

Habitat Restoration and Enhancement (HRE) Act /Assembly Bill (AB) 2193

Eligibility and Application Guidance/Frequently Asked Questions (FAQs)*

General Information and Recommendations

The Habitat Restoration and Enhancement (HRE) Act (AB 2193) is an alternative and expedited approval process for voluntary small-scale habitat restoration projects that would otherwise require approvals by the California Department of Fish and Wildlife (CDFW) under Fish and Game Code Secs. 1602 (Lake and Streambed Alteration Agreement) and/or 2081 (California Endangered Species Act - Incidental Take Permit). Use of the HRE Act process is voluntary, and project applicants can choose the traditional permitting route or the expedited process under HRE.

The HRE Act provides an alternative to these permitting requirements in one application, as well as simplified monitoring requirements, including the option to submit the monitoring plans/reports from other acquired permits instead. HRE Act approval is linked to the State Water Resources Control Board's (SWRCB) Amended General Order for Clean Water Act Sec. 401 General Water Quality Certification for Small Habitat Restoration Projects - all projects must be eligible under the terms of this General Order, even if they are receiving a different State or Regional Water Board approval, in order to utilize the HRE Act process. This linkage allows for coordination of the two processes and time savings from use of common application materials and content.

Contact Sustainable Conservation's Accelerating Restoration Team at restoration@suscon.org to arrange for a **free permitting consultation** on using the HRE Act for your project.

Forms and Approval Timeframes:

There are two distinct approval pathways under HRE and each has a separate application. If coverage has already been acquired under the SWRCB General Water Quality Certification for Small Habitat Restoration Projects, applicants should use the HRE Section **1653 process/form**, which allows them to seek CDFW approval within 30 days using a very brief checklist style application. If a project has or will be receiving other State or Regional Water Board authorizations, the applicant should apply using the Section **1652 process/form**, which asks for additional information (similar to a SWRCB General Order application) and allows for CDFW approval within 60-days.

Application Process and Recommendations:

While it is not required by the Act, we are highly recommending a pre-application meeting with DFW regional staff to get feedback on a project and its environmental protection measures, so a complete application with sufficient technical detail can be prepared. DFW regional staff can also provide valuable insight about local watershed conditions, including likely presence of sensitive species and other information.

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In comparison to the traditional Sec. 1602 Lake and Streambed Alteration Agreement (LSAA) and Sec. 2081 California Endangered Species Act (CESA) Incidental Take permit processes, the HRE application must be “front-loaded” with requested information to provide a complete application and project description.

In both HRE section 1652 and 1653 processes, the environmental and species protection measures must be sufficient to meet the requirements of the statute in order for the application to be deemed complete. For the section 1653 process, an applicant must identify adequate species protection measures from restoration manuals. CDFW review focuses on whether the application contains the information required by the statute, resulting in either a “yes” or “no” decision on approval of the application by the CDFW Regional Manager. Only a determination of ineligibility or inconsistency requires consultation with the CDFW Director. While both traditional permitting processes and HRE require complete identification of protection measures, HRE is designed to reduce extensive back and forth discussion/exchanges between the applicant and CDFW reviewer, which provides for a quicker review and approval and a more predictable process.

Applications submitted to CDFW must include a final design (90% or better) and contain all appropriate environmental and species protection measures, along with revegetation, water quality protection, monitoring and reporting plans, property access agreement, and other details, so the reviewer can determine the application to be complete and eligible. All design guidelines and references, and specific environmental protection measures must be clearly referenced in the application. Make no assumptions of the CDFW reviewer’s background knowledge on the project and provide a clear rationale for the design choices that have been made, particularly those that have temporary or permanent impacts.

Include all avoidance and environmental protection measures from your project CEQA document, planning documents, or other permit applications into the project design. Include only measures relevant to the project.

In the application, reference relevant information from the various project plans, such as biological and hydrological studies, design drawings, engineering plans, revegetation plan, monitoring and reporting plans, etc. Attach these documents to the application, if they are available.

Exclusions:

This process cannot be used for compensatory mitigation and is only for voluntary, environmentally beneficial projects. Make it clear that your project is voluntary and enhances and protects the environment.

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1. What approvals are covered under the HRE Act/AB 2193?

The HRE Act provides alternative approval for the Sec. 1602 LSAA and Sec. 2081 CESA Incidental Take Permit. This process was also designed to be coordinated with other existing permit processes, in particular the SWRCB's General Water Quality Certification for Small Habitat Restoration Projects. All projects must be eligible under the terms of this General Water Quality Certification, even if they are receiving a different State or Regional Water Board approval, in order to utilize the HRE Act process.

See: http://www.swrcb.ca.gov/water_issues/programs/cwa401/generalorders_wb.shtml

2. How long does it take to get approval for a qualified restoration project?

30 days (per Sec. 1653 of the Fish and Game Code, HRE Act) for applicants who submit a complete application and have a Notice of Applicability (NOA) under the SWRCB General Water Quality Certification for Small Habitat Restoration Projects.

60 days (per Sec. 1652 of the Fish and Game Code, HRE Act) for applicants who submit a complete application and do not have an NOA under the SWRCB General Water Quality Certification for Small Habitat Restoration Projects (i.e., have other types of water quality certifications or are exempt), but meet the eligibility requirements of the Certification.

3. What CEQA documents/CEQA compliance can be used with the Sec. 1652 process?

All CEQA documents or Notice of Exemptions (NOE) can be used, as long as the proposed project could be done as a stand-alone project and would otherwise be eligible for a Categorical Exemption. (An example could be projects included under a programmatic CEQA document, where a programmatic document was done because projects in an environmental program have similar characteristics, regulatory requirements, and protections in place, although the projects could be done independently of one another. FRGP projects and Partners in Restoration Programmatic Mitigated Negative Declaration (MNDs) could fall into this category.) The HRE Act, Sec. 1652(b)(7) allows for use of Categorical Exemption 15333 as well as other types of CEQA documents, however the SWRCB General Water Quality Certification for Small Habitat Restoration Projects requires projects be eligible for the 15333 exemption. Projects covered by this exemption, or those included within a programmatic CEQA MND or Environmental Impact Report (EIR) that would otherwise individually qualify for the CEQA 15333 (or "Class 33") exemption, are eligible. The project must meet the size parameters listed in the SWRCB General Water Quality Certification for Small Habitat Restoration Projects (currently a maximum of 5 acres and 500 cumulative linear feet of streambank or shoreline).

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4. How does an applicant address CEQA for a Sec. 1652 application?

If a project is not covered under an existing CEQA document and qualifies for a CEQA Class 33 exemption, it is recommended that the sponsoring agency (a district, city/county or other government agency) file a Notice of Exemption (NOE) under the appropriate Categorical Exemption (15333) with findings supporting the use of the exemption. The findings should mirror the section 1652 application narrative, showing that with implementation of all environmental and species protection measures, there will be no potentially significant adverse impacts to the environment. We recommend submitting a copy of this documentation with your application.

Sustainable Conservation has observed that the Class 33 exemption could be utilized more broadly and encourages agencies to evaluate their projects under this valuable time/resource saving CEQA option.

5. What projects are qualified for the Sec. 1653 process?

Project applicants who have received a NOA under the SWRCB General Water Quality Certification for Small Habitat Restoration Projects are eligible for 30-day approval under Sec. 1653. Species protection measures (if appropriate) must be incorporated into the project design and included with the NOA and application fee. Please refer to the Sec. 1653 Checklist on [CDFW's HRE Act website](#).

6. Can FRGP-funded projects use the HRE Act/AB 2193 process?

Yes, FRGP (Fisheries Restoration Grant Program) projects are eligible for the HRE Act process (assuming they meet the size limitations and would qualify for a Class 33 exemption), however, it is recommended that FRGP project grantees only use the HRE Act process (Sec. 1652, since FRGP provides water quality certification for all funded projects that comply with the California Salmonid Stream Habitat Restoration Manual) when they cannot reasonably expect CDFW staff to complete Secs. 1602 LSAA and 2081 CESA permitting in 60 days. Check with your FRGP staff person to determine which process is most appropriate and whether incidental take permit coverage under CESA has already been provided for.

7. What level of detail is needed in the project description?

Provide as much detail as possible in the project description. Assume the reviewer knows nothing about your project. Clearly explain what you are doing (i.e. installing large woody material and a rock weir) and why you are undertaking each specific activity (i.e. improving habitat complexity, providing a jump pool or flow refugia, etc.). Describe the amount of impact (noting temporary vs. permanent impacts, see below for explanation) from all project activities in acres or linear feet, as appropriate.

Include the amount of work being done within the stream, riparian area or floodplain and elsewhere, so the net benefit can be quantified. Describe the materials to be placed in the channel, (e.g. describe “engineered streambed material”, specify weir heights, describe number and species of trees to be removed and planted, and describe the area and type of invasive vegetation to be removed). Justify

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that the proposed project is the appropriate solution and design to address the problem, and will improve conditions for listed species, water quality, etc. (i.e. describe how each component of the project will contribute to better habitat). If there are permanent impacts from the project, such as might result from the installation of concrete bridge abutments or rock slope protection to protect a bridge or culvert from scour, explain their purpose and need. Identify all temporary impacts, such as staging areas, stockpile areas, and access roads.

Include/attach environmental protection measures from other permits (e.g. Water Board permits, CEQA documents, biological opinions, etc.). Additional species-specific measures may need to be included as well, and can be taken from a biological opinion or other document.

Describe all the necessary detail within the application, clearly indicate where the CDFW staff person reviewing the application can find all the information provided in the supporting documentation (e.g. “see page X, attachment A for more detail”).

8. How do you determine what are temporary and permanent impacts from restoration projects?

Temporary impacts result from aspects of the project that will be revegetated and returned to pre-project conditions, such as staging areas and access routes, or that will within a season or two become part of the natural environment. Permanent impacts are areas permanently altered, that will remain clearly anthropogenic, because of the project (i.e. concrete bridge abutments to improve fish passage, installed culverts, rock slope protection essential for scour resistance, tidegates, water storage tank, off-stream pond, etc.). The areas of temporary and permanent impacts, added together, should remain within the size limitations (currently a maximum of 5 acres and 500 cumulative linear feet of streambank or shoreline).

9. How should the appropriate restoration guidance manuals or other documents be referenced?

For projects submitted under Sec. 1652, the project must be consistent with or identified in, sources that describe best available restoration and enhancement methodologies. The four types of manuals/documents are identified in Sec. 1652(c)(4), and include:

(A) Federal- and state-listed species recovery plans or published protection measures, or previously approved department agreements and permits issued for voluntary habitat restoration or enhancement projects.

(B) Department and National Marine Fisheries Service fish screening criteria or fish passage guidelines.

(C) The department’s California Salmonid Stream Habitat Restoration Manual.

(D) Guidance documents and practice manuals that describe best available habitat restoration or enhancement methodologies that are utilized or approved by the department.

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Reference the specific sections/page numbers of the manuals/documents you are following to design your project (e.g. CDFW Salmonid Stream Habitat Manual, Pacific Watershed Associates' Handbook for Forest, Ranch and Rural Roads, NMFS Guidelines for Salmonid Passage at Stream Crossings, NMFS Fish Screening Criteria, NRCS Field Office Technical Guide, species recovery plan or protection measures from a biological opinion, etc.). If your design varies from the standard guidance, provide a detailed explanation of how and why it does.

10. If the project will be conducted in a dry channel, when rainfall is not expected, are dewatering and erosion control plans necessary?

Include dewatering and erosion control plans as a contingency for unexpected groundwater inflow or unseasonal precipitation as an environmental protection measure. Even if dewatering is unlikely, explain why, given the geographic location and seasonal timing of the work, and note that a dewatering plan is part of the project design (found in the construction drawings, etc.) in the unexpected occurrence of a storm event or groundwater inflow.

11. What information should be provided for the following question in the application:

"Are any special status animal or plant species, or habitat that could support such species, known to be present on or near the project site?"

Clearly explain which sensitive species and habitats are present or potentially present in the project area, and if the species have been observed at the site.

Reference the California Natural Diversity Database (CNDDB), biological studies and reports, biological opinions and permits for nearby projects (of any type), and any other relevant information. If there are no state-listed species present, clearly state this fact in the application and include relevant reference material. List the environmental protection measures that will be implemented to avoid and minimize impacts to each of the sensitive species present or potentially present, and clearly note which protection measures are for which species.

It is recommended to utilize qualified professionals for standard preconstruction surveys where protected species are potentially present. The HRE Act specifically requires a Sec. 1652 application to include:

(3) An assessment of the project area that provides a description of the existing flora and fauna and the potential presence of sensitive species or habitat. The assessment shall include pre-project photographs of the project area that include a descriptive title, date taken, the photographic monitoring point, and photographic orientation.

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12. Should the environmental protection measures specified in the project's 401 Water Quality Certification be included in the HRE Act application?

A NOA under the SWRCB General Water Quality Certification for Small Habitat Restoration Projects will include the environmental protection measures required by the SWRCB. It is not necessary to repeat this information for projects submitted under Sec. 1653. Many of the water quality protection measures may be relevant to CDFW's review and can be attached and referenced in the HRE Act application for consistency and to save time in preparing the application.

13. Can the HRE Act process be used for an invasive species removal project along a portion of a creek?

Invasive species removal is an appropriate type of restoration for the HRE Act process, provided the project is no more than 5 acres and 500 linear feet in size. The linear foot limitation is cumulative, allowing for several spot treatments that can extend over a longer stream reach – and only applies to the area where work is actually being conducted (including new access roads and staging areas).

14. Can a project larger than 5 acres or 500 linear feet be completed in phases over several years, in order to remain within the HRE Act size limitations each year?

No – if the project is more than 5 acres or 500 cumulative linear feet in size, it is not eligible for the SWRCB General Water Quality Certification for Small Habitat Restoration Projects, even if the work is phased in smaller annual pieces. These size limitations may be revised in the future, but the intent of this process is to expedite regulatory approval for small restoration projects.

15. How should the HRE Act application be submitted?

Submit all appropriate project information (including attachments and supporting documentation – be sure to include everything CDFW will need for its review, so your application package is complete) in hardcopy and digital formats, along with a check to cover the project fee, to the CDFW Director's office at the address listed on the application form(s). Submit the application by registered mail (with tracking), so that the 30- or 60-day review period can be accurately tracked.

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