

Notice of Determination

To:

Office of Planning and Research
For U.S. Mail:
P.O. Box 3044
Sacramento, CA 95812-3044

Street Address:

1400 Tenth Street
Sacramento, CA 95814

From:

California Department of Fish and Wildlife (CDFW)
Bay Delta Region
2825 Cordelia Road, Suite 100, Fairfield, CA 94534
Contact: Andy Rockriver
Phone: (209) 234-3420

Lead Agency:

Department of Water Resources
3500 Industrial Boulevard, West Sacramento, CA 95691
Contact: Joy Khamphanh
Phone: (916) 376-9824

SUBJECT: Filing of Notice of Determination pursuant to Public Resources Code § 21108

State Clearinghouse Number: 2018082025

Project Title: Winter Island Tidal Habitat Restoration Project [California Endangered Species Act (CESA) Incidental Take Permit No. 2081-2018-066-03 (ITP)].

Project Location (include county): The project is located on Winter Island, located at the confluence of the Sacramento and San Joaquin rivers, in the Sacramento-San Joaquin Delta, north of the City of Pittsburg, in Contra Costa County.

Project Description: This proposed project involves restoring and permanently protecting 544 acres of tidal wetlands on Winter Island. Project activities include breaching the southern and northern levees, removing existing water control structures and other debris, widening of an eastern tidal channel, and monitoring special-status plant species that could be impacted by Project activities.

The Project will result in permanent impacts to approximately 46.5 square feet of Mason's lilaepsis (*Lilaeopsis masonii*). The project is expected to result in incidental take of Mason's lilaepsis, which is designated as a rare species under the Native Plant Protection Act. The ITP referenced above as issued by CDFW authorizes incidental take of species listed under CESA that may occur as a result of Project implementation.

This is to advise that CDFW, acting as [the lead agency / a responsible agency] approved the above-described project on MAY 16, 2019 and made the following determinations regarding the above described project:

1. The project [will / will not] have a significant effect on the environment (This determination is limited to effects within CDFW's permitting jurisdiction as a responsible agency).
 2. [An environmental impact report / A negative declaration] was prepared by the lead agency for the original project.
 3. Additional mitigation measures [were / were not] made a condition of CDFW's approval of the project.
 4. A mitigation reporting or monitoring plan [was / was not] adopted by CDFW for this project.
 5. A Statement of Overriding Considerations [was / was not] adopted by CDFW for this project.
 6. Findings [were / were not made by CDFW pursuant to Public Resources Code § 21081(a). CDFW did, however, adopt findings to document its compliance with CEQA.
 7. Compliance with the environmental filing fee requirement at Fish and Game Code § 711.4 (check one):
 - Payment is submitted with this notice.
 - A copy of a receipt showing prior payment was submitted to CDFW.
- Responsible Agency statement: The Negative Declaration prepared by the lead agency for the Project is available to the general public at the office location listed above for the lead agency. CDFW's administrative record of proceedings related to the incidental take permit is available to the public for review at CDFW's regional office.

Signature Gregg Erickson
Gregg Erickson, Regional Manager

Governor's Office of Planning & Research Date: 5-21-19

JUL 11 2019

STATE CLEARINGHOUSE

Date Received for filing at OPR: _____

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
CALIFORNIA ENDANGERED SPECIES ACT
INCIDENTAL TAKE PERMIT
NO. 2081-2018-066-03

Department of Water Resources
Winter Island Tidal Habitat Restoration Project

CEQA FINDINGS

RECEIVED

JUL 09 2019

DWG
Office of the General Counsel

INTRODUCTION:

The California Department of Fish and Wildlife (CDFW) has prepared these findings to document its compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 *et seq.*). CDFW is a responsible agency under CEQA with respect to the Winter Island Tidal Habitat Restoration Project (Project) because of its permitting authority under the California Endangered Species Act (CESA) (Fish and Game Code, § 2050 *et seq.*). [See generally Pub. Resources Code, §§ 21002.1, subd. (d), 21069; CEQA Guidelines, § 15381; see also Cal. Code Regs., tit. 14, § 783.3, subd. (a)].¹ CDFW makes these findings under CEQA as part of its discretionary decision to authorize Department of Water Resources (Permittee) to incidentally take Mason's lilaeopsis (*Lilaeopsis masonii*) (hereafter referred to as Covered Species) during implementation of the Project. (See generally Fish and Game Code, § 2081, subd. (b); Cal. Code Regs., tit. 14, § 783.4). The Mason's lilaeopsis is designated as rare under CESA. [Cal. Code Regs., tit. 14, § 670.2, subd. (c)(3)(a)].

CDFW is a responsible agency under CEQA with respect to the Project because of prior environmental review and approval of the Project by the lead agency, Department of Water Resources (DWR). (See generally Pub. Resources Code, § 21067; CEQA Guidelines, § 15367). DWR analyzed the environmental impacts associated with implementation of the Project in a Mitigated Negative Declaration (SCH No. 2018082025) and approved the Project on January 10, 2019. In so doing, DWR imposed various mitigation measures for impacts to the Covered Species as conditions of Project approval and concluded that Project-related impacts to the Covered Species could be substantially lessened with implementation of mitigation and avoidance measures, such that the impacts would be less-than-significant.

As approved by DWR, the Project involves restoring and permanently protecting 544 acres of tidal wetlands on Winter Island. Project activities include breaching the southern and northern levees, removing existing water control structures and other debris, widening of an eastern tidal channel, and monitoring special-status plant species that could be impacted by Project activities.

The Project site is within the range of the Covered Species and is known to support individuals of the species. Development of the Project site could result in the take of 46.5 square feet of Covered Species as defined by Fish and Game Code is expected. (Fish and Game Code, § 86). These impacts fall within CDFW's permitting jurisdiction under CESA. [*Id.*, §§ 2080, 2081, subd. (b)].

As a responsible agency, CDFW's CEQA obligations are more limited than those of the lead agency, in that CDFW is responsible for considering only the effects of those activities involved in the Project which it is required by law to carry out or approve. Thus, while CDFW must consider the environmental effects of the Project as set forth in DWR's prior analysis, CDFW has responsibility to mitigate or avoid only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve. [Pub. Resources Code, § 21002.1,

¹ The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

subd. (d); CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g)]. Accordingly, because CDFW's exercise of discretion is limited to issuance of an Incidental Take Permit (ITP) for the Project, CDFW is responsible for considering only the environmental effects that fall within its permitting authority under CESA. (See generally *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 935-941). Indeed, with respect to all other effects associated with implementation of the Project, CDFW is bound by the legal presumption that the Mitigated Negative Declaration fully complies with CEQA. (Pub. Resources Code, § 21167.3; *City of Redding v. Shasta County Local Agency Formation Commission* (1989) 209 Cal.App.3d 1169, 1178-1181; see also CEQA Guidelines, § 15096, subd. (e); Pub. Resources Code, § 21167.2; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1130).

FINDINGS:

CDFW has considered the Mitigated Negative Declaration adopted by DWR as the lead agency for the Project.

CDFW finds that the mitigation measures imposed as conditions of Project approval by DWR, along with the mitigation measures and Conditions of Approval set forth in CDFW's ITP for the Project, will ensure that all Project-related impacts on the Covered Species are mitigated to below a level of significance under CEQA.

CDFW finds that issuance of the ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, CDFW finds adherence to and implementation of the conditions of Project approval adopted by the lead agency, as well as adherence to and implementation of the Conditions of Approval imposed by CDFW through the issuance of the ITP, will avoid or reduce such potential effects to below a level of significance.

The following measures and others set forth in CDFW's ITP for the Project will avoid to the extent feasible and mitigate to below a level of significance all Project-related impacts on the Covered Species:

- A. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology and natural history of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities, and shall also obtain approval in advance in writing if the Designated Biologist must be changed.
- B. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area.

Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures.

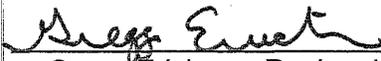
- C. A qualified biologist shall conduct pre-construction surveys for Covered Species prior to all construction activities. If Covered Species are identified in the Project Area, they shall be flagged and avoided. If any Covered Species cannot be avoided, an attempt shall be made to transplant the individuals to suitable habitat after consultation with CDFW.
- D. Permittee shall clearly delineate Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species.
- E. Permittee shall restore up to one acre of Habitat Management lands and provide vegetation monitoring and management of Covered Species on Winter Island for a seven-year period.
- F. Within three (3) months of issuance of this ITP, Permittee shall prepare and submit to CDFW for approval a Mason's Lilaepsis Monitoring and Management Plan (MLMMP), including a baseline assessment, to facilitate management and monitoring of Covered Species on Winter Island. The MLMMP shall include detail adequate to allow efficient implementation by vegetation management contractors under the direction of the Designated Biologist. Management activities may include, but not limited to, invasive species control and biotechnical bank stabilization measures to abate Project-related erosion of Covered Species habitat.
- G. Following completion of the seven-year monitoring period, Permittee shall prepare a summary report describing the success of the MLMMP. The report shall detail Mason's lilaepsis monitoring and management approaches used on Winter Island, any management adaptations attempted, the percent invasive species cover in each management area at the end of each management year, a description of the response of Mason's lilaepsis to management activities over the management period, and any other information that would inform future monitoring and management activities on Winer Island. The report shall be submitted to CDFW staff for review.

CDFW finds that the Mitigation Monitoring and Reporting Program in Attachment 1 of CDFW's ITP for the Project will ensure compliance with mitigation measures by requiring the Permittee to monitor and report progress in implementing those measures for review by CDFW staff.

The Mitigation Monitoring and Reporting Program is adopted.

The Project is approved.

DATE: 5-16-19

By: 
Gregg Erickson, Regional Manager
Bay Delta Region
California Department of Fish and Wildlife