21 CONSULTATION AND COORDINATION

This chapter provides an overview of the agency consultation and other regulatory requirements and the scoping and public involvement process for the action alternatives.

21.1 CONSULTATION AND REQUIREMENTS

21.1.1 Federal Endangered Species Act

Threatened and endangered species are listed under the provisions of Section 4 of the Federal Endangered Species Act (FESA); prohibitions in Section 9 provide for substantial protection of these listed species. Through Section 7 and Section 10 processes, U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) ensure that activities undertaken by federal agencies and nonfederal entities do not result in jeopardy of listed species or adverse modification of critical habitat.

If federally listed species may be affected, the federal lead agency must informally consult with USFWS and/or NMFS to assess the consequences of its actions and to determine whether formal consultation is warranted. USFWS is proposing to issue a Section 10 incidental take permit (ITP), which is a federal action that triggers Section 7 consultation requirements under the action alternatives. As the federal action agency for the action alternatives and permit, USFWS would consult internally pursuant to Section 7.

USFWS would initiate internal consultation following the submission of the Section 10 permit application package by the Yolo Habitat Conservancy (Conservancy). If USFWS concludes that a chosen action alternative is not likely to adversely affect a listed species, then no formal consultation would be conducted and no biological opinion (BO) would be prepared. If the chosen action alternative is likely to result in adverse effects on a listed species, then USFWS would prepare a BO describing how the chosen action alternative will affect the listed species. The USFWS's opinion would be either a jeopardy opinion or a no-jeopardy opinion. A jeopardy opinion concludes the chosen action alternative would jeopardize the continued existence of a federally listed species or would adversely modify designated critical habitat. Under this finding, the BO must suggest "reasonable and prudent alternatives" that would avoid jeopardy.

If the USFWS issues a no-jeopardy opinion, this opinion may include "reasonable and prudent measures" to minimize adverse effects on listed species and an "incidental take statement" that specifies the allowable amount of take that may occur as a result of the chosen action alternative.

21.1.2 National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, requires federal agencies to take into account the effects of their undertaking on properties eligible for listing in the National Register of Historic Places (NRHP). The issuance of an ITP is a federal undertaking subject to Section 106 of the NHPA. The potential effects of the action alternatives on cultural resources, including properties listed or eligible for the NRHP, and any necessary measures to avoid or reduce impacts on these resources, are described in Chapter 12, *Cultural Resources*. As presented in that chapter, the action alternatives are not expected to result in any significant effects on cultural resources. Due to the regional nature of the Proposed Action Alternative, the location of individual projects cannot be known at this time and based on requirements of existing policies (as described in Chapter 12, Cultural Resources), USFWS has made a preliminary determination that the Proposed Action Alternative will have a less-than-significant effect on historical properties. When the Permittees identify site-specific projects that contain specific information, the

type of activities and where they occur, the Conservancy will review the work plan for those activities and assess the level of work that may be necessary to ensuring compliance with Section 106 on a site specific project-by-project basis with the State Historic Preservation Officer (SHPO).

21.1.3 Farmland Protection Policy Act

The Farmland Protection Policy Act (FPPA) of 1981 requires federal agencies to consider action alternatives that minimize or avoid adverse impacts on important farmland. As described in Chapter 6, *Agricultural Resources*, the FPPA does not apply to federal permitting (7 CFR § 658.2[a][1][i]).

21.1.4 Clean Air Act

Section 176(c) of the Clean Air Act (CAA) requires federal agencies to ensure their actions are consistent with the CAA and with federally enforceable state implementation plans (SIPs), also known as air quality management plans. The conformity review process is intended to ensure federal agency actions will not cause or contribute to new violations of any federal ambient air quality standards; will not increase the frequency or severity of any existing violations of federal ambient air quality standards; and will not delay the timely attainment of federal ambient air quality standards.

The action alternatives are within an area designated by EPA as severe nonattainment for the eight-hour ozone standard, moderate nonattainment for the $PM_{2.5}$ standard, and attainment for the one-hour ozone, PM_{10}, and CO standards (EPA 2016). Consequently, to fulfill general conformity requirements, EPA requires a general conformity applicability analysis to identify whether the total ozone emissions for the action alternatives are subject to the General Conformity rule. As described in Chapter 15, *Air Quality*, a general conformity applicability analysis was performed, and emissions were evaluated to determine if they would exceed the applicable de minimis levels. A General Conformity Determination is not required, as it was concluded emissions would likely not exceed the de minimis thresholds.

21.1.5 Migratory Bird Treaty Act

Migratory birds are protected by USFWS under the provisions of the Migratory Bird Treaty Act (MBTA) of 1916 as amended (16 U.S.C. Chapter 7, 703-712) which governs the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests. The take of all migratory birds is governed by the MBTA's regulation of taking migratory birds for educational, scientific, and recreational purposes and requiring harvest to be limited to levels that prevent over utilization.

Section 704 of the MBTA states the Secretary of the Interior is authorized and directed to determine if, and by what means, the take of migratory birds should be allowed and to adopt suitable regulations permitting and governing take. The Secretary of the Interior, in adopting regulations, is to consider such factors as distribution and abundance to ensure take is compatible with the protection of the species. This guidance would be utilized in informal consultation on any such activities within the Plan Area for any action alternative.

21.2 LEAD AND COOPERATING AGENCIES AND STAKEHOLDERS

The Yolo HCP/NCCP EIS/EIR was prepared under the combined efforts of the following partners.

- USFWS
- CDFW
- Yolo Habitat Conservancy

Yolo Habitat Conservancy is the CEQA lead agency. USFWS is the federal lead agency pursuant to NEPA. CDFW is a CEQA responsible and trustee agency. To comply with both CEQA and NEPA, these agencies combined efforts to notify stakeholders, the public, agencies, and tribes of the proposed permits and intent to prepare a joint EIS/EIR.

For more information on the public input process and NEPA/CEQA scoping, please review Section 1.10.1, *EIS/EIR Public and Agency Involvement Process* through Section 1.10.3, *Draft EIS/EIR Public Review* in Chapter 1, *Introduction*.

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