COASTAL CONSERVANCY

Staff Recommendation
September 6, 2018

EXPEDITED PERMITTING FOR AQUATIC HABITAT RESTORATION

Project No. 18-022-01
Project Manager: Joel Gerwein

RECOMMENDED ACTION: Authorization to disburse up to $320,000 received from the California Natural Resources Agency, California Department of Parks and Recreation and Delta Stewardship Council to Sustainable Conservation to advance the adoption of programmatic permits for aquatic habitat restoration and water quality improvement projects.

LOCATION: Statewide

PROGRAM CATEGORY: Integrated Coastal and Marine Resources Protection

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EXHIBITS

Exhibit 1: Project Location Map

Exhibit 2: Project Letters

RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31220 of the Public Resources Code:

"The State Coastal Conservancy hereby authorizes the disbursement of fifty thousand dollars ($50,000) received from the California Natural Resources Agency, two hundred fifty thousand dollars ($250,000) received from the Delta Stewardship Council, and twenty thousand dollars ($20,000) received from the California Department of Parks and Recreation, for a total amount not to exceed three hundred twenty thousand dollars ($320,000), to Sustainable Conservation to advance the adoption of programmatic permits for aquatic habitat restoration and water quality improvement projects. Prior to commencement of the project, the grantee shall submit for the review and written approval of the Executive Officer of the Conservancy (Executive Officer) the following:

1. A detailed work program, schedule, and budget.
2. Names and qualifications of any contractors to be employed in carrying out the project.
3. A plan for acknowledgement of Conservancy funding."

Staff further recommends that the Conservancy adopt the following findings:

"Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

1. The proposed authorization is consistent with Chapter 5.5 of Division 21 of the Public Resources Code, regarding integrated coastal and marine resources protection.
2. The proposed project is consistent with the current Conservancy Project Selection Criteria and Guidelines.
3. Sustainable Conservation is a nonprofit organization existing under section 501(c)(3) of the U.S. Internal Revenue Code, and whose purposes are consistent with Division 21 of the Public Resources Code."

PROJECT SUMMARY:

Staff recommends that the Conservancy authorize the disbursement of up to $320,000 to Sustainable Conservation to advance the adoption of programmatic permits by the US Army Corps of Engineers (Corps), the State Water Resources Control Board (SWRCB), and the US Fish and Wildlife Service (FWS) (for the latter and for the National Marine Fisheries Service [NMFS], a biological opinion is referred to as a permit in this report) for aquatic habitat restoration and water quality improvement projects ("the overall project"). Once the Corps, FWS and SWRCB approve programmatic permits, an agency or entity proposing to carry out qualifying projects does not need to obtain an individual permit for their project, but instead can apply to be covered under the programmatic permit. If the project qualifies for coverage, regulatory approval will be expedited. In California, more than 350 species are listed as threatened or endangered, 90% of wetlands and riparian areas have been lost, and 2/3 of assessed water bodies are impaired. These and other trends all point to the dire need for numerous restoration projects to restore degraded habitats, improve water quality, and save species like salmon and steelhead from further population declines. Project proponents, however, must apply for permits from as many as eight or nine agencies to complete environmentally beneficial projects, using the same process as development projects. It can take many months to years for each project to receive approval, involving substantial cost and complexity. Programmatic permitting simplifies the process and significantly reduces time and cost for both agencies and project proponents, while providing necessary environmental protections.

With the assistance of Sustainable Conservation, SWRCB approved a programmatic permit for small habitat restoration projects, which is limited to projects five acres or less; the proposed programmatic permits will expedite permitting for larger projects. Programmatic approvals will cover a variety of the most commonly proposed habitat restoration projects, including multi-benefit projects of statewide significance that prioritize restoration. Using other funds, Sustainable Conservation worked with the NMFS to develop a programmatic permit for restoration projects in the Central Valley, which was issued on September 1, 2018.

The funds proposed for disbursement under this authorization have been provided to the Conservancy by the California Natural Resources Agency (CNRA), California Department of Parks and Recreation (State Parks), and Delta Stewardship Council (DSC). The Conservancy is

providing staff time to manage the proposed grant. The proposed project to be funded by this grant consists of the following actions to advance the overall project:

- Drafting and submitting a final FWS Biological Assessment (BA) for aquatic restoration;
- Completing a draft SWRCB permit for aquatic restoration;
- Completing a draft CEQA document for the SWRCB permit and responding to comments; and
- Conducting outreach about permits under development.

The programmatic permits will cover the following project types:

1. Tidal and non-tidal wetland restoration and enhancement to improve wetland functions;
2. Stream and riparian habitat establishment, restoration and enhancement to restore ecological and hydrological function of streams;
3. Stream crossing and fish passage improvements for upstream and downstream movement by fish and other species, and to improve hydraulic function in streams;
4. Small dam, tidegate and legacy structure removal to improve fish and wildlife migration, tidal and freshwater circulation and flow, and water quality;
5. Bioengineered bank stabilization to reduce fine sediment input, enhance aquatic and riparian habitat, and improve water quality;
6. Off-channel/side-channel habitat feature restoration and enhancement to improve aquatic and riparian habitat for fish and wildlife;
7. Water conservation projects, such as off-stream storage tanks and ponds and including necessary off-channel infrastructure, to reduce low-flow stream diversions;
8. Floodplain restoration, including levee, berm and dike setback, breaching and removal, and hydraulic reconnection and revegetation, to improve ecosystem function through hydrological connection between streams and floodplains;
9. Piling and other in-water structure removal to improve water quality and aquatic habitat for fish and wildlife; and
10. Non-native invasive plant removal and native plant revegetation to improve aquatic and riparian habitat for fish and wildlife.

Some examples of restoration projects previously funded by the Conservancy that may have been able to use the programmatic permits had they been in place at the time, include, but are not limited to:

- San Gregorio Creek Habitat Enhancement Project (San Mateo County)
- Lower San Antonio Creek Arundo Eradication (Ventura County)
- Anderson Creek Sediment Reduction and Coho Recovery Project (Humboldt County)

- Ten Mile River Coho Habitat Rehabilitation (Mendocino County)
- Green Gulch Creek Habitat Enhancement Project (Marin County)

If this grant is authorized and additional anticipated funds are secured, the programmatic permits are expected to be in place by early 2021. If additional funding is not secured for Sustainable Conservation to complete the overall project, the deliverables of the proposed project (FWS BA, SWRCB Permit, and SWRCB CEQA Document) will provide a basis for the agencies to complete the programmatic permits, without Sustainable Conservation's assistance, over a longer timeframe. In that event, Conservancy staff would remain involved to move the project forward.

Adoption of programmatic permits is estimated to improve the efficiency of federal and state environmental review by 25-50% in comparison to individual project permitting, saving time and money for restoration proponents and providing a higher degree of regulatory certainty. Sustainable Conservation has estimated that the overall project, through simplified project planning, application and review, could save up to $124 million in state/federal grants and local funding for restoration project applicants over 10 years of implementation. In addition, regulatory agencies can reduce staff time devoted to completing review of restoration projects by thousands of hours, allowing them to focus their resources on projects with significant impacts. For example, the North Coast Regional Water Quality Control Board estimates 25-50% staff time savings using a programmatic 401 Water Quality (WQ) Certification vs. an individual project WQ Certification. NMFS estimates a 90% staff time savings using a programmatic Biological Opinion (BO) vs. an individual project BO (16 hours vs. 160 hours). Approximately 120 restoration projects statewide could benefit each year from the expedited approvals. In addition to benefits for fish and wildlife, these restoration projects can also benefit water quality and sediment and salinity balances, increase flood resilience, reduce water treatment costs, and boost water supply by increasing groundwater recharge. Multi-benefit restoration projects also advance climate change adaptation goals, including sea level rise resilience, which are crucial in coastal and estuarine areas.

Site Description: The overall project will provide statewide Corps, SWRCB, and FWS permit coverage for projects in wetlands, streams, floodplains, and riparian corridors, benefiting both coastal and interior watersheds.

Grantee Qualifications: Sustainable Conservation has more than 20 years of experience working on simplified permitting programs with agencies and restoration proponents. They have developed authorizations with multiple agencies. Sustainable Conservation staff includes former agency regulators, and they collaborate closely with restoration proponents. They have already partnered with the NOAA Restoration Center to get Biological Opinions (BOs) with the National Marine Fisheries Service completed for the entire coast, as well as the Central Valley and Delta.

Project History: The Conservancy was asked to assist with this project by Sustainable Conservation and its state agency partners in Spring 2018. The Conservancy has granted funds to Sustainable Conservation in the past to assist with developing simplified permitting programs of more limited scope.

In 2001, the Conservancy granted $55,000 to Sustainable Conservation to facilitate a Patners in Restoration (PIR) permit coordination program for habitat enhancement projects in the Walker Creek, Stemple Creek, and Lagunitas Creek watersheds in the Tomales Bay area. The permit coordination program, which has been managed by the Marin Resource Conservation District (RCD), is still in place and has greatly increased the number of habitat enhancement projects implemented on private lands in the area. That program was later expanded to include additional areas of Marin and Sonoma Counties. In 2003, the Conservancy granted $122,475 to Sustainable Conservation to work with the Santa Cruz County RCD to develop a permit coordination program for habitat enhancement projects in Santa Cruz County as part of the Integrated Regional Watershed Management Planning effort. In 2006, the Conservancy granted $100,000 to Sustainable Conservation to work with the San Luis Obispo and Santa Barbara RCDs to develop PIR permit coordination programs for habitat enhancement projects in San Luis Obispo and Santa Barbara Counties.

The Conservancy also authorized a $50,000 grant in 2003 to Sustainable Conservation to develop a PIR permit coordination program for habitat enhancement projects on private lands in Humboldt County. The Humboldt County project was unsuccessful for two primary reasons. First, the effort attempted to innovate on the PIR model that had been implemented in other coastal counties by extending access to the programmatic permits beyond the RCD and Natural Resources Conservation Service (NRCS) to non-governmental organizations such as Redwood Community Action Agency and the Mattole River Restoration Council who were active in the County in areas where the RCD and NRCS were not. The RCD would have been the holder and administrator of the programmatic permits as they had been in the other county PIR programs. Unfortunately, the regulatory agencies denied the proposal to include non-profit restoration groups as participants. Subsequently, key points of contact and supporters in both agencies left their positions and organizational interest in PIR diminished substantially. However, Sustainable Conservation's current statewide approach to programmatic permits solves the challenges that stymied the Humboldt County PIR project. Since Sustainable Conservation now partners directly with state and federal regulators to create programmatic permits, any qualified project and applicant, whether non-profit or governmental agency, can use the permits, regardless of funding source or applicant affiliation.

PROJECT FINANCING

Coastal Conservancy (California Department of Parks and Recreation funds)	$20,000
Coastal Conservancy (Delta Stewardship Council funds)	$250,000
Coastal Conservancy (California Natural Resources Agency funds)	$50,000
Project Total	**$320,000**

The proposed funds for this authorization are derived entirely from grant funds provided to the Conservancy specifically for this project by the CNRA, DSC, and State Parks through Interagency Agreements. The Conservancy is providing staff time to manage the grant.

The overall project cost is approximately $2,663,000. Sustainable Conservation has already secured and spent $624,000 on the overall project, all of which was provided by foundations and individuals. In addition to the $320,000 from the Conservancy, $200,000 in funding from the

California Department of Water Resources and $40,000 in additional foundation funding has been committed and $465,000 is pending. That leaves approximately $1,034,000 in additional funding which Sustainable Conservation plans to secure for additional work to complete the project. Sustainable Conservation is confident that it can secure these additional funds. Various water agencies (State Water Contractors, Bureau of Reclamation and Northern California Water Association) have expressed interest in providing funding, as has the Wildlife Conservation Board. Sustainable Conservation also plans to approach additional private funders. These additional monies will fund staff time and consultants to meet the deliverables for the Conservancy grant and to help to ensure the programmatic permits are officially issued by the end of 2020. In addition, the non-Conservancy monies will fund additional outreach to train and make restoration practitioners and agency staff aware of these forthcoming and already existing programmatic permits. The additional monies will also fund communications efforts and support services for the program.

CONSISTENCY WITH CONSERVANCY'S ENABLING LEGISLATION:

The proposed project will be undertaken pursuant to Chapter 5.5 of the Conservancy's enabling legislation, Public Resource Code sections 31220, as follows:

Pursuant to section 31220(a), the Conservancy may award grants for coastal watershed and coastal and marine habitat water quality, sediment management, and living marine resources protection and restoration projects. Pursuant to this section, the Conservancy is required to consult with the SWRCB in the development of the project to ensure consistency with Chapter 3 (commencing with Section 30915) of Division 20.4 of the Public Resources Code. Consistent with this section, the project will facilitate aquatic habitat restoration projects, and the Conservancy has consulted with the SWRCB (Exhibit 2).

Pursuant to section 31220(b), the Conservancy may award grants for such projects if the projects protect or restore fish and wildlife habitat within coastal and marine waters and coastal watersheds, including permit coordination projects for watershed restoration. Consistent with this section, the project will advance the adoption of programmatic permits, which will facilitate and expedite efforts to restore and enhance aquatic habitat, including within coastal waters and watersheds.

Pursuant to Section 31220(c), projects funded pursuant to this section shall include a monitoring and evaluation component and shall be consistent with Integrated Watershed Management Programs established pursuant to Section 30947, local watershed management plans, and water quality control plans adopted by the SWRCB and regional water quality control boards. Consistent with this section, the project will include a plan to track permit usage to evaluate the efficacy of the permitting program once it is established. Individual projects facilitated by the programmatic permits will be evaluated for their consistency with Integrated Watershed Management Programs, local watershed management plans, and water quality control plans. Such programs and plans call for the restoration and enhancement of wetlands and waters where feasible, which will be facilitated by this project.

CONSISTENCY WITH CONSERVANCY'S 2018-2022 STRATEGIC PLAN GOAL(S) & OBJECTIVE(S):

Consistent with **Goal 15, Objective B** of the Conservancy's 2018-2022 Strategic Plan, the proposed project involves participating in a statewide collaborative that furthers Conservancy goals and objectives and supports the work of partner organizations by facilitating aquatic habitat restoration projects.

Consistent with **Goal 15, Objective C** of the Conservancy's 2018-2022 Strategic Plan, the proposed project involves working with partner organizations to achieve conservation objectives through project facilitation.

CONSISTENCY WITH CONSERVANCY'S PROJECT SELECTION CRITERIA & GUIDELINES:

The proposed project is consistent with the Conservancy's Project Selection Criteria and Guidelines, last updated on October 2, 2014, in the following respects:

Required Criteria

1. **Promotion of the Conservancy's statutory programs and purposes:** See the "Consistency with Conservancy's Enabling Legislation" section above.
2. **Consistency with purposes of the funding source:** See the "Project Financing" section above.
3. **Promotion and implementation of state plans and policies:** The project is consistent with the following state and federal plans and policies:
    - **a.** The *California Water Action Plan* (2016 update) is a collaborative effort of the California Natural Resources Agency, the California Environmental Protection Agency, and the California Department of Food and Agriculture. This plan was developed to meet three broad objectives: more reliable water supplies, the restoration of species and habitat, and a more resilient, sustainably managed water resources system. It lays out the state's challenges, goals and actions needed to put California's water resources on a safer, more sustainable path. The plan identifies ten overarching strategies to protect our resources, including two that will be furthered by this project: 3) Achieve co-equal goals for the Delta, including the goal of accelerating and implementing habitat restoration, and 4) Protect and restore important ecosystems, particularly wetlands, floodplains, rivers, riparian habitat, and estuaries.
    - b. The *California State Wildlife Action Plan* (SWAP) (2015) is a comprehensive, statewide plan for conserving the state's fish and wildlife and their vital natural habitats for future generations. By facilitating aquatic habitat restoration projects, the expedited permitting program will further the following components of the SWAP's statewide vision: 1) Maintain and enhance the integrity of ecosystems by conserving key natural processes and functions, habitat qualities, and sustainable native species population levels, so that California's ecosystems are resilient to shifting environmental conditions resulting from climate change; and 2) Promote partnerships with federal, state, and local agencies; tribal governments; and nongovernmental

organizations with aligned conservation goals to leverage efficient use of funding and other public resources.

c. *California @ 50 Million: The Environmental Goals and Policy Report* (EGPR) (2015) lays out goals and objectives that focus on land use, population growth and distribution, conservation of natural resources, and air and water quality, as well as a discussion of programs and policies required to implement the state's environmental goals. The expedited permit program will further several priorities and actions in the EGPR by facilitating aquatic habitat restoration projects. The EGPR calls for achieving the co-equal goals of restoring 30,000 acres of fish and wildlife habitat in the Delta and modernizing the Delta's water infrastructure (pg. 19). In order to preserve and steward state lands and natural resources, the EGPR calls for the development of models for expedited permitting that are relevant for rural regions (pg. 22). The expedited permit program developed through this project will apply to rural regions as well as other parts of the state.

4. **Support of the public:** The project enjoys broad public support (Exhibit 2).
5. **Location:** The expedited permit program to be developed by the project would apply statewide, both within and outside the coastal zone. Many aquatic habitat restoration projects facilitated by the program will benefit coastal resources such as salmonids, and/or will benefit wetlands and waters in the San Francisco Bay region.
6. **Need:** The project needs Conservancy involvement to manage state funds. Without this involvement, the project could not utilize state funds and would have insufficient resources to be completed.
7. **Greater-than-local interest:** The project is of statewide importance as it will facilitate aquatic habitat restoration throughout the State.
8. **Sea level rise vulnerability:** The expedited permitting program is not vulnerable to sea level rise. Individual projects facilitated by the program will need to consider sea level rise as part of planning and design.

Additional Criteria

9. **Urgency:** Speeding up and increasing the efficiency of aquatic habitat restoration projects in California is urgent because of the numerous listed species, and the facts that 90% of wetlands and riparian areas that have been lost statewide and 2/3 of assessed water bodies that are impaired. These and other trends all point to the dire need for numerous restoration projects to restore degraded habitats, improve water quality, and save species like salmon and steelhead from further population declines.
10. **Leverage**: See the "Project Financing" section above.
11. **Innovation**: The expedited permitting program demonstrates an innovative approach to environmental compliance by scaling up earlier efforts to expedite regulatory review of small restoration projects within specific regions of the state to large-scale projects statewide.
12. **Readiness**: The grantee has already begun work on the overall project utilizing other funds and will be ready to utilize the grant funds immediately.
13. **Realization of prior Conservancy goals**: See "Project History" above.
14. **Return to Conservancy**: See the "Project Financing" section above.
15. **Cooperation**: The project involves extensive interagency cooperation between local, state, and federal agencies.

16. **Vulnerability from climate change impacts other than sea level rise:** The expedited permitting program is not vulnerable to climate change impacts. Individual projects facilitated by the program will need to consider sea level rise as part of planning and design.

CEQA COMPLIANCE:

The California Environmental Quality Act (CEQA) requires that public entities conduct environmental review prior to approving or funding a project. The CEQA Guidelines at 14 Cal. Code Regs. § 15378(b)(5) provide that the term "project" excludes organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment. The project will involve only the development of programmatic permits, which is an administrative activity of governments that does not directly affect the environment. Therefore, the proposed development of programmatic permits is not a "project" within the meaning of CEQA and funding the project does not trigger the requirement for environmental review under CEQA.

Aquatic habitat restoration projects that may be covered in the future under the programmatic permits will undergo review under CEQA before they are funded or approved.