

State of California
Department of Fish and Wildlife

Memorandum

Governor's Office of Planning & Research

Date: June 5, 2019

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STATE CLEARINGHOUSE

To: Chuck Striplen
Environmental Scientist
North Coast Regional Water Quality Control Board

From: Curt Babcock, Habitat Conservation Program Manager
Northern Region

Subject: **Draft Initial Study/Mitigated Negative Declaration for the Elk River Sediment Remediation and Habitat Rehabilitation Pilot Implementation Project, State Clearinghouse Number 2019059020**

On May 6, 2019, The California Department of Fish and Wildlife (CDFW) received a Draft Initial Study/Mitigated Negative Declaration (IS/MND) for the Elk River Sediment Remediation and Habitat Rehabilitation Pilot Implementation Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines (Pub. Resources Code § 21000 et seq. and Cal. Code Regs. tit 14 § 15000 et seq.).

CDFW TRUSTEE AND RESPONSIBLE AGENCY ROLE

CDFW is the Trustee Agency for the State's fish and wildlife resources, and holds those resources in trust by statute for all the people of the State, pursuant to Fish and Game Code sections 711.7(a) and 1802; Public Resources Code section 21070; and CEQA Guidelines section 15386 (a). As such, CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and their habitat.

CDFW is also a Responsible Agency pursuant to CEQA. As such, CDFW administers the California Endangered Species Act (CESA, Fish & G. Code § 2050 et seq.), the Lake or Streambed Alteration (LSA) program (Fish & G. Code § 1600 et seq.) and other provisions of Fish and Game Code that conserve the State's fish and wildlife public trust resources. The proposed Project activities will require a Lake or Streambed Alteration Agreement (LSAA) and take authorization pursuant to CESA. Thus, CDFW offers the following comments and recommendations on this Project in our role as a Trustee and Responsible Agency pursuant to CEQA.

PROJECT DESCRIPTION

To abate nuisance flooding, the Project proposes to excavate at least 18,000 cubic yards of sediment from 2,375 linear feet of the bed and banks of the North Fork Elk River in Humboldt County. The Project area extends from the mainstem Elk River just below the confluence of the North and South Forks of the Elk River and extends

approximately one mile upstream of the confluence on the North Fork. The Project consists of two separate reaches. The upstream Project location is referred to as "Wrigley Orchard Reach" and the downstream Project location is referred to as the "Elk River Flood Curve Reach". The total amount of sediment the Project proposed to remove is unclear. The IS/MND states the Project proposes to remove "*a minimum of 18,000 cubic yards of sediment,*" and also states "*the maximum amount of sediment removed will depend on the ability of the construction budget to bear the associated cost after project planning and permitting.*" The IS/MND states the excavated material will be deposited on private property within the Project area.

CONSULTATION HISTORY

Since December 2017, CDFW staff have attended numerous meetings and site visits with the Project team and other regulatory agency staff. CDFW has provided previous informal comments on several draft documents associated with the Project.

COMMENTS AND RECOMMENDATIONS

Impacts to State Listed Species

The Project proposes dewatering and dredging of 2,375 feet of the Elk River channel. As such, the Project will require capture and relocation of an estimated 2,123 juvenile Coho Salmon (*Oncorhynchus kisutch*), a State and federally threatened species. Of those 2,123 juvenile Coho Salmon, approximately 5 percent (106) may be killed or injured as a result of relocation efforts.

The Project proposes obtaining State take authorization (defined in Fish & G. Code § 86 as "*hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill,*") via a Consistency Determination Fish and Game Code section 2080.1. In order for CDFW to issue a Consistency Determination, the conditions specified in the Federal Biological Opinion/Incidental Take Statement (BO/ITS) must be consistent with CESA and meet the following criteria:

1. The authorized take is incidental to an otherwise lawful activity;
2. The impacts of the authorized take are minimized and fully mitigated;
3. The measures required to minimize and fully mitigate the impacts of the authorized take:
 - i. Are roughly proportional in extent to the impact of the taking on the species,
 - ii. Maintain the applicant's objectives to the greatest extent possible, and
 - iii. May be successfully implemented by the applicant;
4. Adequate funding is provided to implement the required minimization and mitigation measures and to monitor compliance with and the effectiveness of the measures; and
5. Issuance of the permit will not jeopardize the continued existence of a CESA-listed species.

Through consultation with the Project team, CDFW has recommended mitigations that would meet CESA's requirement that take be "*minimized and fully mitigated*" (Fish & G. Code § 2081(b)(2)). These mitigation strategies, and the funding assurances needed to implement them, must be clearly identified in the BO/ITS. To ensure that the federal document meets the criteria outlined above, CDFW recommends ongoing coordination and consultation with CDFW and federal agencies to ensure that all pertinent CESA requirements are included in the BO/ITS, so that CDFW can issue a consistency determination. Alternatively, incidental take of Coho Salmon could be authorized via an Incidental Take Permit pursuant to Fish and Game Code section 2081(b).

Riparian Habitat Impacts and Mitigation

The IS/MND states:

"In order to construct the Proposed Project, both temporary and permanent impacts to riparian and transitional vegetation types are anticipated (Table 18). In total, approximately 5.89 acres of vegetated area will be impacted by the Proposed Project. Of this amount, 1.38 acres would be impacted through the excavation of aggraded channel banks, 1.35 acres would be temporarily impacted through floodplain excavation, and 3.16 acres would be temporarily impacted by the creation of access and staging, most of which (2.76 acres) is currently upland or used as agricultural pasture."

The IS/MND lacks details about the nature of these temporary and permanent impacts and contains conflicting information about the amount of riparian acreage that will be impacted by the Project. The total impacted riparian acreage calculated in the IS/MND Table 18 is 2.28 acres, however, the IS/MND page 138 references 2.52 acres of impacted riparian habitat. The acreage proposed for revegetation is also unclear. On page 69, the IS/MND states, "*replanting will occur within the 1.35 acres of temporarily disturbed riparian floodplain areas,*" but the IS/MND page 138, states "*all revegetation would occur within the 1.1-acre floodplain disturbance footprint within the Elk River Flood Curve Reach.*" CDFW recommends the riparian habitat disturbance area and mitigation areas be clearly identified and disclosed in the IS/MND.

Mitigation measure BIO-23 "*Revegetation Plan*" improperly defers mitigation to a future plan: "*The final revegetation plan will include details regarding planting, implementation, maintenance, and monitoring. In addition, the Plan will include agreement regarding locations of off-site riparian revegetation which would result in the greatest ecological benefit without impeding the Project's flood conveyance objectives.*" This plan should not be deferred, it should be developed and provided in the IS/MND.

The IS/MND also proposes to conduct mitigation planting "*within adjacent undisturbed riparian floodplain areas, to enhance tree species diversity within the riparian corridor.*" It is unclear whether undisturbed riparian habitat adjacent to the Project is in need of botanical enhancement. The IS/MND does not describe or analyze how planting shrub

and tree species not currently occurring on site is either ecologically appropriate or beneficial. Thus, more information is needed for CDFW to evaluate the utility and effectiveness of this mitigation measure. CDFW recommends the Project mitigate for the removal and substantial degradation of riparian habitat at a greater than 1:1 ratio to account for temporal habitat loss. IS/MND should also include appropriate performance standards and a monitoring plan to ensure the mitigation is feasible and effective.

Enhancement of existing riparian habitat should be conducted at a greater ratio than revegetation or creation of compensatory riparian habitat. Mitigation ratios should consider the age and quality of the affected habitat, to account for temporal impacts (i.e., the length of time that will be required to effectively re-create it).

Lack of a Wetland Delineation for the Project

Pre-Project studies conducted for the IS/MND do not include a wetland delineation, but it appears the Project could result in impacts to, or fill of, wetlands. Some riparian habitat in the project area are clearly wetlands, and several of the areas where dredge spoils are proposed to be placed are in and near floodplain habitats that are likely to support wetlands. The coarse habitat mapping conducted for the Project should be supplemented with a wetland delineation for any areas that may be wetlands and will be impacted by Project activities. The IS/MND should propose mitigation at a greater than 1:1 ratio for the loss and degradation of wetland habitat.

Environmental Data

CEQA requires that information developed in EIRs and negative declarations be incorporated into a database that may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code § 21003, subd. (e)).

Accordingly, any special status species and sensitive natural communities detected during Project surveys must be reported to the California Natural Diversity Database (CNDDDB). The online submission and PDF CNDDDB field survey forms, as well as information on which species are tracked by the CNDDDB, can be found under their corresponding tabs at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

SUMMARY OF COMMENTS AND RECOMMENDATIONS

1. The Project description should clarify the potential scope of the Project by providing the minimum and maximum amount of sediment that will be removed.
2. Coordination and consultation with CDFW and federal agencies should continue to ensure that all necessary requirements are included in the BO/ITS, so that CDFW can issue a consistency determination.
3. The IS/MND should describe in greater detail the nature of temporary and permanent impacts to riparian habitat and resolve conflicting information on the amount of impacted riparian acreage.

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4. Mitigation measure BIO-23 "*Revegetation plan*" improperly defers this mitigation and performance standards to a future plan. This revegetation plan should be included in the IS/MND.
5. The Project should mitigate for the loss of riparian habitat at a greater than 1:1 ratio to account for temporal habitat loss. Mitigation ratios should consider the age and quality of the habitat to account for temporal impacts (i.e., the length of time required to effectively re-create it).
6. The IS/MND should include a wetland delineation for any impacted areas that may support wetlands.
7. The Project should avoid impacts to wetlands and should mitigate for the loss and substantial degradation of wetland habitat at a greater than 1:1 ratio.

Questions regarding this memorandum should be directed to Environmental Scientist Jennifer Olson at (707) 445-5387 or e-mail at jennifer.olson@wildlife.ca.gov.

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