

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
CALIFORNIA ENDANGERED SPECIES ACT  
INCIDENTAL TAKE PERMIT  
NO. 2081-2019-052-07**

**Lind Tug and Barge, Inc.  
Lind Tug and Barge, Inc. Oyster Shell Mining Project**

**CEQA FINDINGS**

**INTRODUCTION:**

The California Department of Fish and Wildlife (CDFW) has prepared these findings to document its compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 *et seq.*). CDFW is a responsible agency under CEQA with respect to the Lind Tug and Barge, Inc. Oyster Shell Mining Project (Project) because of its permitting authority under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*). (See generally Pub. Resources Code, §§ 21002.1, subd. (d), 21069; CEQA Guidelines, § 15381; see also Cal. Code Regs., tit. 14, § 783.3, subd. (a).)<sup>1</sup> CDFW makes these findings under CEQA as part of its discretionary decision to authorize Lind Tug and Barge, Inc. (Permittee) to take incidentally Central Valley Spring-run Chinook Salmon (*Oncorhynchus tshawytscha*), Sacramento River Winter-run Chinook salmon (*Oncorhynchus tshawytscha*), and Longfin smelt (*Spirinchus thaleichthys*)(hereafter, collectively referred to as Covered Species) during implementation of the Project. (See generally Fish & G. Code, § 2081, subd. (b); Cal. Code Regs., tit. 14, § 783.4.). The Central Valley Spring-run Chinook salmon and Longfin smelt are designated as threatened species under CESA. (Cal. Code Regs., tit. 14, § 670.5, subd. (b)(2)(C)] and (b)(2)(E), respectively). Sacramento River Winter-run Chinook salmon is designated as an endangered species under CESA. (Cal. Code Regs., tit. 14, § 670.5, subd. (a)(2)(M)).

CDFW is a responsible agency under CEQA with respect to the Project because of prior environmental review and approval of the Project by the lead agency, California State Lands Commission (CSLC). (See generally Pub. Resources Code, § 21067; CEQA Guidelines, § 15367.) CSLC analyzed the environmental impacts associated with implementation of the Project in a Mitigated Negative Declaration Lind Tug and Barge, Inc. Oyster Shell Mining Project (MND) (SCH No. 2018062075), and approved the Project on December 04, 2018. In so doing, CSLC imposed various mitigation measures for impacts to the Covered Species as conditions of Project approval and concluded that Project-related impacts to the Covered Species could be substantially lessened with implementation of mitigation and avoidance measures, such that the impacts would be less than significant.

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<sup>1</sup> The “CEQA Guidelines” are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

As approved by CSLC, the Project involves mining relic oyster shell deposits of the native oyster (*Ostrea lurida*) in South San Francisco Bay on a portion of CSLC lease No. PRC 5534.1. Oyster shell is mined via a hydraulic suction dredge. The shell is washed and then stored on an adjacent hopper barge. The harvested shell is processed at an upland facility for a variety of uses including dietary supplements for livestock and humans, decorative stone, and as a soil amendment. The Project site is within the range of the Covered Species and is known to support individuals of the species. Mining of the Project site will result in the loss of habitat for the Covered Species and take of the Covered Species as defined by Fish and Game Code is expected. (Fish & G. Code, § 86.) These impacts fall within CDFW's permitting jurisdiction under CESA. (*Id.*, §§ 2080, 2081, subd. (b).)

As a responsible agency, CDFW's CEQA obligations are more limited than those of the lead agency, in that CDFW is responsible for considering only the effects of those activities involved in the Project which it is required by law to carry out or approve. Thus, while CDFW must consider the environmental effects of the Project as set forth in the CSLC Mitigated Negative Declaration, CDFW has responsibility to mitigate or avoid only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve. (Pub. Resources Code, § 21002.1, subd. (d); CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g).) Accordingly, because CDFW's exercise of discretion is limited to issuance of an Incidental Take Permit (ITP) for the Project, CDFW is responsible for considering only the environmental effects that fall within its permitting authority under CESA. (See generally *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4<sup>th</sup> 924, 935-941.) Indeed, with respect to all other effects associated with implementation of the Project, CDFW is bound by the legal presumption that the Mitigated Negative Declaration fully complies with CEQA. (Pub. Resources Code, § 21167.3; *City of Redding v. Shasta County Local Agency Formation Commission* (1989) 209 Cal.App.3d 1169, 1178-1181; see also CEQA Guidelines, § 15096, subd. (e); Pub. Resources Code, § 21167.2; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4<sup>th</sup> 1112, 1130.)

## **FINDINGS:**

CDFW has considered the Mitigated Negative Declaration adopted by CSLC as the lead agency for the Project.

CDFW finds that the mitigation measures imposed as conditions of Project approval by CSLC, along with the mitigation measures and Conditions of Approval set forth in CDFW's ITP for the Project, will ensure that all Project-related impacts on the Covered Species are mitigated to below a level of significance under CEQA.

CDFW finds that issuance of the ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, CDFW finds adherence to and implementation of the conditions of Project approval adopted by the lead agency, as well as adherence to and implementation of the Conditions of Approval

imposed by CDFW through the issuance of the ITP, will avoid or reduce such potential effects to below a level of significance.

The following measures and others set forth in CDFW's ITP for the Project will avoid to the extent feasible and mitigate to below a level of significance all Project-related impacts on the Covered Species:

- A. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities and shall also obtain approval in advance in writing if the Designated Biologist must be changed.
- B. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.
- C. Permittee shall purchase 0.20 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank and provide CDFW documentation of the purchase prior to initiating Covered Activities or 30 days after the effective date of this ITP, whichever occurs first.
- D. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 6.3 into a Quarterly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Quarterly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of this ITP's

approval, the CDFW Regional Representative is Arn Aarreberg (Arn.Aarreberg@wildlife.ca.gov) and Headquarters CESA Program email is CESA@wildlife.ca.gov. CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.


- E. Mining shall halt for two months each year from February through June. Each year by January 31, Permittee shall notify the Regional Representative of the months in which mining will cease.
- F. Permittee shall install and operate a positive barrier fish screen on the drag head intake pipe vent as well on the water intake for the wash water flowing to the rotating trommel wash screen to protect the Covered Species from entrainment. The screen shall be in place during all mining events. The screen shall be in compliance with CDFW fish screen criteria.
- G. All equipment operated within San Francisco Bay shall be checked and maintained prior to and between mining events to prevent leaks of material that if introduced to the water could be deleterious to the Covered Species. No equipment maintenance or fueling shall be done within or near any water body where petroleum products or other pollutants from the equipment may enter these areas. Fuel and other material stored on the barge or dredge tugboat shall be stored in a plastic tub to contain leaks or spills. Spill equipment such as booms, drip pans, and absorbent pads shall be on-board and ready to deploy in the event of a spill.

CDFW finds that the Mitigation Monitoring and Reporting Program in Attachment 1 of CDFW's ITP for the Project will ensure compliance with mitigation measures by requiring the Permittee to monitor and report progress in implementing those measures for review by CDFW staff.

*The Mitigation Monitoring and Reporting Program is adopted.*

*The Project is approved.*

DATE: January 10, 2020

By:   
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Craig Shuman, Regional Manager  
Marine Region  
DEPARTMENT OF FISH AND WILDLIFE