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May 8, 2019

Governor's Office of Planning & Research

MAY 08 2019

STATE CLEARINGHOUSE

Ms. Claudia Gemberling
Contra Costa County
Department of Conservation and Development
30 Muir Road
Martinez, CA 94553

Dear Ms. Gemberling:

Subject: Lower Marsh Creek Stream Corridor Restoration Program, Initial Study and Mitigated Negative Declaration, SCH #2019049002, Contra Costa County

The California Department of Fish and Wildlife (CDFW) has reviewed the Initial Study and Mitigated Negative Declaration (IS/MND) for the proposed Lower Marsh Creek Stream Corridor Restoration Program (Project). CDFW is submitting comments on the IS/MND to inform Contra Costa County Department of Conservation and Development (County), as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW ROLE

CDFW is a Trustee Agency with responsibility under the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as a California Endangered Species Act (CESA) Incidental take Permit (ITP), a Lake and Streambed Alteration (LSA) Agreement, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA ITP must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project (Fish and Game Code, § 2080 et seq.). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as potential significant modification to the Project and mitigation measures may be required in order to obtain a CESA ITP.

CEQA requires a Mandatory Finding of Significance if the Project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts

must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code section 2080.

Lake and Streambed Alteration

CDFW requires an LSA Notification (Notification), pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourse with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document of the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

PROJECT DESCRIPTION SUMMARY

Proponent: Contra Costa County Department of Conservation and Development

Objective: Provide a programmatic approach to creek restoration and flood risk reduction of the Lower Marsh Creek stream system corridors.

Location: Multiple project sites on Marsh Creek, Sand Creek, and Deer Creek located within the cities of Brentwood and Oakley, and in unincorporated Contra Costa County, California.

Timeframe: As funding becomes available and projects are proposed.

The goal of the Project is to incentivize willing landowners and developers to work with the Contra Costa County Flood Control and Water Conservation District (CCCFCD) and other local partners to transition the existing 75-foot stream setbacks on Marsh Creek and 50-foot stream setbacks on Deer and Sand creeks, as required by the Habitat Conservation Plan and Natural Community Conservation Plan (HCP/NCCP) for parcels and development activities subject to compliance with the East Contra Costa County HCP/NCCP, into ecologically functioning riparian habitat corridors. The IS/MND has been developed to put in place the environmental compliance mechanism necessary to alleviate uncertainty and complexity associated with implementing creek restoration projects, which would further incentivize landowners and developers to participate.

Primary program objectives include: enable restoration of riparian vegetation, both woody and herbaceous, within the expanded stream corridors; improve aquatic and wetland habitats within the stream corridors; improve water quality and lower water temperatures within the stream corridors; provide enhanced flow capacity within the stream reaches that are either meeting or exceeding critical flood conveyance targets; reduce the need for and impact of routine channel maintenance by reducing local stream velocities/sheer stress and resulting bank erosion, and allowing riparian trees to grow and shade out nuisance nonnative plants in restoration areas;

and enhance local recreational experiences along existing and future creek trails by creating shaded woodland areas throughout the trail system.

While the 2015 *Lower Marsh Creek Stream Corridor Restoration Master Plan* identified a number of discrete parcels that would be appropriate for implementing multi-benefit restoration projects, the IS/MND expands the limits of the *Master Plan* to include all streamside parcels in the program area.

Implementation of the program will result in: 1) improved habitat conditions for fish, birds, reptiles, and amphibians by providing a mosaic of riparian, floodplain, wetland, and aquatic habitat types for these species to utilize, 2) expanded channel capacity to meet or exceed flood channel conveyance capacity, 3) improved local water quality by shading the creek and reducing mobilization of fine sediments, and 4) improved public recreational opportunities. Projects developed and implemented within this Program could include any or all of the following elements: channel widening; riparian and wetland revegetation; installation of instream habitat features; vegetation maintenance; temporary channel crossing; channel dewatering; removal of existing structures or debris; utility line protection and relocation; recreational improvements; and purchase or donation of land in fee-title or easement.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Table 1: Installation of Instream Habitat Features - Technical Requirements, page 16

Comment 1: Steelhead habitat work window of June 15 through October 15.

The IS/MND recognizes the potential of impacts to the federally threatened distinct population segment of California Central Coast (CCC) steelhead (*Oncorhynchus mykiss irideus*) within the scope of the Project. To reduce impacts to steelhead, CDFW recommends updating the Technical Requirements to include a restricted work window of June 15 to October 15 in steelhead-bearing stream corridors.

Table 1: Recreational Improvements - Technical Requirements, page 20

Comment 2: Relocated trails should be moved away from stream corridors.

The IS/MND includes trail relocation as a possible Project element but beyond adherence to the defined HCP/NCCP stream setbacks, it does not require replaced and relocated trails to undergo an evaluation to determine if relocating it farther from the stream than currently positioned would result in less impacts. CDFW recommends including language requiring an analysis for trail replacement and relocation projects to evaluate the continued or increased impacts from a trail's current position compared to relocation of a trail farther away from the stream corridor. CDFW also recommends this evaluation consider the net increase in habitat creation and trail restoration in terms of recreation-sourced impacts to fish and wildlife.

Potential Permits and Approvals from Public Agencies - CDFW, page 29

Comment 3: Correct language within paragraph.

The IS/MND outlines when the Project would require Section 1602 Notification. CDFW recommends the IS/MND update the language in the paragraph to the following:

"California Department of Fish and Wildlife (CDFW): A Lake or Streambed Alteration Agreement, in accordance with Section 1602 of the California Fish and Game Code, would be required for work within the bed, channel or bank of the ~~marsh~~ **stream corridors**. The project would also be required to comply with Section 2080 of the Fish and Game Code (protection of State-listed special status species), as applicable for non-HCP/NCCP covered species. In addition, all native bird species that occur in the project site are protected by the California Fish and Game Code. Fish and Game Code §§3503, 2513, and 3800 (and other sections and subsections) protect native birds, including their nests and eggs, from all forms of take. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered "take" by CDFW."

E4.1.2 Regulations – California Fish and Game Code, page 51

Comment 4: Correct language within paragraph.

The IS/MND summarizes the sections of California Fish and Game Code applicable to the Project activities; however, the section mis-states the referenced LSAA code. To correct this, CDFW recommends the IS/MND update the language in the paragraph to the following:

"Migratory birds are protected by California Fish and Game Code (CFGF) §3503, which prohibits the take, possession, or needless destruction of the nest or eggs of any bird. Specifically, CFGF §3503.5 prohibits the take, possession, or needless destruction of any nests, eggs or birds in the orders Falconiformes (new world vultures, hawks, eagles, ospreys and falcons, among others) or Strigiformes (owls); CFGF §3511 prohibits the take or possession of fully protected birds; and CFGF §3513 prohibits the take or possession of any migratory nongame bird or part thereof as designated in the MBTA. Construction disturbance that causes nest abandonment and/or loss of reproductive effort is considered "take" by CDFW. Project activities associated with vegetation removal that could disturb active nests (including nestlings or eggs) would trigger the need for GHMWC to comply with the CFGF (§§3503, 3511, and 3513). CFGF §§1600-1607 require project proponents to **notify CDFW if a project will substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake. Project proponents shall prepare and submit an LSAA notification and** obtain a Lake or Streambed Alteration Agreement (LSAA) authorization from CDFW if a project would **will** divert, obstruct, or change the natural flow of the ~~streambed, channel, or bank of~~ any river, stream, or lake, **or impact riparian resources within the project area. An LSAA** must also be issued if the project would use material from streambeds designated by CDFW in which there is at any time an existing fish or wildlife resource or from which these resources derive benefit."

E4.1.3 Special-Status Species – page 52

Comment 4: Update section to include discussion of impacts from habitat conversion.

The IS/MND acknowledges the Project area serves as marginal for some special-status species but does not include a discussion of the impacts from habitat conversion. For example, western burrowing owl (BUOW) has the potential to be impacted by proposed activities. BUOW utilizes three of the five defined habitat types described and has occurrences throughout the Project area, but the IS/MND does not require an analysis of impacts to BUOW habitat conversion or provide compensatory mitigation for habitat conversion from BUOW habitat to other restored habitat types that may not support BUOW use. CDFW recommends the IS/MND be revised to provide an evaluation of the Project's potential impacts from habitat conversions from grassland-type habitats to riparian and wetland habitats. This evaluation should also demonstrate how such impacts will be mitigated for through the HCP/NCCP.

E4.1.3 Special-Status Species – Special-Status Plants, page 52

Comment 5: Update to include CDFW's Plant Survey Protocols.

The IS/MND states that plant surveys will be required on a project-by-project basis; however, it does not include defined plant survey protocols in the event plant surveys are required. To correct this, CDFW recommends the IS/MND be revised to include adherence to CDFW's *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities* (2009), including the reporting requirements contained in those protocols.

Impact BIO-1 – Disturbance to Special-Status Fish, page 56

Comment 6: Update work window to June 15 through October 15.

The IS/MND does not currently require a work window that reduces potential impacts to CCC steelhead. To reduce impacts to steelhead, CDFW recommends updating BIO-1 to include a restricted work window of June 15 to October 15 in steelhead-bearing coastal streams.

Comment 7: Include fish screen criteria.

Mitigation Measure BIO-1 states dewatering pumps will be fitted with intake screens of mesh no greater than 5mm but does not include the potential for updated methods or technology, which could potentially lead to avoidable impacts. To reduce impacts to native aquatic species, CDFW recommends revising Mitigation Measure BIO-1 to require adherence to CDFW's fish screen criteria outlined in the *California Salmonid Stream Restoration Manual's* Appendix S, found at <https://www.wildlife.ca.gov/Grants/FRGP/Guidance>.

Comment 8: BIO-1 does not mitigate to less-than-significant.

The IS/MND does not reduce impacts to special-status fish to a level of less-than-significant as it does not identify compensatory mitigation to offset impacts from potential projects or take coverage due to the HCP/NCCP not offering take coverage for special-status fish. The IS/MND concludes the Project area is considered potential habitat for federally threatened CCC steelhead and State and federally threatened Central Valley spring-run evolutionarily significant unit Chinook salmon (*Oncorhynchus tshawytscha*). Project activities such as habitat restoration and channel armoring have the potential for significant impact to the species through direct mortality and loss of habitat. To offset impacts to a level of less-than-significant, the IS/MND

should revise Mitigation Measure BIO-1 to include a requirement for compensatory mitigation. Compensatory mitigation should be required at a minimum of a 2:1 mitigation ratio (conserved habitat to restored habitat) for permanent impacts, and a 1:1 ratio for temporary impacts (i.e. less than one year from impact to recovery to baseline) to special-status fish habitats. If take of CESA-listed fish cannot be fully avoided, then CDFW recommends the IS/MND include language defining a project's obligation to obtain take coverage through an ITP issued by CDFW.

Impact BIO-2 – Disturbance to Special-Status Plant, page 56

Comment 9: Include CDFW's Plant Survey Protocols.

Mitigation Measure BIO-2 does not include defined survey protocols for floristic surveys or require compensatory mitigation in the event impacts to special-status plant species cannot be fully avoided. The HCP/NCCP offers mitigation and take coverage for most of the special-status plants that occur in the habitats described, but there is potential for species not covered by the HCP/NCCP to occur. Significant impacts to those species need to be included in the IS/MND and offset in the event the species are discovered in the Project area. To correct this, CDFW recommends the IS/MND be revised to include adherence to CDFW's *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities* (2009). In the event special-status plants not covered by the HCP/NCCP are discovered and will be impacted by Project activities, CDFW also recommends revising the IS/MND to require compensatory mitigation for non-HCP/NCCP-covered special-status plant species at a minimum of a 2:1 mitigation ratio (conserved habitat to restored habitat) for permanent impacts and a 1:1 ratio for temporary impacts. CDFW also recommends inclusion of language defining a project's obligation to obtain non-HCP/NCCP CESA-listed plant take coverage through an ITP issued by CDFW when take cannot be fully avoided.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations [Pub. Resources Code, § 21003; subd. (e)]. Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data#44524420-pdf-field-survey-form>. The completed form can be mailed electronically to CNDDDB at the following email address: cnddb@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

CONCLUSION

To ensure significant impacts are adequately mitigated to a level less-than-significant, CDFW recommends the revisions to mitigation measures, described above, be incorporated as enforceable conditions into the revised IS/MND. CDFW appreciates the opportunity to comment on the MDN to assist the County in identifying and mitigating Project impacts on biological resources.

Ms. Claudia Gemberling
May 8, 2019
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Questions regarding this letter or further coordination should be directed to Ms. Jeanette Griffin, Environmental Scientist, at (209) 234-3447 or jeanette.griffin@wildlife.ca.gov; or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at (707) 944-5579 or melissa.farinha@wildlife.ca.gov.

Sincerely,

A handwritten signature in cursive script that reads "Gregg Erickson".

Gregg Erickson
Regional Manager
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse, Sacramento

