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CALIFORNIA ENVIRONMENTAL QUALITY ACT STATUTORY EXEMPTION FOR RESTORATION PROJECTS
CONCURRENCE NO. 21080.56-2022-012-R3

Project: Restore Hayward Marsh

Location: Alameda County

Lead Agency: East Bay Regional Park District

Lead Agency Contact: Chris Barton; cbarton@ebparks.org

Background

Project Location: The Restore Hayward Marsh (Project) is approximately 309 acres in size and is located in the City of Hayward in Alameda County, adjacent to the San Francisco Bay shoreline and directly north of US Highway 92 (37.629346, -122.140079). The Project area includes portions of San Francisco Bay, a segment of the San Francisco Bay Trail, a portion of Cogswell Marsh, Hayward Marsh, and the Mouse Preserve.

Project Description: East Bay Regional Park District (EBRPD) proposes to complete a project designed to conserve, enhance, and restore sensitive coastal resources at Hayward Marsh. Currently, Hayward Marsh is a managed wastewater treatment system consisting of five basins, a mixing channel, and a Mouse Preserve, and offers important but limited habitat to marsh-dependent species. The wastewater treatment plant that supplies the system with freshwater will soon be decommissioned, creating a unique opportunity for the Hayward Marsh system to be redesigned to enhance the area's ecological benefits and to confer climate resiliency to its existing and newly created habitats. If left in its current form, Hayward Marsh's existing tidal marsh habitat is predicted to be lost in the coming decades to rising sea level.

The Project's primary restoration goals are to create and enhance wildlife habitat and to modify the site so that its habitats can accommodate sea level rise. To help achieve these goals, specific project activities include, but are not limited to, levee improvements and breaches, enhancements to existing and creation of new nesting islands, improvements to the channels within the Mouse Preserve to promote tidal flushing in the area, and the creation of new upland transition zones that will offer additional habitat for tidal marsh-dependent species as sea levels rise.

Habitat restoration will support the recovery and protection of Salt marsh harvest mouse (*Reithrodontomys raviventris*), Salt marsh wandering shrew (*Sorex vagrans halicoetes*), and native nesting bird species including California least tern (*Sterna antillarum browni*), Black

skimmer (*Rynchops niger*), Western snowy plover (*Charadrius alexandrinus nivosus*), California Ridgway's rail (*Rallus obsoletus*), and California black rail (*Laterallus jamaicensis coturniculus*).

Project activities will allow transitional marsh habitat to form, help limit levee erosion, allow for the expansion of the westernmost pond as sea level rises, prevent flooding of the Mouse Preserve and nesting sites, and improve tidal connectivity. The Project will increase the extent of tidal marsh from 14 acres to a projected 78 acres; convert all 137 acres which are currently utilized for wastewater treatment to uplands, tidal open water, or muted tidal marsh; and create a more natural water regime and increase resiliency to sea level rise. The proposed Project will remove approximately 6,700 linear feet of levee in the western portion of Hayward Marsh, will install approximately 1,600 linear feet of shoreline protection features, and will decrease slopes on approximately 12,500 linear feet of existing levee to create broader features upon which beneficial vegetation communities can establish.

Interested Party and Tribal Coordination: In April 2022, EBRPD contacted the Native American Heritage Commission (NAHC) for a search of its Sacred Lands File (SLF) and for a list of Native American tribes/individuals associated with the Project area. In May 2022, the NAHC completed its SLF search and provided a list of associated tribes. EBRPD will send letters to these tribes prior to Project implementation.

EBRPD has also participated in extensive public outreach efforts to help inform the completion of the Hayward Regional Shoreline Adaptation Master Plan. These efforts included an online survey, three public workshops, seven interviews, one public shore tour, six meetings, two online public forums, and numerous comments received as part of the public engagement process. In addition to public outreach related to the Hayward Regional Shoreline Adaptation Master Plan, EBRPD conducted four public meetings including a public workshop, two EBRPD Board Executive Committee meetings, one EBRPD Board meeting, and an online survey open to the public. EBRPD has also held outreach meetings with the City of Hayward, Alameda County Flood Control and Water Conservation District, Alameda County Mosquito and Vector Control, Hayward Area Recreation District, Metropolitan Transportation Commission's Bay Trail Program, Union Sanitary District, and the Bay Restoration Regulatory Integration Team.

Anticipated Project Implementation Timeframes: Start date: September 2024
Completion date: January 2026

Lead Agency Request for CDFW Concurrence: On October 3, 2022, the Director of CDFW (CDFW Director) received a concurrence request from East Bay Regional Park District (Lead Agency) pursuant to Public Resources Code section 21080.56, subdivision (e) (Request). The Request seeks the CDFW Director's concurrence with the Lead Agency's determination on October 3, 2022, that the Project meets certain qualifying criteria set forth in subdivisions (a) to (d), inclusive, of the same section of the Public Resources Code (Lead Agency Determination). The CDFW Director's concurrence is required for the Lead Agency to approve the Project relying on this section of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).

Concurrence Determination

The CDFW Director concurs with the Lead Agency Determination that the Project meets the qualifying criteria set forth in Public Resources Code section 21080.56, subdivisions (a) to (d), inclusive (Concurrence).

Specifically, the CDFW Director concurs with the Lead Agency that the Project meets all of the following conditions: (1) the Project is exclusively to conserve, restore, protect, or enhance, and assist in the recovery of California native fish and wildlife, and the habitat upon which they depend; or is exclusively to restore or provide habitat for California native fish and wildlife; (2) the Project may have public benefits incidental to the Project's fundamental purpose; (3) the Project will result in long-term net benefits to climate resiliency, biodiversity, and sensitive species recovery; and includes procedures and ongoing management for the protection of the environment; and (4) Project construction activities are solely related to habitat restoration. Pursuant to Public Resources Code section 21080.56, subdivision (g), CDFW will post this Concurrence on its CEQA Notices and Documents internet page: https://wildlife.ca.gov/Notices/CEQA.

This Concurrence is based on best available science and supported, as described below, by substantial evidence in CDFW's administrative record of proceedings for the Project.

This Concurrence is also based on a finding that the Project is consistent with and that its implementation will further CDFW's mandate as California's trustee agency for fish and wildlife, including the responsibility to hold and manage these resources in trust for all the people of California.

Discussion

A. Pursuant to Public Resources Code section 21080.56, subdivision (a), the CDFW Director concurs with the Lead Agency that the Project will exclusively conserve, restore, protect, or enhance, and assist in the recovery of California native fish and wildlife, and the habitat upon which they depend; or restore or provide habitat for California native fish and wildlife.

   The Project will protect against the loss of sensitive endangered species habitat as well as minimize habitat conversion to less beneficial habitat types within the proposed restoration area due to sea level rise. The restoration activities of the Project will help create and maintain breeding sites for sensitive avian species, and the creation of an interim levee and new water control structures will prevent a muted tidal marsh that supports Saltmarsh harvest mice from being inundated. By changing levee slopes, removing existing water treatment infrastructure, and adjusting grades in the eastern portion of the site, the Project will achieve a greater number of acres of tidal marsh habitat and tidally influenced open water through time, both of which are designed to provide resilient and improved habitat in the long term for sensitive plant and wildlife species.

B. Pursuant to Public Resources Code section 21080.56, subdivision (b), the CDFW Director concurs with the Lead Agency that the Project may have incidental public benefits, such as public access and recreation.

While the primary purpose of the Restore Hayward Marsh Project is habitat restoration, the Project may have incidental public benefits owing to the regulatory environment within which it will occur. To permit the proposed habitat improvements, under the McAteer-Petris Act, the Bay Conservation and Development Commission (BCDC) must find that the Project provides "the maximum feasible public access to the bay and its shoreline." The Project will address this requirement by improving an existing segment of a multi-use path (the San Francisco Bay Trail) that passes along the bayside margin of the restoration area, where levee improvements designed to support climate resiliency will also occur. During improvements, the San Francisco Bay Trail's existing interpretive exhibits will be relocated to increase the buffer between public access and sensitive wildlife habitat.

C. Pursuant to Public Resources Code section 21080.56, subdivision (c), the CDFW Director concurs with the Lead Agency that the Project will result in long-term net benefits to climate resiliency, biodiversity, and sensitive species recovery, and includes procedures and ongoing management for the protection of the environment.

Long-term net benefits to climate resiliency: The Project has been designed to offer a specific complement of marsh and upland habitats under sea level rise conditions modeled to the year 2080, and thus results in clear near- and long-term net benefits to climate resiliency. Near term, improvements to levees will better protect the entirety of Hayward Marsh from extreme storm events, which are expected to increase in frequency and intensity as climate change progresses. Gentler slopes along the sides of most levees will allow for tidal marsh habitat and transition zone habitat to develop and migrate, as well as provide refuge for tidal marsh species during extreme tide events, which are also expected to occur more frequently over time.

Long term, upland areas created by the proposed Project are designed to become tidal marsh and transition zones habitat as sea level rise progresses. This will provide future habitat for species that currently occupy existing tidal marsh habitat after these areas are inundated by sea level rise. Because tidal marsh habitat naturally protects shorelines, retaining tidal marsh habitat will also continue to help protect areas inland of Hayward Marsh.

Long-term net benefits to biodiversity: The proposed Project is designed to benefit biodiversity through the creation of gentle levee side slopes, the creation of new islands and improvement to existing islands, and through the installation of shoreline protection features. More gradual side slopes along levees would allow for habitat diversity to develop on these slopes. As sea level rises, the gentle slope along levee and shorebird island sides would allow for tidal marsh and transition zone to shift to higher elevations, maintaining habitat diversity throughout Hayward Marsh. Additionally, the gradual slope proposed for the new upland area proposed for the eastern portion of Hayward Marsh would allow for muted tidal marsh and transitional

zone habitat to develop as sea level rises and some of the existing marsh areas are converted to open water habitats.

Shorebird and aerial fish foragers are expected to experience substantial benefits as a result of the proposed Project. Gentler side-slopes on new and existing islands would reduce the risk of chicks falling into the surrounding water and make it easier for birds to get on and off the islands. Nesting shorebird habitat would also be enhanced on each island by adding oyster shells and other materials on top of each island for use as refuge by shorebirds and their chicks. Additionally, excavated 20-foot-wide channels around each island would make it more difficult for predators to access the islands.

Long-term net benefits to sensitive species recovery: The proposed Project would result in long-term net benefits to multiple sensitive species' recovery. Fish species would benefit from an increased level of connectivity between waters within Hayward Marsh and the San Francisco Bay. Fifty-four acres of water treatment ponds would be converted to tidal or muted tidal open water immediately post-restoration, which would improve foraging and dispersal opportunities. As sea level rises, tidal open water habitat available within the Project would increase to 172 acres of tidal or muted tidal open water.

Native nesting birds would benefit in a variety of ways. California least tern, Black skimmer, and Western snowy plover all currently rely on manmade islands within Hayward Marsh for breeding and refugia during foraging. In addition to raising and expanding the existing breeding island, the Project will construct additional islands that will be suitable for use by these species. Foraging opportunities for aerial fish foragers will also increase as sea level rise progresses and the area of tidal open water around breeding islands increases. California Ridgway's rail and California black rail require tidal marsh habitat for nesting, foraging, and predator avoidance. The change in areas currently classified as muted tidal marsh, upland, or managed pond would be converted to up to 73 acres of tidal marsh or muted tidal marsh in the long term, which will increase both breeding and foraging opportunities for these species within Hayward Marsh.

Salt marsh harvest mouse and Salt marsh wandering shrew will benefit from a more natural tidal regime resulting from the removal or lowering of levees within Hayward Marsh to provide better habitat connectivity. The lowering of levees and addition of more suitably vegetated upland islands within managed ponds will provide a greater extent of upland refugia for these species adjacent to existing salt marsh areas, and these upland areas are also expected to provide suitable refugia from increasingly high tides. Long term, the breaching of levees combined with predicted sea level rise will cause a large portion of Hayward Marsh to shift to tidal marsh, which is ideal habitat for these species.

Special-status plants will benefit from the gentle slopes created along the levees, islands, and new upland areas, all of which would allow tidal marsh vegetation,

including special-status plants, to migrate to higher elevation along the slopes as sea level rises.

Procedures for the Protection of the Environment
Avoidance and minimization measures, outlined in the Project's Biological Resources Technical Report (2022), will be implemented specific to species or species groups to ensure the protection of the environment. These species or species groups include fish species, California least tern, Black skimmer, Western snowy plover, California Ridgway's rail, California black rail, native nesting birds, Salt marsh harvest mouse and Salt marsh wandering shrew. Special-status plants and sensitive land cover types will also be addressed by the Project's avoidance and minimization measures.

Ongoing Management for the Protection of the Environment
The EBRPD wildlife biologists and operations staff have overseen the protection and management of the environment and wildlife at Hayward Marsh since the 1980s. The Project will continue this work which includes wildlife surveys, maintaining California least tern islands, predator monitoring and control, invasive weed control, and water quality monitoring.

D. Pursuant to Public Resources Code section 21080.56, subdivision (d), the CDFW Director concurs with the Lead Agency that the Project does not include any construction activities, except those solely related to habitat restoration. The Project-related construction activities are all related to the overall goal of the Project to restore or enhance habitat in the Project area and all Project-related construction activities are planned to be implemented for the purpose of habitat restoration. Therefore, the Project does not include any construction activities except for those that are solely related to habitat restoration.

Scope and Reservation of Concurrence

This Concurrence is based on the proposed Project as described by the Lead Agency Determination and the Request. If there are any subsequent changes to the Project that affect or otherwise change the Lead Agency Determination, the Lead Agency, or any other public agency that proposes to carry out or approve the Project, shall submit a new lead agency determination and request for concurrence from CDFW pursuant to Public Resources Code section 21080.56. If any other public agency proposes to carry out or approve the Project subsequent to the effective date of this Concurrence, this Concurrence shall remain in effect and no separate concurrence from CDFW shall be required so long as the other public agency is carrying out or approving the Project as described by the Lead Agency Determination and the Request.

Other Legal Obligations

The Project shall remain subject to all other applicable federal, state, and local laws and regulations, and this Concurrence shall not weaken or violate any applicable environmental or public health standards. (Pub. Resources Code, § 21080.56, subd. (f).)

CDFW Director's Certification

By:_____ Date: 11/16/22

Charlton H. Bonham, Director