

Date: December 9, 2010

Attendees: Jim Robins, *Alnus* Ecological
Jonathan Ambrose, NMFS
Rick Macedo, DFG
Jonathan Warmerdam, NCRWQCB
Jim Burke, NCRWQCB
Dave Wright, Campbell Timberland Management
Bill Snyder, CAL FIRE
Pete Cafferata, CAL FIRE
Jim Ambrosius, NMFS
Alydda Mangelsdorf, NCRWQCB
Tom Spittler, CGS

Discussion Items

The meeting focused on 1) the permit flow chart process that Jon Ambrose had developed, 2) next steps for the Soquel Demonstration State Forest restoration project, and 3) permit fee issues for a project in Usal Creek being proposed by Campbell Timberland Management.

I. Permit Pathways

Each agency described the permitting pathways based on current authority and CEQA or NEPA overlays. Following is a summary of the discussion of the permitting pathways.

Federal Permitting Pathways

The clearest nexus to the NMFS current Biological Opinion (BO) is through a federal sponsor such as the Army Corps of Engineers. If the project falls under the Corps Nationwide permit authority and limitations, the Corps notification is a self certification process on the part of the applicant.

We discussed other potential federal partners to create a pathway to the NMFS BO in instances where Corps jurisdiction is not clear. For example, the types of stream channel projects being contemplated fit well with the direction that NRCS has indicated it would like to pursue in California with respect to increasing support for forestry and wildlife projects.

Action Item: *Bill Snyder will contact Steve Smith from NRCS and extend an invitation to engage in the planning process to determine if NRCS has an interest and would like to have an active role in facilitating these types of projects.*

State Permitting Pathways

Department of Fish and Game

DFG permitting authority and processes involve the California Endangered Species Act (CESA) as it relates to “take” of state listed species, the California Environmental Quality Act (CEQA), and Section 1600 issuance of Lake and Streambed Alteration Agreements (LSAA).

For projects funded through DFG’s Fisheries Restoration Grant Program (FRGP), permitting is covered. For non FRGP projects where “take” of state listed species will not occur, CESA would not apply but the applicant would still have CEQA and LSAA requirements. Where “take” is possible, in those instances where the project is consistent with the NMFS programmatic BO, the project proponent can pursue a federal permit and DFG “take” would be covered under the DFG consistency determination. Where the project is not consistent with the BO or will occur in an area not covered by the BO, DFG would have to issue an incidental take permit.

CEQA compliance requirements can be met with an existing Categorical Exemption (CAT EX) provided that; “projects not to exceed five acres in size” (Categorical Exemption 15333). Activities which would result in greater disturbance would require an Initial Study and preparation of a Negative Declaration or Environmental Impact Report (EIR).

LSAA agreements are required for all activities.

Regional Water Quality Control Board

Permits issued by the North Coast Regional Water Quality Control Board can proceed under 401 or 404 permitting authority. Categorical Exemptions can be used to provide CEQA compliance for activities classified as “Small Habitat Restoration Projects”. If the categorical exemption can be used, projects can be covered under a 404 certification which creates a nexus to the Army Corps and NMFS BO for the covered area.

If the project can not be designed to fall under the categorical exemption, a 401 application would be required. At this point a nexus to the Army Corps process could possibly be created that would allow for coverage under the NMFS BO.

Department of Forestry and Fire Protection

The Department of Forestry and Fire Protection (CAL FIRE) permitting authority comes through the Forest Practice Act and associated regulations. Placement of wood or other restoration activities that involve equipment use in a Watercourse and Lake Protection Zone (WLPZ) would generally be prohibited under recently passed Anadromous Salmonid Protection (ASP) rules. Provisions for alternatives to these prohibitions were provided in the rules under 14 CCR 916.9(v).

With consultation with DFG or under other provisions of the “v” rule section, in-stream restoration projects could be approved under the CEQA functional equivalency process. However, the timber operations proposed in the harvesting document would still be subject to permitting by the other agencies. At this point, the clearest path towards securing permits would be to design THP related projects that would fall under the DFG and WQ categorical exemptions and self register under the Army Corps Nationwide Permit to create a federal nexus to the NMFS BO and DFG consistency determination relative to take.

A clear timely pathway for permitting projects that exceed the categorical exemption status still needs to be identified.

Action Item: *Given the complexity of the permitting process, the group agreed to invite Terra Mueller to our next planning meeting to provide a briefing on the Mendocino Coordinated Permitting process. Bill Snyder will take the lead on this aspect.*

Points needing additional clarification

Permitting pathways which need further clarification-The Section 7 pathway without benefit of the federal nexus is more problematic and less well defined. Pursuing this path on a THP by THP basis would be time consuming and would likely be a significant disincentive to landowner participation. This particular pathway will need to be further reviewed particularly given that the existing BO developed by the Santa Rosa NMFS office does not cover NMFS jurisdictional areas out of the Arcata Office.

Development of effective landowner outreach strategies-Work on linking landownership outreach to foster project implementation in priority watersheds was only briefly discussed and needs further discussion at the next meeting.

II. Usal Project

Dave Wright from Campbell Timberland Management described a proposed project for stream restoration activities in the Usal Creek drainage on timberlands owned by the Redwood Forest Foundations. The issue raised was

one of permitting costs for the 20 proposed large wood placement sites which were to be installed in a 2 mile stream segment. Given the number of project sites, the project exceeds the DFG's CAT EX provisions and DFG fees had become an issue of concern to the project proponents. Currently, DFG treats each wood placement site as an activity that triggers a 1600 permit fee. In the case of the Usal project, these additional fees could make the project infeasible.

Rick Macedo indicated that DFG's director determines 1600 fees pursuant to section 1609 of the Fish and Game Code. There are restrictions on what the Director can charge. There does not appear to be a restriction that would prevent the Director from developing a fee structure specific to restoration projects. Section 1609 requires that "fees charged shall be established in an amount necessary to pay the total costs incurred by the department in administering and enforcing this chapter, including, but not limited to, preparing and submitting agreements and conduction inspections".

Action Item: *Jonathan Warmerdam will draft a sign on letter to Fish and Game requesting that the DFG Director consider establishing a separate classification for habitat restoration projects, along with a separate fee schedule and policy guidance for aggregating sites with the objective of structuring fees to facilitate project implementation.*

III. Soquel Demonstration State Forest In-stream habitat restoration project

Next steps in the process for moving forward with the Soquel Creek project on SqDSF were discussed. At this point the funding for *Alnus* Ecological to secure permits is in place. Design and planning steps need to move forward. CAL FIRE and CGS will be responsible for this aspect although funding potentially could be available through *Alnus* through a grant from the Coastal Conservancy. Pete Cafferata handed out a map and a document with photos and notes describing potential large wood placement sites discussed on a streamwalk conducted on November 16th along the East Branch of Soquel Creek within SqDSF..

There is still intent to facilitate elements of the work through activities associated with the Fern Gulch THP that CAL FIRE has submitted. A placeholder will be inserted in the plan to indicate that the in stream work will likely occur. Once planning and design elements are completed, a decision will need to be made as to whether or not to include the planned restoration work into the harvest plan as a major amendment. This approach would be similar to the approach used by Campbell Timberland in their Slaughterhouse Gulch THP/Wood placement project.

It was recognized that the County should be part of the process as the project moves along. The question was raised regarding County authority for state projects on state lands.

Action Item: *Clarification regarding the county and state authorities will be directed to CAL FIRE's Chief Counsel by Bill Snyder*

Action Item: *Jonathan Warmerdam will draft a letter to Fish and Game requesting that the 1600 Committee consider establish a separate classification for habitat restoration projects, along with a separate fee schedule and policy guidance for aggregating sites with the objective of structuring fees to facilitate project implementation.*

Action Item: *CAL FIRE staff will develop an MOU with the NMFS Science Center to formalize an agreement to undertake a rigorous science-based experiment for the SqDSF large wood placement project.*

The next meeting has been calendared for January 27, 2010 for the CAL FIRE Offices in Santa Rosa with a start time of 10AM. (Please note this is a change in location due to a conflict with a Regional Water Quality Control Board meeting on that day.)