

Record of Decision for the Meeks Bay Restoration Project

BACKGROUND

The USDA Forest Service (USFS), Lake Tahoe Basin Management Unit (LTBMU); Tahoe Regional Planning Agency (TRPA); and Lahontan Regional Water Quality Control Board (Lahontan RWQCB) prepared a joint environmental document for the Meeks Bay Restoration Project. The document is an environmental impact statement (EIS) for the LTBMU prepared pursuant to the National Environmental Policy Act (NEPA) (42 U.S. Code 4321-4347), the Council on Environmental Quality (CEQ) Regulations Implementing NEPA (40 Code of Federal Regulations 1500-1508), Forest Service Manual 1950, and Forest Service Handbook 1909.15; an EIS for TRPA pursuant to the Tahoe Regional Planning Compact (Public Law 96-551), Code of Ordinances, and Rules of Procedure; and an environmental impact report (EIR) for Lahontan RWQCB pursuant to the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.) and the State CEQA Guidelines (California Code of Regulations Section 15000 et seq.).

The proposed Meeks Bay Restoration Project area (project area) includes approximately 74 acres of National Forest System (NFS) lands along the west shore of Lake Tahoe, which historically included a stream channel, wetland, lagoon, and barrier beach. Historic development in the project area, including construction of Meeks Bay Marina, displaced wetland and lagoon habitat, modified the stream channel, created conditions conducive to aquatic invasive species (AIS), and accelerated sediment delivery into Lake Tahoe. The LTBMU acquired the project area in 1974 and manages it through concession agreements. The project area has heavy summer recreation activity, including camping, boating, and beach use. The site is within the homeland of the Washoe Tribe of Nevada and California, which manages the Meeks Bay Resort and Meeks Bay Campground under special use permit with the Forest Service and is participating in the restoration of Meeks Meadow upstream of the project area. The purpose of the project is to implement management actions necessary to protect resources and move the project area toward desired conditions while continuing to support sustainable recreation opportunities. The action alternatives considered in the EIS/EIS/EIR included strategies to meet the following project needs and objectives:

- ▶ Improve hydrologic function and processes of Meeks Creek, Meeks lagoon, and associated floodplain.
- ▶ Restore degraded aquatic, riparian, and wetland habitats and barrier beaches to provide high quality habitat that is resilient to a changing climate.
- ▶ Improve fish passage and flood flow conveyance through the State Route (SR) 89 stream crossing, and control or eradicate current populations of terrestrial and aquatic invasive plant and animal species.
- ▶ Promote the Threatened, Endangered, Proposed, Candidate, and Sensitive species Tahoe yellowcress (*Rorippa subumbellata*) and Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*).
- ▶ Replace the SR 89 Caltrans bridge to allow for aquatic organism passage and flood flow conveyance.
- ▶ Maintain and enhance access to Lake Tahoe and National Forest System lands.
- ▶ Provide sustainable recreation opportunities consistent with a functioning ecosystem.
- ▶ Enhance educational and interpretive opportunities.
- ▶ Enhance species of value to the Washoe Tribe.

SCOPE OF THIS DECISION

This decision applies to all the elements of the proposed action (i.e., Alternative 4 – Preferred Alternative) except the SR 89 bridge replacement. The EIS/EIS/EIR includes a program-level analysis of replacement of the bridge; however, the California Department of Transportation (Caltrans), which would serve as lead agency for that element, is in the process of refining the design for the bridge replacement and completing project-level environmental analysis pursuant to CEQA. While an EIS/EIS/EIR was prepared to meet the requirements of NEPA, CEQA, and, TRPA, this USFS decision pertains to the EIS prepared pursuant to NEPA.

DECISION

Based on my review of the analysis in the EIS, I have decided to authorize the construction, operation, and maintenance of Alternative 4 – Preferred Alternative (hereafter also referred to as the proposed action) on National Forest System (NFS) lands under my jurisdiction.

As the Forest Supervisor, I am required to balance the conservation of natural resources while providing quality access, use, and enjoyment of NFS lands in the Lake Tahoe Basin by the American public. I have carefully reviewed the EIS and the environmental impacts of this proposal. In my review, I considered the resource disturbance associated with these activities and the fact that the proposal was designed to implement restoration activities on Meeks Creek and enhance the existing recreation uses in the project area without substantially increasing visitation (see the response under Section F.3.9, "Visitation Estimates," and Section F.3.10, "Visitor Crowding," in Appendix F of the Final EIS and Impact 3.1.1, "Recreation," in the EIS). I have further evaluated the effectiveness of project design features, resource protection measures (RPMs), and mitigation measures at protecting sensitive resources. I find that the steps taken to minimize impacts from construction and during operation of the proposed action will minimize the potential adverse effects on natural and cultural resources.

Alternative 4 was developed in response to desire from stakeholders, agencies, and the public for an alternative that avoids the visual effects and motorized boat traffic associated with a pier and does not substantially increase overnight visitation capacity. Thus, Alternative 4 does not propose a pier or expanded campgrounds, but does retain the potential for additional parking (see Table 2-1 in Chapter 2, "Description of the Proposed Action and Alternatives"). Throughout scoping and the comment period, many commenters expressed support for removal of the marina and restoration of the creek, while some supported retaining the marina (No Action Alternative) or providing other motorized boating opportunities. Additionally, over the course of the NEPA process, many commenters expressed opposition to construction of a pier in Meeks Bay. I also recognize that the approval of this project supports completion of a Lake Tahoe Environmental Improvement Program project, and the project would result in improvements in several TRPA Threshold Standard categories (i.e., recreation, wildlife, vegetation preservation, water quality, and wildlife). I considered the importance of this proposal to the visiting public, as well as to the protection of natural and cultural resources.

Based on my review of the analysis as documented in the EIS, I have decided to authorize the construction and operation of the Meeks Bay Restoration Project on NFS lands. The proposed action includes the project features summarized in Table 1 and shown in the conceptual site plan shown in Figure 1.

Table 1 Proposed Action Features

Feature	Proposed Action (Alternative 4 Preferred Alternative)
Restoration	Remove marina infrastructure and restore creek, lagoon, and barrier beach
Pier	No pier
Campgrounds	Reconfigured campgrounds with up to 50% of sites providing alternative camping, such as yurts or camping cabins. <ul style="list-style-type: none"> ▶ 36 sites at Meeks Bay Resort campground ▶ 36–42 sites at the Meeks Bay campground
Parking	Reconfigured parking with up to additional 14 spaces
Paddlecraft infrastructure	Moveable, universally accessible paddlecraft launch platform and paddlecraft storage rack
SR 89 bridge	This Decision does not consider approval of the SR 89 bridge replacement because design and project-level environmental analysis for this element is currently being completed by Caltrans, which would serve as lead agency.
Fish management structure	Construct fish management structure between 75 feet upstream of the SR 89 bridge and the new bridge with multi-use path to manage fish passage upstream of the lake
Day-use areas	Reconfigure and slightly expand day-use areas
Multi-use path	Create multi-use path along SR 89 with a spur loop through the project area with a new bridge across Meeks Creek
Parking ¹	Add 14 day-use parking spaces to the area south of Meeks Creek: <ul style="list-style-type: none"> ▶ 90 day-use parking spaces Retain existing parking capacity at Meeks Bay Resort: <ul style="list-style-type: none"> ▶ 300 overnight/day-use parking spaces
Cabin relocation	Remove two motel-style cabins near the beach and replace them with new cabins farther from the beach
Shoreline stabilization	Replace existing shoreline protection in front of and north of cabins
AIS control	Implement ongoing AIS control
Habitat enhancement	Add nest/perch structures and Tahoe Yellow Cress protection
Interpretive features	Add interpretative path and features

¹ There is overlap in parking for day-use and overnight guests in the project area for existing and proposed parking. There are not necessarily dedicated day-use or overnight parking spaces. The permit holder (Washoe Tribe of Nevada and California) manage the parking areas for overflow parking for the overnight visitors, as needed.

Source: Compiled by Ascent in 2022.

This Decision applies only to NFS lands. Additional terms and conditions will be included in the contract documents to provide for the implementation of the project design features, RPMs, and the mitigation and monitoring plan identified in the EIS (Appendix G) to avoid and minimize environmental effects. The Decision is also contingent on LTBMU securing all necessary additional permits required by TRPA, Lahontan RWQCB, and other regulatory agencies.

Construction would occur according to a phased construction schedule that will be developed by LTBMU. Operation would occur according to the terms of the concession agreements for the project area.

DECISION RATIONALE

My decision to authorize the construction and operation of the Meeks Project Bay Restoration Project on NFS lands is based on the analysis presented in the EIS, which supports my position that the proposed action best balances meeting the purpose and need for the project while having an acceptable level of impact to the environment. The No Action Alternative is not selected because it would not meet the purpose and need for the project. Furthermore, the

No Action Alternative would require a substantial investment to repair and operate the marina, which would provide limited public benefit because the marina can only be operational during periods of high lake levels. In addition, the No Action Alternative would result in environmental impacts associated with a continued degradation of Meeks Creek and spread of aquatic invasive species.

While other action alternatives meet the purpose and need, all the other action alternatives would have more substantial impacts on the environment. Alternative 1 would have greater impacts to resources, including scenic quality, noise, and public safety, from the introduction of a pier and associated motorized boating activity in the project area. Alternative 2 would have greater scenic impacts from the introduction of a pedestrian pier, and it would not realize the resource and scenic benefits associated with relocating cabins away from the shoreline. Alternative 3 would result in additional resource impacts from the relocation of parking areas and expansion of campgrounds. It would also not realize the resource and scenic benefits associated with relocating cabins away from the shoreline. In selecting Alternative 4, I recognize that this alternative is also preferred by the other regulatory agencies including TRPA and Lahontan RWQCB. This alternative is also supported by the Washoe Tribe of Nevada and California.

I have considered all of the resource issues and concerns described in the Final EIS, as well as the comments received from agencies, the public, and stakeholders, and my rationale for choosing the proposed action is based on careful consideration of several key elements addressed during the environmental review process. These key elements include consistency with the purpose and need for this project, addressing concerns expressed regarding a pier in Meeks Bay, support for removal of the marina and restoration of Meeks Creek, and the opportunity to enhance existing recreation resources without substantially increasing visitor capacity of the project area.

In reaching this decision, I have considered the issues raised by the public during the environmental review. Those issues are addressed in the following discussion.

Meeting the Purpose and Need

The proposed action best meets the project purpose and need to move the Meeks Creek stream channel and wetland/lagoon below SR 89 to a more natural condition where geomorphic and hydrologic processes support a functioning ecosystem while continuing to support sustainable recreation opportunities. All action alternatives would result in enhancing the natural environment to support improved hydrologic function; restoration of aquatic, riparian, and wetland habitats; improving fish passage and flood flow conveyance; continued control of aquatic invasive species; and protecting Tahoe yellowcress (*Rorippa subumbellata*) and Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*).

Recognizing that people and families engage with nature and outdoor recreation in different ways, I believe the project features included in the proposed action will provide a comprehensive experience that will appeal to a broad range of the visiting public, including residents that frequent the project area.

The proposed action provides opportunities for increased interaction between visitors and the natural environment in the project area through the addition of a path and bridge that crosses Meeks Creek and new interpretive trails. While the proposed action would remove opportunities for launching and mooring boats at the marina, it creates a new opportunity to experience the stream environment through improved pedestrian interpretive trails and opportunities for enhanced non-motorized watercraft activities. The proposed action would provide sustainable recreation opportunities by directing visitors to designated trails, and providing efficient ways to access amenities at Meeks Bay by walking and biking.

With the addition of a small, moveable, and universally accessible paddlecraft launch structure, the proposed action increases access to the lake for visitors with a broader range of abilities. The temporary, moveable nature of the paddlecraft launch will provide the flexibility to locate the paddlecraft launch to meet visitor needs and changing lake levels. The permittee would manage this infrastructure and would have the ability provide input into the size, design, and exact placement of the paddlecraft launch.

Preferred Alternative

Legend

- Day Use
- Beach
- Camping
- Shore Improvements
- Restoration
- Parking
- Roads
- New Multi-Use Path
- Existing Multi-Use Path
- Combined Road/Multi-Use Pat
- Interpretive Trail
- Buildings
- Vehicular Bridge
- Pedestrian Piers/Ramps
- Movable Paddlecraft Launch



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DESIGNWORKSHOP

Source: Image produced and provided by Design Workshop in 2022.

Figure 1 Proposed Action (Alternative 4 – Preferred Alternative)

Issue Areas

Throughout the public scoping period and public participation opportunities (e.g., public workshops, stakeholder forum meetings, TRPA public meetings) (see summary under “Public Involvement,” below), numerous comments about the proposed action, alternatives, and environmental document were provided by the public, agencies, and tribes. Many of the concerns were addressed through the stakeholder planning process that resulted in the alternatives evaluated in this EIS. Key concerns and issues that were raised by multiple individuals and influenced the development of alternatives included the following:

- ▶ opposition to a pier or motorized boating facilities in Meeks Bay due to concerns over traffic, noise, crowding, and user conflicts;
- ▶ concerns over the loss of moorings and motorized/sailing boat launch opportunities with the removal of the marina; and
- ▶ a desire for improved public safety access with a pier or other structure that provides public safety boat access at Meeks Bay.

The EIS evaluates the potential environmental effects (e.g., transportation, noise, crowding, user conflicts) of four action alternatives that provide a range of recreation improvements in addition to achieving the project purpose to restore Meeks Creek. The alternatives provide several options that offset the loss of the marina, boat ramp, and mooring opportunities. As further described under Section 2.12, “Alternatives Considered but Not Evaluated,” alternatives were considered that would maintain motorized boat access in the project area; however, these alternatives were eliminated because they would not achieve the project objectives and would result in potential environmental effects on beach recreation, tree removal, scenic quality, and traffic and circulation patterns.

RESOURCE PROTECTION AND MITIGATION

The EIS includes both Resource Protection Measures (RPMs) and mitigation measures to avoid and minimize, to the extent feasible, the potential environmental consequences of project implementation.

Appendix A of the EIS identifies RPMs that would be followed during project planning, construction, and operations and maintenance activities. The mitigation monitoring, and reporting program (MMRP) in Appendix G of the EIS documents the implementation of RPMs and mitigation measures in connection with the approval of the Meeks Bay Restoration Project. The MMRP tables present the text of each RPM and mitigation measure, the timing of its planned implementation, the implementing entity, and the entity with monitoring responsibility. With this decision, LTBMU is committing to implementing these measures, as applicable, to reduce the potential direct and indirect impacts that could result from project implementation. Although the RPMs are part of the proposed action, they are included in the MMRP and will be implemented and monitored in a manner consistent with the mitigation measures adopted for the proposed action.

As part of this decision, these RPMs and mitigation measures are adopted to the extent they apply to NFS lands and conform to Forest Service authorities. The complete RPM and mitigation text, with embedded Forest Service clarifications and revisions is available online at: www.meeksbayproject.org.

ALTERNATIVES CONSIDERED

Through public scoping and agency coordination, four action alternatives were identified for detailed analysis in addition to the No Action Alternative. The action alternatives include Alternative 1 – Restoration with Boating Pier, Alternative 2 – Restoration with Pedestrian Pier, Alternative 3 – Restoration with No Pier, and Alternative 4 – Preferred Alternative. The alternatives are described in detail in Chapter 2, “Description of the Proposed Action and Alternatives.” Each of the action alternatives includes different combinations of design elements intended to achieve

the project purpose, need, and objectives while minimizing adverse effects. The four action alternatives, including the proposed action, addressed in the EIS are variations on approaches to the following key project components:

- ▶ removal of Meeks Bay Marina;
- ▶ restoration of Meeks Creek and associated wetland/lagoon habitat;
- ▶ continued management of AIS;
- ▶ reconfiguration or construction of pedestrian and vehicle circulation, parking areas, and campgrounds; and
- ▶ installation of utility infrastructure and water quality best management practices (BMPs), aquatic organism passage improvements, shoreline stabilization, flood flow conveyance improvements, resource protection features, and other associated improvements.

The action alternatives to the proposed action, Alternative 4, are described below.

ALTERNATIVE 1 - RESTORATION WITH BOATING PIER

Alternative 1 was developed in response to concerns regarding the loss of motorized boating access at Meeks Bay. Alternative 1 generally includes each of the types of components of the proposed action except it includes a 300-foot-long pier that would allow boaters to temporarily dock and access the beach and facilities in the project area.

ALTERNATIVE 2 - RESTORATION WITH PEDESTRIAN PIER

Alternative 2 was developed to include a pedestrian pier with a universally accessible walkway that would connect the pier to nearby day-use and parking areas. The pedestrian pier option would expand access to the lake for visitors of all abilities, would allow access for paddlecraft, and would reduce scenic and hydrology impacts compared to the boating pier included in Alternative 1.

ALTERNATIVE 3 - RESTORATION WITH NO PIER

Alternative 3 provides a different mixture of recreation opportunities to offset the loss of the marina compared to the other action alternatives. This alternative includes a moveable paddlecraft launch and provides opportunities to expand the campground and parking, but no pier.

ALTERNATIVES ELIMINATED FROM DETAILED STUDY

Several alternatives or components thereof were considered in a screening process and eliminated from detailed consideration as described in Section 2.12, "Alternatives Considered but Not Evaluated Further," in Chapter 2, "Description of the Proposed Action and Alternatives," of the EIS/EIS/EIR. The alternatives eliminated from detailed evaluation included an alternative with a smaller marina and several alternatives with a boat ramp.

The smaller marina alternative would be feasible from a legal, regulatory, and technical standpoint, but would not satisfy the project purpose and need or have the potential to eliminate significant environmental effects. The smaller scale marina alternative would not meet the purpose of the project to restore the Meeks Creek ecosystem downstream of SR 89 to a more natural condition where geomorphic and hydrologic processes. Retention of even a small marina would substantially reduce the area available for, and the benefits of, the restoration. Additionally, ongoing maintenance and operation of the marina would require ongoing dredging activities and additional long-term AIS control; both activities which would compromise restoration to a natural ecosystem condition. Consequently, the purpose for the project would not be met because the project would not be able to move toward the desired condition.

The boat ramp alternatives would be feasible from a technical standpoint but would not comply with TRPA scenic regulations for a boat ramp and, in one location, would not comply with regulations for development in Stream Mouth Protection Zones. A boat ramp at the southern end of Meeks Bay was dismissed from further review due to strong public opposition, as well as anticipated environmental effects related to tree removal, scenic degradation, displacement of popular beach and swimming opportunities, and traffic and circulation impacts that would result from introducing vehicles and boat trailers into the area.

A boat ramp near the center of Meeks Bay was considered but not evaluated further because it could not be permitted under the TRPA Code of ordinances, which prohibits new shoreline structures in Stream Mouth Protection Zones. A central ramp would also divide the beaches, introducing vehicles and boat traffic into the center of a beach recreation area. A boat ramp on the northern end of Meeks Bay was also considered but dismissed because the existing resort buildings and topography would not provide sufficient space for boat trailer access and maneuvering, and it would result in many of the same environmental effects as the southern location. Maintaining the current location of the existing boat ramp in Meeks Creek was also considered but dismissed from further review because it would require similar construction, dredging, and encroachment into the lagoon as the small-scale marina, and it would not meet the purpose and need for the project for the same reasons as the small-scale marina alternative.

EVALUATION OF ALTERNATIVES

LTBMU's consideration of the alternatives included evaluation against the following three criteria:

- ▶ Does the alternative meet the project purpose and need?
- ▶ Is the alternative feasible (i.e., legal, regulatory, technical)?
- ▶ Does the alternative avoid or substantially lessen any significant effects of the proposed action (including consideration of whether the alternative itself could create significant effects potentially greater than those of the proposed action)?

The alternatives screening process culminated in the identification and screening of nine potential alternatives for the proposed action: the No Action Alternative, the three action alternatives summarized above, and five additional alternatives considered but eliminated from detailed evaluation.

Of the nine alternatives to the proposed action, including the No Action Alternative, none meets all three screening criteria listed above, but two alternatives meet two of three of the criteria. The alternatives that would install a boating pier or pedestrian pier (Alternatives 1 and 2) would be consistent with project purpose and need and would be feasible, but would not eliminate or reduce environmental effects. Similarly, Alternative 3 would be consistent with project purpose and need and would be feasible, but would result in greater disturbance resulting in greater potential impacts on biological resources, and hydrology and water quality, from construction of two multi-use path bridges, expanded campgrounds, and relocated parking.

After soliciting public and agency comments on Alternatives 1 through 3, the lead agencies developed Alternative 4 as the preferred alternative. Alternative 4 was designed, after consideration of agency and public comments, to incorporate the most desirable elements from Alternatives 1 through 3. The intent of Alternative 4 is to meet the project purpose and need while minimizing environmental impacts. From the standpoint of minimizing environmental effects from physical disturbance, Alternative 4 – Preferred Alternative – would be the environmentally preferable alternative. Alternative 4 supports the most restoration and least amount of development within the project area.

PUBLIC INVOLVEMENT

An extensive public involvement process guided the development of a reasonable range of alternatives and informed the environmental analysis. The project was informed by a collaborative public and stakeholder process beginning in 2018. The public engagement process exceeded the requirements of NEPA, TRPA regulations, and CEQA, and sought to gather broad input to identify issues and possible design approaches to achieve the purpose and need and objectives of the project while minimizing adverse effects. A group of stakeholders including representatives from the Washoe Tribe, environmental groups, property owners, and boating interests, met regularly at open public meetings to provide input at key points in the project planning and environmental review process. This stakeholder process was facilitated by a professional mediator and allowed all participants to share viewpoints and provide suggestions for elements to be considered in the alternatives. The alternatives evaluated in the EIS are a result of the collaborative engagement process.

The environmental review process for this project began with a public scoping period. The Notice of Intent (NOI) was published in the Federal Register Volume 83 Issue 176, on September 11, 2018. The NOI (compiled with a Notice of Preparation [NOP]) and scoping letter were also sent to agencies, tribes, and the public to inform them that a Draft EIS/EIS/EIR would be prepared for the project, and to solicit input as to the scope and content of the EIS/EIS/EIR. The NOP/NOI was distributed on September 11, 2018, and the scoping period concluded on October 26, 2018. Scoping notices were mailed to governmental agencies, landowners within 300 feet of the project boundaries, interested individuals, and community organizations. Additionally, a public notice was placed in the Tahoe Daily Tribune on September 15, 2018. The scoping process was also intended to identify significant issues related to the project. Scoping comments received are summarized in the Scoping Summary Report (Appendix 1-A of the FEIS).

One public scoping meeting was held at Meeks Bay Resort on October 10, 2018, and 10 public meetings were held between May 2020 and July 2021 to share information about the project and obtain public input into the development of the alternatives and potential environmental effects.

PUBLIC REVIEW OF DRAFT EIS

The Draft EIS was distributed for public review for 60 days from June 10 through August 9, 2022. A Notice of Availability (NOA) for the Draft EIS was published in the Federal Register on June 10, 2022. The NOA was mailed to interested parties, agencies, and property owners; and a public notice was posted in the Tahoe Daily Tribune. Three public meetings were held on the Draft EIS via online webinar to provide an overview of the Draft EIS and answer questions on the document and alternatives. A total of 64 letters were received from agencies, organizations, and individuals. The responses to comments are contained in Appendix F of the Final EIS.

TRIBAL CONSULTATION

The Forest Service regularly consults with tribal governments regarding projects authorized under the National Historic Preservation Act and NEPA. Tribal consultation for this project was conducted via multiple means. Formal consultation with tribal governments with ancestral and traditional homelands within the LTBMU— including the Washoe Tribe of Nevada and California and the Colfax-Todds Valley Consolidated Tribe—was initiated via letter, dated June 16, 2020, under the National Historic Preservation Act and implementing regulations at 36 CFR 800 and Executive Order 13007. Responses were received from the Washoe Tribe of Nevada and California and the Colfax-Todds Valley Consolidated Tribe requesting to be consulting parties. Both tribes were involved throughout development of the alternatives and environmental review and continue to be consulting parties. A tribal consultation letter under Section 106 consultation was sent to the Washoe Tribe on January 11, 2024. No concerns were returned to the Forest Service. The project was highlighted for the Washoe Tribe during a quarterly coordination meeting on January 23, 2024, informing them of the upcoming objection period. An email in advance of the publication will go to the Washoe Tribe's preferred email communication list for projects on week prior to publication. was initiated on

In addition to formal consultation, Washoe Tribe members, by virtue of their role as the operator of the Meeks Bay Resort, have participated in the ongoing stakeholder meetings for the Meeks Bay Restoration Project. Also, like other agencies and interested parties, the consulting tribes were invited to provide input throughout the environmental process. The tribes were sent the NOP/NOI and scoping letter requesting input on the scope and content of the environmental analysis and the Notice of Availability for public review of the Draft EIS/EIS/EIR.

FINDINGS REQUIRED BY OTHER LAWS AND REGULATIONS

The USDA Forest Service manages the LTBMU in conformance with many Federal laws. In this section laws pertinent to this decision are discussed.

NATIONAL FOREST MANAGEMENT ACT

The National Forest Management Act (NFMA) requires projects and permits to be consistent with the Land Management Plan (LMP) (16 USC Section 1604(i)). If a proposed site-specific decision is not consistent with the applicable plan, I may modify the proposed decision to make it consistent with the plan, reject the proposal; or amend the plan to authorize the action.

Consistency with the LMP for the LTBMU is discussed in Section 3.13, "Land Use," of the Final EIR/EIS. The discussion under Impact 3.13-1 addresses consistency of the project with specific LMP goals, policies, and objectives.

ENDANGERED SPECIES ACT

Under Section 7 of the Endangered Species Act, a federal agency that authorizes, funds, or carries out a project that "may affect" a listed species or its critical habitat must consult with U.S. Fish and Wildlife Service (USFWS). The USFWS is charged with oversight of species designated as threatened or endangered under the federal Endangered Species Act of 1973 (16 U.S. Code [USC] 1536[c]), as well as those species that are designated by the USFWS as species of concern. Under provisions of Section 7(a)(2) of the ESA, a federal agency that permits, licenses, funds, or otherwise authorizes activities must consult with USFWS, as appropriate, to ensure that its action will not jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat.

USFWS has authority over projects that may result in take of a federally listed species. Under the ESA, "take" is to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect or to attempt to engage in any such conduct" (Public Law 93-205, as amended by Section 3 of Public Law 107-136 [16 USC 1532]). The loss of habitat can also be considered "take" under the ESA. The process is accomplished through consultation under ESA Section 7 (16 USC 1536[a][2]), pursuant to which a biological assessment (BA) is prepared to describe the impact mechanisms and any adverse effects on the listed population. Information in the BA is used by USFWS to prepare a biological opinion (BO).

The Forest Service is requesting informal consultation with USFWS for Lahontan cutthroat trout (*Oncorhynchus clarkii henshawi*) and Sierra Nevada yellow-legged frog (*Rana sierrae*). Completion of the formal consultation with the USFWS for these species was completed on August 18, 2023 and USFWS issued a Biological Opinion (BO) in compliance with Section 7 of the Endangered Species Act.

CLEAN AIR ACT

Section 176I of the Clean Air Act prohibits federal agencies from, among other things, issuing licenses or permits or approving any activity that does not conform to an approved State Implementation Plan (SIP). Federal conformity regulations presume conformity with state plans where project emissions are below applicable thresholds (the "de minimis thresholds"), and where no "regionally significant" emissions would occur.

The project area for the proposed action lies within the Lake Tahoe Air Basin and the Mountain Counties Air Basin, under the jurisdiction of the El Dorado County Air Quality Management District (EDCAQMD). EDCAQMD regulates air

quality in the portion of El Dorado County that exists within the Mountain Counties Air Basin, which is in nonattainment with the California ambient air quality standard for respirable particulate matter (PM₁₀) (see Table 3.8-3 in Section 3.8, "Air Quality"). The project area is in attainment or unclassified with respect to the NAAQS for all criteria air pollutants.

General conformity is the federal regulatory process for preventing major federal actions or projects from interfering with air quality planning goals. Conformity provisions ensure that federal funding and approval are given only to those activities and projects that are consistent with air quality SIPs. Conformity with the SIP means that major federal actions will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS.

Analysis presented in the EIS/EIS/EIR (Impact 3.8-1, Section 3.8, "Air Quality") shows that construction emissions from the proposed action would not exceed the EDCAQMD daily mass emissions thresholds of 82 pounds/day for reactive organic gases and oxides of nitrogen. However, EDCAQMD considers PM₁₀ and PM_{2.5} emissions to be significant unless BMPs to reduce fugitive dust are implemented because such emissions could conflict with the SIP or contribute to the violation of an ambient air quality standard. However, the proposed action would implement Mitigation Measure 3.8-1 to reduce emissions of fugitive dust PM₁₀ and PM_{2.5} through the application of recognized fugitive dust control measures.

Overall, operational emissions from the proposed action would generally remain the same as those from existing conditions because the proposed project would not increase visitor capacity in the project area and would remove the Meeks Bay Marina, thereby decreasing capacity for motorized boating and the associated emissions. Thus, emissions of criteria air pollutants generated by operation of the proposed action would not exceed EDCAQMD emissions thresholds (see Impact 3.8-2, Section 3.8, "Air Quality").

The emissions from construction of the proposed action would be below the General Conformity threshold. As a result, no conformity determination is required. I am requiring compliance with Mitigation Measure 3.8-1 as a condition of this decision.

CLEAN WATER ACT

The Federal Water Pollution Control Act of 1977 or Clean Water Act (CWA) requires states to set standards to protect, maintain, and restore water quality through the regulation of point source and certain non-point source discharges to surface water. All projects that have a federal component and may affect state water quality (including projects that require federal agency approval, such as issuance of a Section 404 permit) must also comply with CWA Section 401. Point source discharges are regulated by the National Pollutant Discharge Elimination System (NPDES) permit process, outlined in CWA Section 402. NPDES permitting authority is delegated to, and administered by, California's nine Regional Water Quality Control Boards (RWQCBs). California's State Water Resources Control Board (SWRCB) regulates the NPDES storm water program. In addition, Section 404 of the CWA authorizes the USACE to regulate the discharge of dredged or fill materials into navigable waters of the U.S., including certain wetlands and other waters of the U.S. USACE issues individual site-specific or general (nationwide) permits for such discharges.

Section 303(d) of the CWA requires states to identify impaired waters and establish the Total Maximum Daily Load (TMDL) of pollutants for those waters to protect water quality for beneficial uses. Lake Tahoe is currently on the 303(d) list for deep water transparency (Lake clarity), because it has not achieved the standard of 29.7 meters (97.4 feet) average annual Secchi disk visibility depth (depth at which a disk of standard size and markings remains visible as it is lowered into the water) since the early 1970s. With a goal to restore Lake Tahoe's historic deep-water transparency through programs and policies aimed at reducing the amount of fine sediment and nutrients entering the lake, the Lake Tahoe TMDL was adopted by the Lahontan RWQCB and Nevada Division of Environmental Protection and approved by the US Environmental Protection Agency in August 2011. TMDL analysis showed runoff from urban land uses as the primary source of fine sediment loading to the Lake and, therefore, the TMDL plan emphasizes actions by the jurisdictions (i.e., cities, counties, and state departments of transportation) to reduce fine sediment sources from entering urban stormwater runoff and to treat urban runoff before it reaches the lake.

"Stream Environment Zone" (SEZ) is a term used specifically in the Tahoe Basin to describe perennial, intermittent, and ephemeral streams; wet meadows, marshes, and other wetlands; riparian areas; and other areas expressing the presence of surface and ground water through biological and physical characteristics. As described under "Jurisdictional Wetlands" in Section 3.4, "Terrestrial Biological Resources," the project area contains riverine waters, lacustrine habitat (i.e., Lake Tahoe), palustrine emergent wetlands, palustrine scrub-shrub wetlands, and palustrine forested wetlands. These habitats would be considered SEZs.

All of the action alternatives would restore Meeks Creek and lagoon, which would not result in a net loss of state or federally protected wetlands or other water waters and would ultimately result in a functional improvement in ecosystem functions and an increase in wetland habitat from current conditions.

Implementation of the restoration activities would include earth moving and grading to recreate a shallow lagoon and to restore channel and floodplain topography along Meeks Creek from SR 89 to Lake Tahoe. This would result in removal of anthropogenic fill from the marina and placement of clean gravel and sand fill to recreate historic channel and floodplain conditions. In addition to the restoration, construction of the project would include soil disturbance associated with demolition of existing cabins, reconfiguring the campgrounds, and repair and realignment of existing roads and parking areas.

Soil disturbance associated with these construction activities could cause accelerated soil erosion and sediment loss that could be transported to Lake Tahoe. Use of hazardous materials during construction (e.g., fuels, lubricants) could result in the release of these materials into Meeks Creek and the lake. Construction dewatering could also provide a mechanism for contaminant discharges. Implementing the project would result in direct disturbance of waters of the U.S., waters of the state, riparian habitat, and SEZs. As described in Impact 3.6-1 in Section 3.6, "Hydrology and Water Quality," implementation of RPMs described in Appendix A of the EIS/EIS/EIR would be implemented to protect water quality. These include BMPs to control erosion, minimizing soil disturbance, winterization requirements, stockpile protection, spill prevention plans, diversion and dewatering plans, testing of fill for chemical contamination, surface water protections, equipment monitoring, and turbidity control measures.

LTBMU will be required to obtain approvals from the USACE and SWRCB under the CWA, including certification (or a waiver) under Section 401 from the State that the proposed discharge complies with water quality standards. A draft aquatic resources delineation according to USACE criteria has been prepared and would be submitted to USACE prior to project permitting under Section 404 of the CWA,

Pursuant to the NPDES General Permit for construction, all construction projects in California that involve land disturbance greater than 1 acre are required to prepare and implement a detailed Stormwater Pollution Prevention Plan (SWPPP), which includes BMPs designed to prevent construction pollutants from contacting stormwater and keep products of erosion from moving off-site into receiving waters throughout the construction and life of the project.

FLOODPLAINS AND WETLANDS (EOS 11988 AND 11990)

Floodplain Management Executive Order 11988 directs all federal agencies to evaluate potential effects of any actions it may take in the floodplain and to avoid all adverse impacts associated with modifications to floodplains. It also directs federal agencies to avoid encroachment into the 100-year floodplain, whenever there is a practicable alternative and to restore and preserve the natural and beneficial values served by the floodplains.

Portions of the project area, such as the area of Meeks Creek restoration activities and SR 89 bridge replacement, are located within the 100-year floodplain boundary. Implementation of the proposed action would result in restoration of Meeks Creek and lagoon, which would increase connection to floodplain surfaces and enhance riparian vegetation that would help to treat stormwater runoff in the floodplain by natural filtration and could offer a modest amount of stormwater attenuation (see the analysis under Impact 3.6-4 in Section 3.6, "Hydrology and Water Quality," in the EIS/EIS/EIR). The channel itself would be sized to convey a range of design flows, which would include stormwater runoff from adjacent areas. Additionally, restoration activities associated with the proposed action are intended to increase climate resiliency of Meeks Creek to changes in temperature and precipitation patterns, and lake level

fluctuations due to climate change. There would be a beneficial effect to storm water and drainage conditions related to restoration of the creek and lagoon.

As discussed under Impact 3.4-4 in Section 3.4, "Terrestrial Biological Resources," the proposed action would result in grading the Meeks Creek lagoon and floodplain to a range of elevations that would support a mix of natural obligate wetland and riparian vegetation. Overall, project actions would not result in a net loss of state or federally protected wetlands or other water waters and would ultimately result in a functional lift in ecosystem functions and an increase in wetland habitat from current conditions.

As discussed under the "Clean Water Act" section, above, all the action alternatives involve restoring Meeks Creek and lagoon, which would not result in a net loss of state or federally protected wetlands or other water waters and would ultimately result in a functional improvement in ecosystem functions and an increase in wetland habitat from current conditions.

ENVIRONMENTAL JUSTICE (EO 12898)

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, requires federal agencies to identify and to address any disproportionately adverse effects on human health or the human environment of minority and/or low-income populations resulting from federal programs, policies, and activities. Adverse environmental or human health conditions created by any of the alternatives considered would not affect any minority or low-income neighborhood disproportionately.

The activities proposed in all alternatives were based solely on the existing and desired condition of Meeks Creek and the project area in response to the purpose and need. The design and project components in the proposed action and alternatives were not based on the demographic makeup, occupancy, property value, income level or any other criteria reflecting the status of adjacent non-federal land. Reviewing the location of the proposed components of any of the alternatives in relationship to non-federal land, there is no evidence to suggest that any minority or low-income neighborhood would be affected disproportionately. Conversely there is no evidence that any individual, group or portion of the community would benefit unequally from any of the actions in the proposed alternatives. Furthermore, one commenter on the Draft EIS/EIS/EIR expressed concern that any reduced capacity for camping and other lodging options could affect lake access for low- and middle-income families. As described in the response to the comment under Section F.3.41 in Appendix F of the EIS/EIS/EIR, none of the alternatives would substantially reduce camping and lodging capacity in the project area.

NATIONAL HISTORIC PRESERVATION ACT

The basis for determining significance of cultural resources is driven by the National Historic Preservation Act (NHPA). In particular, Section 106 requires federal agencies to take into account impacts upon resources listed or eligible for listing on the National Register of Historic Places (NRHP). LTBMU has completed Section 106 consultation. On February 28, 2024, the State Historic Preservation Officer provided a letter to LTBMU which concurred with LTBMU's determination related to the eligibility of historic resources and did not object to the finding of no adverse effects on historic resources.

The proposed action would implement RPMs HER-1, HER-2, and HER-3 (see Appendix A of the EIS), during construction in the project area, as applicable. Implementation of these RPMs would result in avoiding adverse effects on historic properties for the purposes of Section 106. The EIS/EIS/EIR provides background information related to historic properties in the project area and assesses the potential effects on historic properties under Impact 3.3-1 in Section 3.3, "Cultural and Tribal Cultural Resources," of the EIS.

OTHER REQUIRED PERMITS AND APPROVALS

The Forest Service is actively consulting and coordinating with Federal, State, and local agencies, and tribes that have an interest in the project or could have a role in reviewing and/or providing permits or other approvals for individual aspects of the project. This includes coordination with Federal, County, and State of California regulatory agencies. The following lists identify permits and other approval actions that may be required before implementation of individual elements of the project. The list of necessary permits will be refined, and applicable permits and approvals will be sought after the design of project components is completed.

FEDERAL ACTIONS/PERMITS

- ▶ US Army Corps of Engineers: Department of the Army permit under Section 404 and Section 10 of the Clean Water Act for discharges of dredged or fill material into waters of the United States.
- ▶ US Environmental Protection Agency: Review of the EIS, filing and noticing, and concurrence with the Section 401 Clean Water Act permit.
- ▶ US Fish and Wildlife Service: Endangered Species Act consultation and issuance of incidental-take authorization for the take of federally listed endangered and threatened species, if take of a species is anticipated.

STATE ACTIONS/PERMITS

- ▶ California State Lands Commission Lease of State Lands: Construction of any type of structure, such as a pier, on lands under the Commission's jurisdiction (i.e., the state's sovereign lands in Lake Tahoe below 6,223 feet) requires a lease of State Lands.
- ▶ Lahontan Regional Water Quality Control Board (Region 6): National Pollutant Discharge Elimination System construction stormwater permit (Notice of Intent [NOI] to proceed under general construction permit) for disturbance of more than one acre, discharge permit for stormwater, general order for dewatering, Section 401 Clean Water Act certification or waste discharge requirements, and Basin Plan Prohibition Exemption.

REGIONAL ACTIONS/PERMITS

- ▶ Tahoe Regional Planning Agency: The bi-state agency and the USFS have a Memorandum of Understanding (MOU) in which the Forest Service agrees to the review of projects that are not exempt under the MOU for compliance with the TRPA code of ordinances. In some instances, this may include a land capability verification that determines the coverage verification.

ADMINISTRATIVE REVIEW (OBJECTION) OPPORTUNITIES

This draft decision is subject to the objection regulations at 36 CFR 218, Subparts A and B.

Individuals or entities who have submitted timely, specific written comments about the proposed project during any designated opportunity for public comment are eligible to file an objection on the Project (36 CFR 218.5(a)).

Objections to the decision must be submitted within 45 days following the publication of the legal notice in the Tahoe Daily Tribune. The date of the published legal notice is the exclusive means for calculating the time to file an objection. Those wishing to object should not rely upon dates or timeframes provided by any other source. It is the objector's responsibility to ensure evidence of timely filing of a written objection with the reviewing officer (36 CFR 218.9).

Issues raised in objections must be based on previously submitted, timely, specific written comments regarding the proposed project unless based on new information arising after the designated comment opportunities. Objections on the project must include the following information (36 CFR 218.8(d)): (1) objector's name and address, with a telephone number, if available; (2) objector's signature or other verification of authorship; (3) identification of a single lead objector when applicable; (4) project name, Responsible Official name and title (Erick Walker, Forest Supervisor, LTBMU), and name of affected National Forest(s) and/or Ranger District(s) (Lake Tahoe Basin Management Unit); (5) description of those aspects of the project being objected to, including specific issues related to the proposed project; (6) specific reasons for, and suggested remedies to resolve, the objection; and (7) description of the connection between the objection and the objector's prior comments, unless the objection concerns an issue that arose after the designated opportunities for comment. Documents incorporated by reference must adhere to 36 CFR 218.8(b).

The Regional Forester is the reviewing officer for objections for this Project: Jennifer Eberlien, Regional Forester, USDA Forest Service. Objections may be submitted online on the LTBMU project website [<https://www.fs.usda.gov/project/ltbmu/?project=52971>]. On the right-hand side of the page, under "Get Connected", click on "Comment/Object on the Project". This will take you to the web form for submission of objections. Attachments in the electronic submissions must be in common formats (.doc, .pdf, .rtf, .txt).

If you are not able to access the online form, objections may be submitted by postal mail to: USDA Forest Service, Regional Forester, 1323 Club Drive, Vallejo, CA 94592, Attn: Meeks Bay Restoration Project.

IMPLEMENTATION DATE

If no objection is filed on the project, a Final ROD may be issued on, but not before, the fifth business day following the close of the objection filing period (36 CFR 218.21). If an objection to this decision is filed in accordance with 36 CFR 218, then this Record of Decision may not be signed until all concerns and instructions from the reviewing official in the objection response have been addressed (36 CFR 218.12 (b)). After the decision is signed, implementation may begin immediately.

CONTACT

For additional information concerning this project or the Forest Service objection process, contact:

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Lake Tahoe Basin Management Unit
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(530) 543-2615

Responsible Official:

ERICK WALKER
Forest Supervisor
Lake Tahoe Basin Management Unit

Date