on land for which litigation under the California Environmental Quality Act (“CEQA”)<sup>3</sup> is pending. And developers themselves, aware of the uncertain outcomes in CEQA litigation, are generally reluctant to invest large sums of money in reliance on project approvals that, at least in theory, could be set aside by a court. The litigation was not resolved until August 2023 (*Santa Rita Union School Dist. v. City of Salinas* (2023) 94 Cal.App.5th 298); and final judgment in favor of the City and the WASP developers was not entered until November 2023.

The litigation focused entirely on issues relating to the provision of school facilities for future students living within the WASP. The mitigation measures for biological resources were never at issue. The MMRP for the WASP included a total of four mitigation measures directed at potential impacts on the CTS and the CRLF. The CTS is listed as “threatened” under both ESA and CESA. The CRLF is listed as threatened under ESA but is not listed under CESA. 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 California Department of Fish and Wildlife (“CDFW”). Each of these agencies has permitting authority to allow for the “incidental take” of listed species, provided that appropriate mitigation is required.<sup>4</sup>

The authors of the WASP mitigation measures assumed that the two species were present within the WASP and thus wrote the measures in a way that *requires* the WASP applicants to consult with the USFWS and CDFW “to obtain the appropriate regulatory approvals and authorizations regarding” both CTS and CRLF. In retrospect, this language was unnecessary, as was the implicit requirement that consultation be completed for the WASP as a whole before *any* portion of the WASP could be developed. The language was not needed because, regardless of any mitigation measures adopted by the City of Salinas, private property owners such as the WASP developers are subject to all relevant federal and state environmental laws governing their property, and thus will be required to comply with ESA and CESA if their proposed projects would result in the incidental take of species protected by those two statutes.

The City has recently learned that, contrary to what was assumed in the 2019 WASP EIR and MMRP, it is by no means certain that CTS and CRLF are present within the WASP or within all discrete existing or future legal parcels within the WASP. The mitigation measures at issue, therefore, could be modified without loss of environmental protection if the City modifies them to substitute *conditional* language for the current language. The new language would stop short of demanding the acquisition of incidental take permits under ESA and CESA in the event that those species are determined, by qualified biologists, *not* to be present on WASP properties on which development approvals are sought. The new language would also dispense with the implicit requirement of consultation for the *entire* WASP before development could proceed *anywhere*

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<sup>3</sup> Pub. Resources Code, § 21000 et seq.

<sup>4</sup> 16 U.S.C. § 1539; Fish & Game Code, § 2081.  
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within the WASP.

The proposed changes to the single approved mitigation measure dealing with the irrigation ditches and roadside ditches would give a “qualified wetlands consultant” a role similar to that of the above-referenced qualified biologist with respect to CTS and CRLF. The current language in the mitigation measure dealing with the ditches requires the WASP developers to get formal determinations from USACE and CDFW on the question of whether those agencies exercise any legal jurisdiction over the ditches. Because these agencies already have heavy workloads, they cannot be relied upon to make such determinations expeditiously – even where their ultimate conclusions are that they have no permitting authority to exercise.

The proposed new language would authorize the qualified wetlands consultant to assess these jurisdictional issues, saving the WASP developers the need to impose unnecessarily on USACE and CDFW. Formal permits from USACE and CDFW would only be required if the qualified wetlands consultant concludes that these two agencies *do* (or one of them does) in fact have legal authority over the ditches. The new language also adds a new agency to the mix – the RWQCB. Its jurisdiction over wetlands can differ from that of either USACE or CDFW.

Attachment A shows the proposed changes to the mitigation measures at issue. Proposed new language is shown with underlining. Proposed deletions are shown in ~~striketrough~~.

The proposed modifications would not sacrifice environmental protection in the name of increased flexibility. If qualified biologists, after surveying properties within the WASP, find the presence of suitable CTS or CRLF habitat, then the City will require that the loss of any such habitat from development shall be mitigated in a manner that results in “no net loss of habitat values and functions (though not necessarily acreage).” This mitigation “performance standard” will ensure that development within the WASP will avoid any significant adverse effects on CTS or CRLF habitat. An option for satisfying the standard – if the most efficient way to go – will be through the issuance of incidental take authorizations under ESA and/or CESA.

The changes to the mitigation measure addressing the ditches also maintain the existing level of environmental protection. If the ditches within the WASP are subject to USACE, CDFW, or RWQCB jurisdiction, then the laws administered by those agencies will have to be satisfied. What will change will be that the time frame for determining the existence of such jurisdiction should be substantially accelerated.

The expectation, in proposing the MMRP modifications set forth above, is that, under scenarios in which CTS habitat, CRLF habitat, and features subject to USACE, CDFW, or RWQCB jurisdiction are not found to be present within areas proposed for development, the actual development of such areas, including new housing, would proceed more expeditiously than it would otherwise.

#### CEQA CONSIDERATION:

**Covered by the WASP Final EIR.** The City of Salinas has determined that the proposed actions modifying WASP Mitigation Measures 3.2-1 through 3.2-4 and 3.2-7 are within the scope of the WASP EIR as certified by the Council in December 2019 and upheld by the Court of Appeal for the Sixth Appellate District in August 2023 in *Santa Rita Union School Dist. v. City of Salinas* (2023) 94 Cal.App.5th 298.<sup>5</sup> The modifications to the mitigation measures for CTS, CRLF, and wetland features have been carefully drafted to ensure that they are as environmentally protective and stringent as the originally adopted measures being modified.

#### CALIFORNIA GOVERNMENT CODE §84308 APPLIES:

No.

#### STRATEGIC PLAN INITIATIVE:

This item supports the City Council’s goal of Housing (Facilitate the addition of the overall production of market rate, workforce, low-income, farm worker housing, and ADU development while minimizing impacts to neighborhoods). (2025 Strategic Plan)

#### DEPARTMENTAL COORDINATION

The City Attorney’s Office and Community Development Department coordinated on the preparation of the revised mitigation measures.

#### FISCAL AND SUSTAINABILITY IMPACT:

The proposed actions will have no effect on the City’s General Fund, as the costs of mitigation for CTS, CLRF, and wetlands will be borne by the WASP developers as costs of doing business in the development of their properties.

#### ATTACHMENTS:

Resolution  
Attachment A: Revised Mitigation Measures

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<sup>5</sup> See Cal. Code of Regs., tit. 14, § 15168, subd. (c)(2) (authorizing “within the scope” findings for projects for which Program EIRs have been prepared).