

COASTAL CONSERVANCY

Staff Recommendation
March 26, 2015

PINOLE CREEK FISH-PASSAGE IMPROVEMENT PROJECT

Project No. 14-005-01
Project Manager: Melanie Denninger

RECOMMENDED ACTION: Authorization to disburse up to \$165,000 to the Contra Costa County Resource Conservation District for construction of fish-passage improvements on Pinole Creek under and adjacent to Interstate 80 in the City of Pinole.

LOCATION: City of Pinole in Contra Costa County (Exhibits 1 and 2)

PROGRAM CATEGORY: San Francisco Bay Area Conservancy Program

EXHIBITS

Exhibit 1: [Project Regional Location](#)

Exhibit 2: [Project Vicinity](#)

Exhibit 3: [CEQA Documents](#)

Exhibit 4: [Project Photos](#)

Exhibit 5: [Project Design](#)

Exhibit 6: [Project Letters](#)

RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31160 *et seq.* of the Public Resources Code:

“The State Coastal Conservancy hereby authorizes the disbursement of an amount not to exceed \$165,000 (one hundred sixty-five thousand dollars) to the Contra Costa Resource Conservation District (“the District”) for the Pinole Creek Fish Passage Improvement Project to eliminate a barrier to migration of anadromous steelhead. This authorization is subject to the following conditions:

1. Prior to the disbursement of any Conservancy funds, the District shall submit the following for review and approval of the Executive Officer of the Conservancy:
 - A. A detailed work program, project budget, and schedule;
 - B. Evidence that all permits and approvals necessary for the project have been obtained;
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- C. A plan for the installation of a sign acknowledging Conservancy funding; and
- D. The name(s) and qualifications of any contractors that the District intends to employ for the project.

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 the purposes and objectives Chapter 4.5 of Division 21 of the Public Resources Code, regarding the San Francisco Bay Area Conservancy Program.
2. The proposed project is consistent with the current Conservancy Project Selection Criteria and Guidelines.
3. The Conservancy has independently reviewed and considered the Initial Study and Mitigated Negative Declaration for the Pinole Creek Fish Passage Improvement Project that the Contra Costa Resource Conservation District adopted on January 12, 2015 under the California Environmental Quality Act (attached to the accompanying staff recommendation as Exhibit 3). Based on the record as a whole, the Conservancy finds that the project, as designed, avoids, reduces or mitigates the possible significant environmental effects and that there is no substantial evidence that the project will have a significant effect on the environment, as defined in 14 California Code of Regulations Section 15382.

PROJECT SUMMARY:

Staff recommends that the Conservancy authorize disbursement of an amount not to exceed \$165,000 (one hundred sixty-five thousand dollars) to the Contra Costa Resource Conservation District (“the District”) for construction of modifications to infrastructure under and adjacent to Interstate 80 in the City of Pinole (Exhibits 1 and 2) for the purpose of eliminating barriers to migration of anadromous steelhead (*Oncorhynchus mykiss*) in Pinole Creek.

The Pinole Creek Fish-Passage Improvement Project (“the project”) is a priority for Conservancy assistance because it will result in removal of the only significant barrier to migratory fish passage on Pinole Creek. The project will restore access for the historic population of steelhead, a federally listed threatened species that requires access to saltwater habitat in San Francisco Bay as well as access to freshwater spawning and rearing habitat above Interstate 80 in order to survive as a population. The project will provide anadromous steelhead access to approximately 6.8 miles of suitable steelhead habitat upstream of the project with nearly 4.3 miles of this habitat located in a protected watershed above the freeway.

Construction of the fish-passage improvements will entail retrofitting one of the existing twin 430-foot-long culverts under Interstate 80 to provide adequate water depth when low flows coincide with fish migration. The project will install baffles at the upstream end of the culverts to direct low flows into the improved culvert and install rock at the downstream end of the culvert to protect against any induced scouring of the channel (Exhibit 4).

The District has demonstrated a strong commitment to this project. For at least a dozen years it has tirelessly pursued project design, agency support, and funding, while developing strong inter-agency relationships and consensus. The District's Executive Director is directly managing the project. The Conservancy has provided grants to many resource conservation districts in Bay Area counties and has found them to be capable and effective, but this project will be the first with this District.

Site Description: The project is located under and adjacent to the Interstate 80 overcrossing of Pinole Creek, about halfway between the creek's headwaters in rolling hills to the east and its mouth on San Francisco Bay (Exhibits 1 and 2). While construction will take place in and adjacent to concrete culverts under the broad freeway – an area virtually devoid of vegetation and native animals, almost all of the creek channel both upstream and downstream has a soft bottom, with much of the upstream channel shaded by riparian vegetation (Exhibit 7).

Pinole Creek is believed to have had a viable population of Central Coast steelhead prior to the introduction of infrastructure that blocked the migration essential to its long-term survival, and individuals of the steelhead species are still occasionally spotted both upstream and downstream of the last remaining barrier under Interstate 80. The Pinole Creek steelhead population is not expected to survive unless it can resume migrating between upstream spawning and rearing habitat and adult habitat in the saltwater of San Francisco Bay and the ocean.

Caltrans owns the land under and adjacent to the freeway. Public Works holds an easement and owns and maintains the culverts. Construction access will be from either City or private property. Most of the upper watershed of Pinole Creek is owned and managed by the East Bay Municipal Utility District ("EBMUD").

Project History: The Conservancy has been engaged for many years in identifying and eliminating barriers to passage of anadromous fish in coastal and Bay Area streams and first became involved with development of this project in 2001, with a contribution of \$10,000 toward conceptual design of measures to eliminate the barrier under the freeway. After consulting extensively with resource and regulatory agencies and property owners and assembling partial funding for pre-construction costs, the District applied in 2013 for construction funding under a program jointly administered by the Conservancy and the Metropolitan Transportation Commission ("MTC"). For administrative simplicity, MTC and the Conservancy decided that the project was more appropriate for funding by the Conservancy alone. After District and Conservancy staff determined that a CEQA analysis previously prepared by Caltrans was not adequate for the current form of the project, and that the District lacked the funding and ability to complete a new CEQA analysis and review, Conservancy staff deployed consultants under retainer to work with the District to prepare an initial study and mitigated negative declaration (Exhibit 3).

PROJECT FINANCING

Coastal Conservancy	\$165,000
California Natural Resources Agency (EEMP)	\$350,000
Contra Costa County (Fish and Wildlife Fund)	\$ 40,000
U.S. Fish and Wildlife Service (California Fish Passage Forum)	\$ 40,000
Department of Water Resources (Urban Streams Program)	<u>\$ 76,577</u>
Project Total	\$671,577

The anticipated source of Conservancy funds is the FY 12/13 appropriation to the Conservancy from the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (“Proposition 84,” codified at Pub. Res. Code §§ 75000 *et seq.*). Proposition 84 funds are available for San Francisco Bay Area Conservancy Program projects that protect and restore natural habitat values of coastal watershed lands and are consistent with Chapter 4.5 (the San Francisco Bay Area Program) of the Conservancy’s enabling legislation. (Pub.Res. Code § 75060(c)). As described in the “Consistency with Conservancy’s Enabling Legislation” section, below, the project is consistent with Chapter 4.5 of Division 21 of the Public Resources Code.

Consistent with Pub. Res. Code § 75005(n), the project would restore natural habitat values of the San Francisco Bay watershed by improving physical structures affecting fish passage in Pinole Creek. Proposition 84 requires that, in evaluating potential restoration projects, the Conservancy give priority to projects that meet at least one of the criteria specified in Pub. Res. Code § 75071(a)-(e). The proposed acquisition satisfies at least three of the specified criteria. The project satisfies criterion (a) by removing a barrier to fish and other aquatic life, thereby providing an important habitat linkage between large blocks of accessible habitat upstream of the project site. The project satisfies criterion (b) by retrofitting two poorly designed culverts, thereby improving the biological quality of the watershed. The project advances criterion (e) by including 20% in non-state matching funds (from Contra Costa County, the U.S. Fish and Wildlife Service and permit-related funds deposited by Phillips 66 with the Regional Water Quality Control Board), as demonstrated by the financing summary, above.

All of the contributions from the sources listed above other than the Conservancy and the Department of Water Resources have been committed. The largest portion of funds from the project are derived from the Resources Agency’s Environmental Enhancement and Mitigation Program which utilizes funds appropriated from the Highway Users Tax Account to mitigate the environmental effects of transportation facilities. The District expects EBMUD to provide in-kind monitoring services with an estimated value of \$15,625.

CONSISTENCY WITH CONSERVANCY’S ENABLING LEGISLATION:

The proposed project is consistent with the provisions of Chapter 4.5 of Division 21 of the Public Resources Code, Sections 31160-31165, which state that the Conservancy may award grants in the nine-county San Francisco Bay Area to help achieve stated goals. The project is located in Contra Costa County, which is within the nine-county San Francisco Bay Area, consistent with Section 31162.

Section 31162(b) states that one such goal is “to protect, and enhance natural habitats and connecting corridors...of regional importance.” In addition, under Section 31165, the Conservancy may undertake projects and award grants “for activities that are compatible with the preservation, restoration, or enhancement of ocean, coastal, bay, or watershed resources...” Consistent with sections 31162(b) and 31165, the project will enhance the natural habitat and connecting corridors in Pinole Creek for the benefit of the threatened steelhead which utilize the bay and upper reaches of the watershed.

The project satisfies all the criteria for determining project priority in Section 31163(c):

1. The project is consistent with several approved plans including *The Pinole Creek Watershed Vision Plan* that identifies this project as necessary to restore the health and quality of the Pinole Creek environment to encourage native habitat (p.20), and the state-wide plans discussed in the “Consistency with the Conservancy’s Project Selection Criteria and Guidelines,” below.
2. The project serves a regional constituency by enhancing habitat access for steelhead trout, a special-status species and has the support of state and local conservation interests.
3. The project can be implemented in a timely way as the District is ready to begin construction this year.
4. The design for retrofitting the I-80 culverts provides an opportunity for habitat benefits that could be lost without Conservancy funds because the matching funds will not be available indefinitely and the District has tapped all currently available funding sources.
5. The project includes substantial matching funds as discussed in “Project Financing,” above.

**CONSISTENCY WITH CONSERVANCY’S 2013
STRATEGIC PLAN GOAL(S) & OBJECTIVE(S):**

Consistent with **Goal 11, Objective F** of the Conservancy’s 2013-2018 Strategic Plan, the proposed project will enhance stream habitat for the benefit of the steelhead fishery by removing a barrier to fish passage.

**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:** By removing a barrier to fish migration, the project serves to promote and implement several statewide plans and policies including the:
 - *California Water Action Plan* (California Natural Resources Agency, California Environmental Protection Agency, and California Department of Food and Agriculture, 2014). Goal #4, “Protect and Restore Important Ecosystems,” identifies the elimination of barriers to fish migration as a priority action. The goal references coordinated efforts with CDFW to complete culvert and bridge improvement to provide anadromous fish species access to historic spawning and rearing habitat on smaller watersheds around the state.
 - *Steelhead Restoration and Management Plan for California* (CDFW, February 1996, with updates to Steelhead Tasks in 2013). This CDFW document provides strategies to restore native and naturally produced (wild) stocks of steelhead, including restoring access to historic habitat that is presently blocked.
 - *Central California Coast Steelhead Recovery Plan* (U.S. National Marine Fisheries Service, 2007 Draft). This National Marine Fisheries Service document identifies priority actions to improve the potential for recovery for Central California Coast steelhead, including identification and removal of barriers to migration.
4. **Support of the public:** As shown in the letters attached as Exhibit 5, the project is supported by Congressional Representative Mike Thompson, State Senator Loni Hancock, Assemblymember Tony Thurmond, Contra Costa County Supervisors Federal Glover and John Gioia, Caltrans District 4, the Contra County Department of Public Works, the City of Pinole, and the Friends of the Pinole Creek Watershed.
5. **Location:** The project is located in Contra Costa County, within the jurisdiction of the nine-county San Francisco Bay Area Conservancy Program.
6. **Need:** The grantee has assembled funds from a number of public and private sources and has determined that, without Conservancy funding assistance, the project will not go forward and matching funds will be lost.
7. **Greater-than-local interest:** The purpose of the project is to support the continued existence of the State-listed steelhead. The listing of the species demonstrates that the project is of greater-than-local interest.
8. **Sea level rise vulnerability:** The project is not vulnerable to rising sea level, as it is located approximately one mile from San Francisco Bay and 30 feet above existing sea level.

Additional Criteria

9. **Urgency:** The project is urgent, as its purpose is to support the continued existence of steelhead, a species that is threatened by extinction.
11. **Leverage:** See the “Project Financing” section above.
12. **Readiness:** The grantee has all of the necessary funding in hand, has applications for permits well underway, and has longstanding support from relevant resource and regulatory agencies and community groups.

13. **Realization of prior Conservancy goals:** The San Francisco Bay Area Conservancy Program and the Conservancy as a whole have been working for many years to help remove barriers to migration of migratory fish. This project will result in removal of a barrier to steelhead migration.
15. **Cooperation:** This project has enjoyed many years of cooperation by property owners (Caltrans and Public Works), resource and regulatory agencies and community groups. Going forward, the property owners will grant permits or other permission free-of-charge to enable the project to proceed and EBMUD has agreed to conduct post-project monitoring to track the size of the steelhead population in the creek.

COMPLIANCE WITH CEQA:

Pursuant to the California Environmental Quality Act (“CEQA”), the District, as lead agency, prepared an Initial Study and Mitigated Negative Declaration (“IS/MND”) for the Pinole Creek Fish-Passage Improvement Project. An Initial Study was prepared for the project and sent to the State Clearinghouse for public and agency review on November 11, 2014 for a 30-day agency and public review period. During the comment period, no comments were received by the State Clearinghouse or the District. On January 12, the Board of Directors of the District adopted the IS/MND and a Mitigation Monitoring Program (“MMP”) to be implemented by the District (Exhibit 3). The proposed Conservancy authorization calls for the District to implement and monitor the mitigation measures as provided for in these documents.

CEQA requires consideration of potential environmental effects of discretionary agency actions and approvals, unless exempt. The IS/MND identified a series of construction-related best management practices (BMPs) that avoid the introduction of dirt, debris and other construction waste into Pinole Creek and reduce fire hazards. In addition, the IS/MND provides a series of avoidance and minimization measures would be implemented to protect special status species and wildlife species that have the potential to occur at the site. These BMPs are shown in Tables 2-1 and 2-2 of the IS/MND. A Health and Safety Plan will address potentially contaminated soil and groundwater that may be encountered during excavation.

After application of the BMPs, avoidance measures and Health and Safety Plan, the only potentially significant impacts of the proposed project in the area of cultural resources. Mitigation measures were adopted to ensure that these potential impacts to cultural resources are avoided or reduced to less than significant. The IS/MND notes that Pinole Creek is likely to have been used by Native Americans prior to the arrival of Europeans. While a records search yielded no recorded archeological resources in the project area, the location in the creek suggest that there is a high potential for unrecorded Native American archeological resources to be present. Absent mitigation measures, the project could cause a substantial adverse change in the significance of an archaeological resource and could result in directly or indirectly destroying a unique paleontological resource or site or unique geologic feature.

To avoid or reduce these potential impacts to less than significant, the District adopted two mitigation measures. A summary of the measures is provided below and the full text is included in the Mitigation and Monitoring Plan (“MMP”) in Exhibit 3 to this staff recommendation.

MM CUL-1 Inadvertent Encounter of Undiscovered Archeological and/or Human Remains (Summary) All site workers will be trained to recognize potential artifacts and human remains.

In the event that potential artifacts or remains are encountered, protocols for stopping work and notifying the coroner and the Native American Heritage Commission, and proper handling of artifacts or remains and will be followed.

MM CUL-2 Inadvertent Encounter of Undiscovered Paleontological Resources. (Summary) In the event that paleontological resources are encountered, work within 50 feet shall be suspended and protocols for notifications, assessments and management will be followed.

Conservancy staff has independently reviewed the District's Initial Study, MND, and MMP for the proposed project and recommends that the Conservancy find that the project as conditioned avoids, reduces, or mitigates the possible significant environmental effects to a level of insignificance and there is no substantial evidence that the project, as mitigated, will result in significant effect on the environment as defined in 14 California Code of Regulations §15382.

Upon approval, staff will file a Notice of Determination for this project.