



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

DECISION DOCUMENT/FINDING OF NO SIGNIFICANT IMPACT (FONSI)

Castro Cove/Chevron Richmond Refinery Final Damage Assessment and Restoration Plan and Environmental Assessment

National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216-6 (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality regulations at 40 C.F.R. 1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." Following is an explanation of the required criteria relevant to making a finding of no significant impact for the restoration activities proposed in the Castro Cove/Chevron Richmond Refinery Final Damage Assessment and Restoration Plan and Environmental Assessment (DARP/EA). In drawing these conclusions, NOAA relied upon guidance in the NEPA regulations at 40 C.F.R. § 1508.27, which describe the criteria that federal agencies should consider in evaluating the potential significance of proposed actions. In making the findings discussed below, NOAA also relied upon the impacts analysis conducted in the Cullinan Ranch EIS/EIR prepared by the U.S. Fish and Wildlife Service (USFWS) and the preliminary conceptual plan for Breuner Marsh.

Background:

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Natural Resource Trustee Agencies (Trustees), including NOAA, the USFWS on behalf of the Department of the Interior, and the California Department of Fish and Game, prepared the Castro Cove/Chevron Richmond Refinery Final DARP/EA. The DARP/EA assesses damages and evaluates restoration alternatives for natural resource injuries incurred from historical releases of contaminants from the Chevron Product Company (Chevron) refinery in Richmond, California.

Prior to 1987, the Chevron refinery discharged wastewater containing oil and hazardous substances directly into Castro Cove, a small embayment within San Pablo Bay. Although the wastewater discharge was relocated outside of Castro Cove in 1987, some of the sediments inside the Cove retained elevated levels of contaminants, including mercury and polycyclic aromatic hydrocarbons (PAHs). In 2007 and 2008 Chevron undertook a major, on-site cleanup project, removing the most highly contaminated sediments within Castro Cove, in compliance with an order issued by the California Regional Water Quality Control Board. In addition to cleanup costs, Chevron is liable for natural resource damages, which are used to fund environmental restoration projects to compensate the public for the diminished ecological value of injured resources, including contaminated habitats, such as the intertidal mudflat, salt marsh, and other shallow subtidal habitat in Castro Cove.



Restoration Alternatives:

The Trustees cooperatively developed the Final DARP/EA. It examines and evaluates potential projects to restore natural resources in compensation for injuries resulting from the releases into Castro Cove.

The DARP/EA considered, in a public process, a “no action” alternative and many individual projects to address the injured resources. The Trustees rejected the “no action” alternative because it does not compensate the public for interim losses suffered by the resources. CERCLA clearly establishes trustee authority to seek compensation for interim losses pending recovery of natural resources. Furthermore, technically feasible alternatives for restoration are available. For the remaining active restoration alternatives, the Trustees developed criteria to evaluate and prioritize the entire suite of projects that were under consideration. These criteria included each project’s ability to restore resources of the type impacted by the release of oil and hazardous substances in Castro Cove, and relevant federal and state law provisions governing use of damages for natural resources. Based on an evaluation under these criteria, the Trustees selected an alternative that provides funding for the following two restoration projects:

- Cullinan Ranch Restoration
- Breuner Marsh Restoration

Before being brought to the attention of the Trustees, both of these projects were already slated for planning/implementation by their implementing agencies. Therefore, they are, or will be, the subject of further environmental analysis in another document or documents. The environmental impacts of the Cullinan Ranch project were evaluated fully in the Cullinan Ranch Restoration Environmental Impact Statement/Environmental Impact Report (EIS/EIR), which was prepared by the USFWS San Pablo Bay National Wildlife Refuge (the USFWS is also one of the Trustee agencies for Castro Cove). USFWS issued the Cullinan draft EIS/EIR in April 2008 and the final EIS/EIR in May 2009; USFWS has not yet issued the Record of Decision. For Breuner Marsh, the project implementer (East Bay Regional Park District, or “EBRPD”), will be required to prepare a detailed plan for the restoration of the site and to produce environmental compliance documentation under the California Environmental Quality Act. Thus, this restoration project will not be ripe for detailed analysis of environmental consequences until after specific project implementation details are more fully developed in that planning process. The proposed action under this DARP/EA, which provides partial funding for these projects, is not expected alter them in any way that will incrementally increase impacts beyond those that have been or will be identified and planned for by the project implementers.

Public Involvement:

The Trustees released a draft DARP/EA on November 25, 2008, for public review and received public comments through January 9, 2009. In addition, the Trustees held a public meeting in Richmond on December 17, 2008. Public comments were split nearly evenly between those that were supportive of the Trustees’ proposal in the Draft DARP/EA and those that were critical. Those that were critical generally preferred a larger expenditure on projects within Richmond (Cullinan Ranch is approximately 12.5 miles from Castro Cove). The Trustees carefully

considered public comments, amended the draft DARP/EA, and responded to those comments (see Appendix B in the Final DARP/EA). Significantly, the Trustees reallocated a portion of the restoration funds from Cullinan Ranch to Breuner Marsh, which still provides an appropriate amount of compensatory restoration.

Alternatives Considered:

The DARP/EA evaluates an array of project alternatives for restoration of tidal and subtidal habitats against certain criteria. The initial screening criteria were that a project must provide resources “of the same type and quality and of comparable value” to the injured habitats in Castro Cove (NOAA 1995) and that a project must be within reasonable proximity to Castro Cove. Additional criteria included the following: technical feasibility, cost-effectiveness, time to provide benefits, duration of benefits, avoidance of adverse impacts, likelihood of success, multiple resource and service benefits, public health and safety, and compliance with applicable federal, State, and local laws and policies. The Trustees selected the two most meritorious projects based on this evaluation.

Ten projects (seven tidal wetlands projects and three subtidal projects) underwent detailed evaluation. Two projects (Invasive Spartina and McNabney Marsh) were dropped from further consideration because funding was no longer needed. The specific projects which the Trustees considered are listed below with the selected projects shown in italics.

Tidal Wetlands:

- *Cullinan Ranch*
- *Breuner Marsh*
- Pacheco Marsh
- Baypoint Marsh
- Historical Richmond Marsh
- Wildcat Marsh
- Hoffman Marsh

Subtidal Habitat:

- Eelgrass
- Native Oyster
- Creosote Piling Removal

Environmental Consequences:

The National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) require an analysis of the effects of government actions on the quality of the human environment. In addition, Council on Environmental Quality (CEQ) regulations implementing NEPA recommend the avoidance of repetitive discussions when more than one environmental document addresses (or will address) the same action(s) (as is the case for the two projects selected to receive partial funding in this Final DARP/EA).

The Cullinan Ranch Restoration Project is the subject of a separate and nearly-completed NEPA analysis in the form of an EIS/EIR, which contains a full impacts analysis. The Trustees carefully considered this analysis when evaluating and subsequently selecting this project. The Breuner Marsh Restoration Project is still at an early stage of planning that will include the appropriate environmental analysis. However, at this time, only the preliminary conceptual plan for Breuner Marsh was available for Trustee review. Accordingly, as more site-specific information is developed regarding the Breuner Marsh Project, it may be necessary to conduct further impacts analysis. Trustee funding of either project will be conditioned upon the implementer complying with all legal requirements for analysis of environmental impacts.

As noted above, the selected projects were already set for planning/implementation prior to Trustee involvement. Also, funding from the Trustees is not expected alter the projects in any way that will incrementally increase impacts beyond those that have been or will be identified and planned for by the project implementers. Thus, the addition of Trustee funding is expected to be without significant adverse effects to soil, air quality, water resources, floodplains, wetlands, vegetation, fisheries, wildlife, visual quality, aesthetics/recreation, wilderness, subsistence, cultural resources, park management, or the local economy.

(1) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in Federal Management Plans (FMPs)?

Response: No. As documented in the DARP/EA, the Trustees do not expect the selected projects to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act. Any short-term and temporary localized impacts (such as increased turbidity) will be minimized by the use of best management practices (BMP's).

A full analysis of the effects of the Cullinan Ranch project is presented in the EIS/EIR for that project. The proposed actions in this DARP are not expected to alter the project in such a way as to change the level of impact from that which was already expected and planned for. Funding of a portion of the Cullinan Ranch project may lead to minimal adverse effects to designated essential fish habitat (EFH). This is explained in the July 31, 2008, comment letter from the National Marine Fisheries to the USFWS confirming that the project may have minor adverse impacts to certain EFH identified under the Magnuson-Stevens Fishery Conservation and Management Act, but that such effects were minimal and short-term in nature and so did not warrant any conservation measures to minimize, mitigate, or otherwise offset those effects.

Based on preliminary plans, the Bruener Marsh restoration action is not expected to cause substantial damage to the ocean and coastal habitats or designated essential fish habitat (EFH).

(2) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

Response: No. The selected projects are not expected to have a substantial impact on ecosystem function and species biodiversity. Both of the projects are designed to improve habitat function through the conversion of what at present are principally terrestrial areas into diverse wetland ecotones. Because these projects are intended to restore natural resources, they are expected to cause a net increase to habitat productivity and improve ecosystem function. While there will be certain changes resulting from the conversion of one habitat type to another as discussed in question (1) above, the proposed actions are not expected to alter the project in such a way as to increase the level of impact beyond that which was already expected and planned for.

(3) Can the proposed action reasonably be expected to have a substantial adverse impact on public health and safety?

Response: No. The selected restoration projects are not expected to have any substantial adverse impacts on public health and safety.

(4) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?

Response: The proposed action is not expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species. For the Cullinan Ranch project, the USFWS conducted consultations under Section 7 of the Endangered Species Act both internally and with NOAA. The NOAA consultation concluded that any adverse impacts would be insignificant and short term, and the USFWS consultation resulted in a “no jeopardy” opinion.

According to the USFWS in the Cullinan Ranch Draft EIS/EIR, implementation of the Cullinan restoration will result in an increase of approximately 1,525 acres of tidal marsh habitat, including tidal marsh vegetation, meandering tidal sloughs, and upland refugia. Anticipated increases in these habitats through restoration activities would result in an increase in subtidal habitat available for anadromous fish that currently inhabit adjacent subtidal aquatic habitat. Anticipated increases in subtidal habitats through restoration activities would also result in a beneficial effect for special status fish species in the Napa River and San Pablo Bay. There would also be a beneficial effect to other special status species including the black rail, San Pablo song sparrow, Suisun shrew, and plants such as soft bird’s beak and Mason’s lilaeopsis.

Based on preliminary plans, the Bruener Marsh restoration action is not expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species.

(5) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response: No. The Trustees do not expect there to be significant adverse social or economic impacts interrelated with natural or physical environmental effects of the selected projects.

(6) Are the effects on the quality of the human environment likely to be highly controversial?

Response: No. The environmental effects of the selected projects are not expected to cause controversy. During the public comment period for the Draft DARP/EA, some members of the public expressed concern about the allocation of funding between the two selected projects. However, the concerns that were expressed were not related to adverse impacts; rather, they were related to the geographic distribution of beneficial impacts. Specifically, some commenters requested that a greater portion of the restoration funds be spent within the City of Richmond. In the Final DARP/EA the Trustees allocated a larger portion of the restoration funds to Breuner Marsh, which in turn will leverage an additional \$1 - \$2 million for that project.

(7) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas?

Response: No. The Trustees do not expect the selected projects to result in substantial adverse impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas. The impacts from the proposed action will not adversely affect districts, highways, structures or objects listed on the National Register of Historic Places, or cause loss or destruction of significant scientific, cultural, or historical resources. Overall, wetlands will be created by this project, and no functioning farmlands will be affected. Historically, the area of the project was predominantly tidal marsh in the floodplain of the Napa River. Around the turn of the century the proposed project area was leveed for agricultural purposes. The Cullinan Restoration project as well as the Bruener marsh restoration project would restore a mosaic of wetland and associated habitats to benefit estuarine biota including waterfowl, shorebirds, fishes, and small mammals.

(8) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: No. The Trustees do not believe that the proposed restoration projects pose any uncertain effects or unknown risks to the human environment. The areas in which the projects will be implemented are well known to the project implementers, and none of the project methods that are expected to be used are unique, controversial, or untried. The Trustees expect the project implementers to use standard methods for marsh creation that have been used frequently and with great success throughout the San Francisco Bay area.

(9) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

Response: No. The DARP/EA summarizes potential overall cumulative impacts of implementing the selected projects in conjunction with other known past, proposed or foreseeable closely related projects that could potentially add to or interact with the these projects within the affected area. As described in the DARP/EA, the actions to be funded are not expected to result in additional incremental effects that are significant when evaluated cumulatively with other projects within the affected area.

(10) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

Response: No. The selected projects are not expected to impact any cultural, scientific, or historic resources. The Trustees are aware of no previously recorded archeological sites located in the area of the proposed projects. The projects are also not expected to adversely impact any roadways.

(11) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

Response: No. The selected projects remove non-native species from areas that currently support them, and do not promote the introduction or spread of invasive species. Existing San Francisco Bay invasive species monitoring and control programs will continue to be required to prevent the spread of invasive species that already occur in the Bay into the newly restored areas.

(12) Is the proposed action likely to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration?

Response: No. The selected projects are not expected to set precedents for future actions that would significantly affect the human environment or represent a decision in principle about a future consideration. In fact, all of the project concepts (e.g., marsh creation) are extensions of well established and frequently used restoration methods.

(13) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

Response: No. Implementation of the selected projects would not require any violation of federal, state or local laws designed to protect the environment. The Trustees will condition the use of Castro Cove settlement funds on the proposed restoration actions being implemented in compliance with all applicable laws.

(14) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response: No, the selected projects will not result in a substantial cumulative adverse effect on target species or non-target species. The restoration projects' primary goal is to

compensate for injured natural resources or services lost due to the releases into Castro Cove.

DETERMINATION

Based upon an environmental review and evaluation of the DARP/EA for the Castro Cove/Chevron Richmond Refinery as summarized above, and upon the Cullinan Ranch EIS/EIR, NOAA has determined that implementation of the restoration plan does not constitute a major Federal action significantly affecting the quality of the human environment under the meaning of Section 102(2) (c) of the National Environmental Policy Act of 1969 (as amended). Accordingly, an environmental impact statement is not presently required for this action. However, the Breuner Marsh Restoration Project will be subject to further environmental review and NOAA may reconsider this issue in the future. The DARP/EA is available upon request from Greg Baker, NOAA Regional Restoration Coordinator, at (650) 329-5048.

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for

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6-21-2010

Date