

State of California
Department of Fish and Wildlife

Memorandum

Date: February 15, 2022

To: Jennifer Norris
Deputy Secretary for Biodiversity and Habitat
California Natural Resources Agency

From: Chad Dibble, Deputy Director
Ecosystem Conservation Division
California Department of Fish and Wildlife

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Subject: Status of Cutting Green Tape Report Implementation

Throughout 2021 and into 2022, the Department of Fish and Wildlife (Department) continues to make significant progress in Cutting Green Tape, both in developing a new program and implementing new efficiencies to improve restoration throughout California. With the support of Governor Newsom and Secretary Crowfoot, the Department has continued work on several permitting and granting initiatives including actions from the California Landscape Stewardship Network's recommendations put forth in their *Cutting Green Tape: Regulatory Efficiencies for a Resilient Environment Report*.

This memo outlines the Department's progress on the actions outlined in Secretary Crowfoot's memo to his leadership team, dated January 7, 2021. Going forward, these actions, in addition to other existing and new efficiency initiatives will be coordinated through the Department's newly established Cutting the Green Tape (CGT) Program. Following last year's one-time investment to pilot the development and implementation of new improvements to granting and permitting, we are excited to have ongoing support starting this year to follow through on these important investments. Last year's piloted effort yielded a proof-of-concept for the CGT Program with real benefits to a focused set of projects. As the CGT Program is implemented statewide, more restoration statewide will occur faster, starting this year. A forthcoming report to the Legislature on the Department's CGT efforts will provide additional information on these efforts.

Progress on the Department's Actions

1. **All entities** within the Natural Resources Agency should review their own procedures for CEQA implementation and as necessary, clarify that the presence of endangered, rare or threatened species, or the use of mechanized equipment, respectively, does not preclude application per se of the CEQA Guidelines Class 33 categorical exemption for small habitat restoration projects (*Recommendation 1 in the report*) and that staff should make every effort to use this action where appropriate.

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Throughout 2021, as part of our pilot CGT initiative, the Department focused on identifying existing challenges to restoration and identifying potential solutions. One takeaway of this analysis was a clear need to improve the universal understanding and consistent use of the various CEQA exemptions potentially applicable to restoration projects. With Secretary Crowfoot's clarification of the Class 33 categorical exemption, and through increased education and outreach, the understanding and applicability of how tools like these are used will result in more projects and useful case studies to share statewide.

Throughout 2020 and 2021, the Department conducted a series of workshops focused on restoration permitting as part of our pilot CGT initiative to highlight new efficiency efforts, but also to offer insights into various permitting options and the eligibility and applicability thereof. These workshops were a success with a high turnout of engaged stakeholders providing meaningful feedback, suggesting ongoing education and outreach efforts like these are valuable and necessary.

The Department's new CGT Program includes as a role going forward, developing and disseminating internal guidance to permitting staff to ensure eligible projects have access to the CEQA Class 33 categorical exemption option. The Department would also support minor revisions to section 15333 of the CEQA Guidelines to clarify and highlight the intent of how the Class 33 categorical exemption is applied. The Department looks forward to continued coordination on this issue.

- 2. The **Department of Fish and Wildlife** should continue to prioritize it's work with the State Water Resources Control Board (SWRCB) to complete the Programmatic Environmental Impact Report that will accompany SWRCB's 401 General Order and Waste Discharge Requirement for large aquatic restoration projects (Recommendation 6 in the report).*

The Department continues to support and participate in this effort through coordination with SWRCB and Sustainable Conservation in the completion of the Programmatic Environmental Impact Report (PEIR).

In June 2021, SWRCB released for public review a proposed General Order and PEIR for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Implementation of Large Habitat Restoration Projects Statewide. The Department formally acknowledged this release with an August 12, 2021 letter offering comments to further refine and streamline our own permitting process to support the PEIR and ensure continuity and efficiency.

Throughout this effort, SWRCB has consulted with and sought input from the

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Department as a CEQA responsible agency and as California's trustee agency for fish and wildlife. The Department has assembled and made available a small team of scientists with species conservation and restoration project expertise to provide substantive input to SWRCB as it developed the proposed General Order and PEIR. Under my direction, this team has coordinated with and supported SWRCB as it developed the proposed Order and PEIR, consistent with Governor Newsom's Executive Order (N-82-20).

The Department team continues to track progress of the PEIR and in coordination with the stakeholders, recently discussed how the newly established CEQA statutory exemption for restoration projects (Senate Bill 155) could complement and support this effort.

- 3. The **Department of Fish and Wildlife** should continue to explore and advance options for permitting large-scale restoration projects by means of a combined approach to a Section 2081(a) take authorization under the California Endangered Species Act and a lake and streambed alteration agreement authorization pursuant to Section 1600, et seq ((Recommendation 7). In doing so, the Department should look for opportunities to ensure consistency with the SWRCB's General Order.*

In each effort to identify new pathways towards increased efficiency in environmental permitting, the Department takes thorough consideration of the complex elements of the process and legal framework for each permit. This approach allows us to balance progressive ideas with a careful consideration of the integrity of the regulatory process. The allocation of new staff to the Department's CGT Program includes a dedicated attorney, for whom the exploration of feasible alternatives to integrating the Department's 2081(a) CESA take authorizations with Lake or Streambed Alteration Agreements (LSA Agreements) will be a top priority of the CGT Program in 2022.

Through our new Restoration Management Permit (RMP) and ability to issue Restoration Consistency Determination, the Department is already consolidating multiple environmental authorizations into fewer permits, with the goal of developing a single master permitting procedure for voluntary restoration projects. In 2022, the Department will investigate both short- and long-term strategies to accelerate shovel-ready restoration project approvals quickly while developing simple, sustainable, and durable integrated restoration permitting options. The RMP, the Restoration Consistency Determination (CD), and an integrated LSA Agreement process are intended to work in conjunction with the SWRCB's proposed General Order, filling a niche similar to the way the Department's HREA approvals complement the existing General Water Quality Certification for Small Habitat Restoration

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Projects (SHRP).

4. Our Agency's **Deputy Secretary for Biodiversity and Habitat** should consult with appropriate regulatory agencies and provide a recommendation on whether to amend CEQA Guidelines to clarify the meaning of "construction activities" for restoration projects using Class 7 and Class 8 categorical exemptions. These exemptions apply to actions by regulatory agencies intended to protect natural resources and the environment. (Recommendation 8 in the report).

As noted earlier, targeted clarification or revision of certain categorical exemptions, including clarifying the meaning of "construction activities" in the Class 7 and Class 8 exemptions by making minor changes to the CEQA Guidelines themselves would provide additional CEQA exemption options for certain restoration projects. The Department looks forward to our continued coordination with the Deputy Secretary on these issues.

5. The **Department of Fish and Wildlife** should coordinate with the State Water Resources Control Board to create an interagency framework and process for prioritizing and permitting restoration projects that are beneficial to aquatic resources to facilitate expedited implementation (Recommendation 9 in the report).

The Department looks forward to expanding our coordination with the SWRCB to develop this interagency framework. This action will be carried out by the Department's new CGT Program starting in 2022.

6. The **Department of Fish and Wildlife** should continue to advance its work with the State Water Resources Control Board and with existing resources to develop an efficient process for joint application and review of permits under HREA (Fish and Game Code, section 1653) and the 401 General Water Quality Certification Order for Small Habitat Restoration Projects (Recommendations 13 and 14). This process could include a joint application, joint tracking or another joint process intended to increase permitting efficiency.

The Department currently works to support this recommendation through coordination of our regional staff and their regional counterparts at the SWRCB, as well as joint consultations with the permit applicant. This coordination results in a collaborative review of SHRP applications to ensure efficient approval of the subsequent application to the Department under our HREA program. The CGT Program continues the effort to further this collaboration and would like to cross-reference our respective guidance on SWRCB and Department websites, as well as incorporating [Sustainable Conservation's HREA Frequently Asked Questions document](#).

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An objective of the CGT Program is to replicate the success of this ad hoc interagency effort in our Northern Region with a more formalized process

across all Department regions. Lastly, as noted earlier, the Department's permitting workshops over the past year have proven an effective means for communicating and clarifying these permitting options and we will look to facilitate future opportunities for continued outreach and education.

Additional Cutting the Green Tape Initiatives

A number of additional Cutting the Green Tape initiatives were also supported under the Department's one-year pilot CGT initiative and will continue under our new CGT Program. The Department received new positions in regional and headquarters functions to support granting, environmental review, and permitting functions. As the program is fully stood up and staff are hired, the objective for the CGT Program is to continue to follow through on these existing and new efficiency improvements, and to support our granting and permitting programs, including developing and implementing new CEQA exemption procedures. Several notable initiatives under the CGT Program are outlined below.

Streamlined Permitting

A major accomplishment in streamlined permitting in 2020 and 2021 was the Department's development of a template "Restoration Management Permit" (RMP), developed after meeting with stakeholders to identify the specific obstacles and constraints they face in our permitting processes. The RMP consolidates one or more of three different take authorizations that restoration

projects may need to obtain into a single streamlined permit. The RMP can authorize take of: (1) endangered, threatened, and candidate species pursuant to CESA; and (2) fully protected species pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. In 2022, the Department will prioritize RMP procedures necessary to develop an efficient means to authorize take of species of special concern and common species via the RMP. Previously, these constituted three separate approvals from at least two different regions or branches within the Department. Depending on the types of take authorizations needed for a restoration project, the RMP is also designed to work in conjunction with LSA Agreements. Throughout 2022, the CGT Program continues to refine and promote the statewide usage of the RMP template.

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Additionally, and in response to strong interest in facilitating programmatic permitting options, the Restoration Permitting Team also worked with the National Oceanic and Atmospheric Administration (NOAA) Fisheries to develop a new process for issuing consistency determinations (CD) for

restoration projects that have received approvals pursuant to a federal programmatic biological opinion (PBO). This process involves the Department's pre-approval of PBOs to ensure general consistency with CESA coupled with an expedited review of project-specific applications. Under this process, all possible conflicts between CESA and the PBO are resolved at the front end, resulting in an expedited CD process that focuses solely on project-specific review of an application for consistency with the PBO. Through this effort, the Department has also confirmed our ability to issue CDs on project-specific biological opinions covering restoration projects. Under existing law, CDs for voluntary restoration projects are exempt from CESA fees. The Department recently issued our first CD for a PBO pursuant to this new process, with several other CDs being planned for issuance in 2022.

CEQA Statutory Exemption for Restoration Projects (SERP)

A new program under the Department's CGT came about in late 2021. Governor Newsom signed Senate Bill (SB) 155, on September 23, 2021, adding Section 21080.56 to California Public Resources Code. This section provides a new CEQA statutory exemption until January 1, 2025, for fish and wildlife restoration projects that meet certain requirements (SERP). The Department's CGT Program is responsible for coordinating with lead agencies seeking SERP concurrence.

The Department unveiled our new SERP process in November 2021, following the enactment of Senate Bill 155, which created a statutory CEQA exemption for restoration projects as defined by the bill.

The SERP process serves to fulfill the requirement that lead agencies obtain the concurrence of the Director that a project meets the qualifying criteria. Our goal was to pilot a process to issue our first project concurrence by year-end.

We are happy to announce that we met this goal, and on December 28, the Director signed the concurrence with the lead agency determination by the North Coast Regional Water Quality Control Board that the Garcia River Estuary Enhancement Project qualifies as a statutorily exempt restoration project under CEQA.

Stakeholder Coordination and Grant Administration

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Preceding the statewide Cutting Green Tape initiative were several stakeholder-supported efforts to address challenges in restoration and develop solutions. The Restoration Leaders Committee (RLC) was first convened by Director Bonham in 2018 to discuss challenges and opportunities facing our grant programs. The RLC developed and presented 18 recommendations for the Director in the topic areas of grant administration, permitting and engineering, and grant program prioritization.

The Department recently conducted a Proposition 1 grant solicitation under focused on Coho recovery in alignment with the Department's existing North Coast Salmon Project (NCSP). This focused solicitation was conceived as part of the Department's CGT to pilot a streamlined and multi-phased application process, with a narrowed focus to award restoration funding within four high priority North Coast Coho Salmon watersheds that incorporate watershed-specific strategies developed through the NCSP.

Throughout all the actions, initiatives, and objectives of the Department in support of Cutting Green Tape, a recurring theme and critical component of this work has relied on the support, input, and partnership of our stakeholders in the restoration community. Going forward, collaboration, education and outreach, and continued learning, will each guide our work, internally and with stakeholders, as we develop, refine, and implement these improvements to ensure the critical restoration work we support can keep pace with threats to our climate and biodiversity.