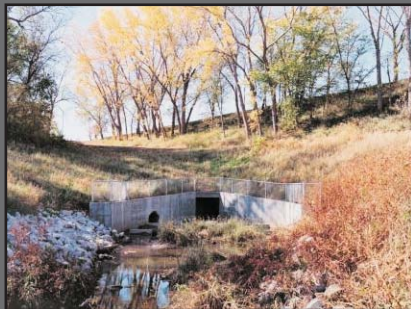
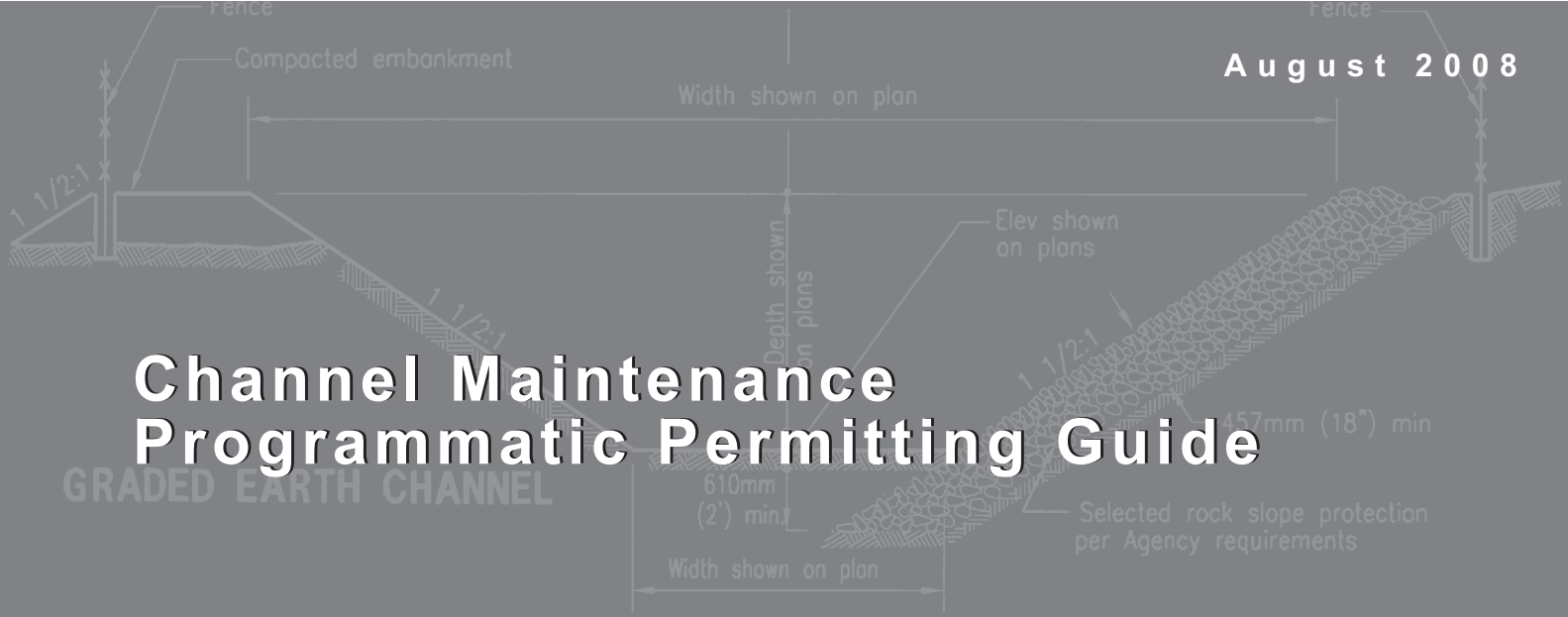


Channel Maintenance Programmatic Permitting Guide

GRADED EARTH CHANNEL



332 kg/M³ -C-22Mpa
(560-C-3250)
Concrete or Air Placed
Concrete. Reinforced with
152mm (6") x 152mm (6")
- 10/10 gage w.w.f.

TYPICAL SECTION
MAJOR DRAINAGE CHANNEL

Prepared for:
Regional Channel Maintenance Workgroup

Representing:
City of Carlsbad
City of Chula Vista
City of Encinitas
City of Escondido
City of La Mesa
City of Lemon Grove
City of National City
City of Oceanside
City of Poway
City of San Diego
City of San Marcos
City of Santee
City of Solana Beach
City of Vista

Prepared by:
EDAW, Inc.
1420 Kettner Boulevard, Suite 500
San Diego, California 92101

See Detail A
When depth exceeds
914mm (3'-0") weep
holes must be added at
3.05m (10') on centers.
(see detail)

332 kg/M³ -C-22Mpa
(560-C-3250)
Concrete or Air Placed Concrete.
Reinforced with 152mm (6") x 152mm
(6") - 10/10 gage w.w.f.

MINOR DRAINAGE CHANNEL TYPICAL SECTION

When depth exceeds
914mm (3'-0") weep
holes must be added at
3.05m (10') on centers.
(see detail)

Channel Maintenance Programmatic Permitting Guide

Prepared for:

Regional Channel Maintenance Workgroup

Representing:

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August 2008

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- U.S. Fish and Wildlife Service, Carlsbad Field Office
- California Regional Water Quality Control Board, San Diego Region (Region 9)
- California Department of Fish and Game, South Coast Region (Region 5)
- California Coastal Commission, San Diego Coast District
- California Coastal Commission, Federal Consistency Unit, San Francisco.

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List of Acronyms

BA	Biological Assessment
BMP	best management practice
BO	Biological Opinion
CCA	California Coastal Act
CCC	California Coastal Commission
CCMP	California Coastal Management Program
CDFG	California Department of Fish and Game
CDP	Coastal Development Permit
CE	Categorical Exemption
CEQ	Council on Environmental Quality
CEQA	California Environmental Quality Act
CESA	California Endangered Species Act
CFR	Code of Federal Regulations
CMR	Channel Maintenance Report
CWA	Clean Water Act
CZMA	Coastal Zone Management Act
DPW	Department of Public Works
EA	Environmental Assessment
EFH	Essential Fish Habitat
EIR	Environmental Impact Report
EO	Executive Order
EPA	Environmental Protection Agency
ESA	Endangered Species Act
ESHA	Environmentally Sensitive Habitat Area
FONSI	Finding of No Significant Impact
GIS	geographic information system
IP	Individual Permit
LCP	Local Coastal Program
LEDPA	least environmentally damaging practicable alternative
LOP	Letter of Permission
MBTA	Migratory Bird Treaty Act
MS4	Municipal Separate Storm Sewer System
NCCP	Natural Community Conservation Plan
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NWP	Nationwide Permit
OHWM	ordinary high water mark
PGL	Program Guidance Letter
RCM	Regarding Channel Maintenance
RGL	Regional Guidance Letter
RGP	Regional General Permit
ROWD	Report of Waste Discharge
RTR	Required Technical Report

RWQCB	Regional Water Quality Control Board
SAA	Streambed Alteration Agreement
SWRCB	State Water Resources Control Board
TMDL	total maximum daily limit
USACE	U. S. Army Corps of Engineers
USFWS	U. S. Fish and Wildlife Service
WDR	Waste Discharge Requirement

1.0 Introduction

Municipal storm water and flood control systems collect, convey, detain, treat, and discharge runoff. Within a given municipality, these systems are often composed of hundreds or thousands of structures and channels that manage storm water flows and provide safety to life and property by preventing flooding and related effects (e.g., erosion, reduced water quality, and vector issues). The accumulation of sediment and debris and subsequent establishment of vegetation within storm water and flood control systems can appreciably reduce their function. Locally, regular maintenance of storm water systems is required per the Municipal Storm Water Permit for San Diego County (Order No. 2001-01, and as amended in Order No. R9-2007-0001). Storm waters and other resources (e.g., wetlands and listed species) that may occur within or near storm water systems are regulated by federal and/or state agencies. Therefore, impacts to these resources from routine maintenance activities require permits or other authorizations from these regulating agencies. Depending on conditions within these authorizations as well as within and adjacent to a maintenance area, agencies may specify the method, extent, and timing of the activity.

The primary regulations that pertain to most maintenance activities are the Clean Water Act (CWA), Sections 401 and 404, and the California Fish and Game Code (Fish and Game Code) Sections 1600-1616; however, site-specific conditions may invoke regulation under the federal and state Endangered Species Acts (ESA and CESA, respectively). Additionally, if the maintenance site is in the coastal zone, regulation under the California Coastal Act (CCA) will apply. Finally, to obtain the permits or authorizations required under these federal and state statutes, compliance with both the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) will be required.

Many of the activities required for the periodic operation and maintenance of storm water and flood control facilities are common among municipalities within San Diego County. This guide addresses those activities and the regulatory reach and process for obtaining authorizations for routine maintenance work from the following federal and state agencies:

- U.S. Army Corps of Engineers (USACE)



Concrete-lined inlet to box culvert

- Regional Water Quality Control Board (RWQCB)
- U.S. Fish and Wildlife Service (USFWS)
- California Department of Fish and Game (CDFG)
- California Coastal Commission (CCC)

Although certain site conditions may require authorizations from other agencies or invoke other regulations, this permitting guide focuses on the federal and state agencies and primary statutes noted above.

1.1 BACKGROUND

In September 2004, the County of San Diego, and all 18 cities within the county, received letters entitled “Directive Regarding Channel Maintenance Activities” from the RWQCB that mandated the submittal of a Required Technical Report (RTR) pertaining to **channel maintenance activities** and practices. Subsequently, representatives from the cities and the County met to discuss the RTR and channel maintenance throughout the region, whereby the Regional Channel Maintenance (RCM) Workgroup was formed.

Each municipality within the RCM Workgroup faces similar challenges of meeting goals of water quality and habitat conservation while performing necessary channel maintenance and flood control activities. The number of storm water and flood control sites maintained by some municipalities in a 2- to 3-year timeframe can be over 1,000.

Since receiving the directive letters from the RWQCB, many municipalities have curtailed many of the routine maintenance activities that need to occur within their storm water and flood control facilities. Until approvals are issued by the regulatory agencies for municipality-wide channel maintenance work, the RCM Workgroup members will need to obtain site-specific authorizations.

1.2 ADVANTAGES OF PROGRAMMATIC APPROACH

Programmatic permits for actions that would affect federal and state jurisdictional waters establish a procedure to authorize repeated and similar activities at hundreds, or even thousands, of locations throughout a jurisdiction or region. Individually, or in smaller groups, these activities could be authorized by the regulatory agencies under existing general permits (i.e., the USACE Nationwide Permit Program) or standard individual processes (e.g., case-by-case Section 404 individual permits or Fish and Game Code 1602 Streambed Alteration Agreements [SAAs]) via submittal of site-

specific permit applications and case-by-case review, public noticing when needed, and processing. Case-by-case Section 401 water quality certifications issued by the RWQCB would also need to be obtained, as well as case-by-case consultation with the USFWS and CDFG wherever the individual action has the potential to affect federal or state listed species. Where the activity is within the coastal zone, case-by-case review under state-certified Local Coastal Programs and/or by the CCC would also need to be conducted.



Low-flow concrete channel with natural sides

For routine maintenance activities in particular, by adhering to avoidance and minimization measures, operational protocols, and additional measures when needed to address sensitive environmental resources that occur at or near the maintenance site, impacts to jurisdictional waters and listed species or their habitat can be minimized for most maintenance activities. In light of this expectation, and because maintenance needs are in perpetuity, a programmatic permit from the USACE, RWQCB, CDFG, USFWS, and CCC (for coastal municipalities) would offer substantial, long term cost and time savings. Moreover, a programmatic permitting approach would provide for the development of regional protocols (see example protocols in Appendix A), which can be refined as needed over time, and more comprehensive and integrated mitigation planning.

Obtaining programmatic approvals for repeated routine activities can be beneficial for municipalities because they:

- Pre-authorize similar activities at numerous locations (following notification and/or verification conditions as established)
- Provide flexibility to accommodate additional sites in the future that meet established criteria
- Replace case-by-case applications/authorization
- Increase efficiency in conducting routine activities
- Establish consistent approach for avoiding and minimizing impacts to regulated environmental resources
- Provide comprehensive approach for mitigation
- Allow an extended authorization period
- Reduce demand on the resource agencies
- Increase level of regulatory independence for the applicant

- Decrease long-term costs, i.e., one programmatic review, process, and associated fees, vs. numerous case-by-case costs

Many RCM Workgroup members are expected to pursue programmatic authorizations from the resource agencies; therefore, additional benefits may include the following:

- Co-ownership of mitigation banks
- Clear and consistent definition of regulated channel maintenance activities subject to programmatic permits

Based on meetings between the RCM Workgroup and staff from the USACE, RWQCB, and CDFG, it was determined that a Regional General Permit (RGP) from the USACE would be the applicable, comprehensive permit that each city could pursue for impacts to “waters of the U.S.,” similar to RGP No. 53 that was issued to the County of San Diego, Department of Public Works (DPW) for the routine maintenance work it conducts on bridges, culverts, and other road crossings countywide. Additional agency-specific permits and/or authorizations for conducting maintenance activities where other regulated resources occur would also be obtained by the RCM Workgroup member cities, again, similar to the companion approvals that were obtained by the County DPW. These would include a Section 401 water quality certification, a SAA from CDFG, consultation with and/or take authorization from USFWS and CDFG under the federal and state endangered species acts, and review or permit issuance by the CCC for maintenance activities affecting state waters within the coastal zone.

1.3 DEVELOPMENT AND ORGANIZATION OF THE GUIDE

This guide has been prepared for the RCM Workgroup members to assist them in pursuing a programmatic approach to permitting their storm water and flood control maintenance activities. This guide describes the steps required for applying for an RGP from the USACE and the companion approvals from the RWQCB, USFWS, and CDFG; for coastal jurisdictions, this guide also describes the approval needed from the CCC.

Specifically, this guide includes the forms, instructions, and, where relevant, standardized information that will streamline many of the submittal requirements when individual municipalities pursue programmatic permits (e.g., mitigation, operational protocols, and annual reporting requirements). Clarifying and streamlining the process and requirements associated with these agencies, and illustrating the benefits to be gained, are also intended to aid City

Managers and City Council/Board Members in reviewing and approving requests to apply for these permits from their own Public Works divisions.

This guide was developed with input from the USACE, RWQCB, USFWS, CDFG, and CCC. Between August 2006 and April 2007, each of these agencies met with the RCM Workgroup, first alone to discuss agency-specific issues and recommendations for programmatic permitting, and then at a multi-agency meeting to discuss issues that are common among all the agencies. Subsequently, each agency reviewed this guide and provided comments. Input gathered from the meetings and agency review has been incorporated herein. Contact information for the agency representatives who participated in the meetings or other representatives who have been involved in the development of this guide is included in Appendix B.



Earthen storm channel

Instructions for completing permit applications and descriptions of the processes for obtaining each type of programmatic permit are the focus of this guide (see Chapter 7). Because environmental documentation is required for the permits discussed herein, NEPA and CEQA processes are also summarized herein (see Chapter 6).

Other information included in this guide that is important to the permit processes described includes:

- Discussions of the federal and state statutes that regulate routine maintenance work (Chapter 2)
- Descriptions of typical storm water facilities (Chapter 3)
- Descriptions of typical maintenance activities (Chapter 4)
- Definitions of jurisdictional limits (Chapter 5)
- Discussions of notifications required after permits are issued (Chapter 8)
- Alternative mitigation approaches (Chapter 9)
- Key issues important to all municipalities that were discussed with the regulatory agencies (Chapter 10)

Channel maintenance activities as referred to in this guide pertain to the periodic **cleaning and repair** of storm water and flood control facilities, including a municipality's **Municipal Separate Storm Water Sewer System (MS4)** as well as segments of some earthen channels that convey storm waters. Hereafter in this guide, these features are referred to as "storm water and flood control" facilities. The MS4 and

other key terms used in this guide are defined in a glossary included as Chapter 12.

Finally, although this guide describes permits that a municipality will need to conduct many maintenance activities in storm water and flood control systems, the processes described in this guide are not binding on any jurisdiction. Each jurisdiction eventually will make the decision to obtain permits according to its best interests.

2.0 Regulatory Setting and Applicable Permits



Earthen channel

Section 2.1 discusses the primary regulations and permits applicable to storm water and flood control maintenance activities. Section 2.2 provides a brief summary of additional regulations that could apply to these activities.

2.1 PRIMARY REGULATIONS AND PERMITS

The primary regulations applicable to the permitting objectives of the RCM Workgroup are summarized in Table 2-1 and discussed below. Under each general discussion, a focused discussion is included on the type of authorization that is expected to be applicable to the RCM Workgroup members for their routine storm water and flood control facility maintenance. Table 2-2 also provides a summary and comparison of the permits discussed in this chapter.

Throughout this guide, and in particular the following section, reference is made to impacts that would be considered minor or minimal. The regulatory agencies discussed in this guide do not have a specific numeric as to what constitutes a minimal impact to jurisdictional waters. The conditions at an impact site, including the potential for sensitive resources other than jurisdictional waters, factor into whether a relatively larger impact at one location (e.g., 0.3 acre) may be considered minimal, when a relatively smaller impact at another location (e.g., 0.2 acre) may be considered more than minimal. Additionally, for linear jurisdictional waters, e.g., riparian systems, the length of the impact, in addition to the total area, is considered when determining if the impact would be minimal or not. Again, the conditions at the site will factor into whether a relatively longer impact at one location (e.g., 200 feet) may be considered minimal, when a relatively shorter impact at another location (e.g., 150 feet) may not.

The term “minimal impact” is not quantifiably defined. Site conditions are considered when determining if impacts are minimal.

Table 2-1
Primary Regulations Pertaining to
Channel Maintenance Activities

Regulation	Regulating Agency	Agency's Authority
Clean Water Act Section 404	U.S. Army Corps of Engineers (USACE)	Regulates placement of dredged or fill material into waters of the U.S.
	U.S. Environmental Protection Agency (EPA)	Enforcement of regulations, may veto USACE permit
Clean Water Act Section 401	Regional Water Quality Control Board (RWQCB)	Issues water quality certification; certification required for Section 404 Permits
Clean Water Act, Porter-Cologne		Regulates discharge of waste into waters of the U.S.
Endangered Species Act	U.S. Fish and Wildlife Service (USFWS)	Other federal agencies must consult with USFWS if their activities may affect federally listed species
	National Marine Fisheries Service (NMFS)	Other federal agencies must consult with NMFS if their activities may affect federally listed marine species
California Fish and Game Code, Sections 1600 – 1616	California Department of Fish and Game (CDFG)	Regulates activities that will alter a river, stream or lake
California Endangered Species Act, Fish and Game Code Section 2050 et seq.		Prohibits take of a candidate species or species listed as threatened or endangered under CESA unless authorized by CDFG pursuant to Fish and Game Code Section 2080.1 or 2081(b) and (c)
Coastal Act	California Coastal Commission (CCC)	Issues (or reviews and appeals, if needed) all coastal development permits
Coastal Zone Management Act		Issues notice that work is consistent with state coastal management plan
CEQA	EPA USFWS NMFS RWQCB CDFG CCC	Lead or commenting agency
NEPA		

Source: Adapted from Cylinder et al. 1995.

Table 2-2
Comparison of Authorizations Applicable to Maintenance Activities Affecting Jurisdictional Waters and Listed Species

Authorization	USACE 404 Permit				RWQCB Section 401 Certification	CDFG Streambed Alteration Agreement	USFWS or NMFS Section 7 Consultation ¹	CDFG Incidental Take Permit ¹	CCC Coastal Development Permit and Federal Consistency Determination
	NWP	IP	RGP	LOP					
Description	Nationwide Permits (NWPs) have already been issued for certain categories of projects (e.g., <i>Maintenance, Bank Stabilization, Discharges into Ditches</i> , etc.) and are applicable nationwide. There are over 40 types of NWPs. Some NWPs authorize up to 0.5 acre of permanent impacts within USACE jurisdiction. For all NWPs, impacts must be minimal.	Individual Permits (IPs) are required for projects that have more extensive impacts to areas under USACE jurisdiction (generally more than 0.5 acre) and do not fit within any of the existing NWP categories or RGPs.	Regional General Permits (RGPs) include those issued by USACE for certain activities. Two existing RGPs commonly used include RGP 41, <i>Removal of Invasive, Exotic Plants</i> , and RGP 63, <i>Emergency Authorizations</i> . In addition, applicants can obtain new RGPs to authorize repeat activities with minimal environmental impacts, e.g., municipal-wide routine maintenance.	Letters of Permission (LOPs) are typically used to authorize impacts to Section 10 jurisdictional waters that are minimal. LOPs may authorize impacts to Section 404 jurisdictional waters (including impacts more than minimal) only if the process for review is established via an IP.	The federal CWA specifies that states must certify that any activity subject to a permit issued by a federal agency, such as the USACE, meets all state water quality standards. In California, the state and regional water boards are responsible for certification of activities subject to USACE Section 404 Permits.	An agreement is required for any project that will alter the flow, bed, banks, channel or associated riparian areas of a river, stream, or lake and could adversely affect an existing fish or wildlife resource. Different types can be issued, including a “Standard,” “Routine Maintenance,” or “Master” agreement, among others.	Section 7 consultation is required for any activity subject to a permit issued by a federal agency, such as the USACE, that has the potential to affect federally listed or protected species or their habitats. USFWS generally administers these permits. However, if species that migrate between marine and freshwater environments are involved, then NMFS administers the permit.	Take of a candidate species or a species listed under CESA is prohibited unless the take is incidental to an otherwise lawful activity and authorized by CDFG. Authorization may be obtained in the form of an incidental take permit [Fish and Game Code Section 2081(b) and (c)]. If the species is also listed under ESA, authorization may be obtained in the form of a “consistency determination” (Fish and Game Code Section 2080.1) if CDFG determines that a federal incidental take statement (ESA Section 7) or incidental take permit (ESA Section 10(a)) is consistent with the incidental take permit requirements in Fish and Game Code Section 2081(b) and (c).	Coastal development permits (CDPs) are required for development within the coastal zone. The CCC directly handles CDPs for areas subject to tidal influence, on public trust lands, or for municipalities that have not developed a Local Coastal Program (LCP). Municipalities with LCPs may issue their own CDP, which could be appealed by CCC. Under separate review, the CCC must assess federally proposed authorizations to determine whether the activity is consistent with the state’s coastal management program.
Action Requiring Permit	When moving (discharging) or placing materials – such as dirt, rock, geotextiles, concrete, or culverts – into or within USACE jurisdictional areas. This type of activity is also referred to as a “discharge of dredged or fill material.”				When a 404 permit is required. Some NWPs and existing RGPs are already state certified.	When a project alters a river, lake, or stream or disturbs riparian vegetation.	The presence of federally protected species.	Whenever a project could result in take of a CESA protected species.	<u>CDP</u> : development within the coastal zone. <u>Consistency determination</u> : federal permits (e.g., Section 404) for activities that would affect the coastal zone.
Estimated Processing Time ²	3-4 months ³	6-12 months ³	<u>Existing RGPs</u> : 1 month ³ <u>New RGPs</u> : 12+ months ³	<u>Section 10 LOP</u> : 2-3 months ³ <u>Section 404 IP/LOP</u> : 12+ months ³	3-6 months	<u>Standard</u> : 3-6 months <u>Long-term Routine Maintenance</u> : 6+ months <u>Master</u> : 12+ months	<u>Section 7 Consultation</u> : maximum 135 days	6 months for an incidental take permit. 30 days (statutory) after notice to CDFG for a consistency determination.	6 months
Fees	No fee	Fee for private applicants; no fee for municipalities	Fee for private applicants; no fee for municipalities	<u>Section 10 LOP</u> : no fee <u>Section 404 IP/LOP</u> : fee for private applicants; no fee for municipalities	Determined via formula	Based on fee schedule in California Code of Regulations, Title 14, Section 699.5	No fee	No fee	<u>CDP</u> : no fee for municipalities <u>Consistency determination</u> : no fee
Term	2 years	Permit specific (up to 10 years)	5 years	<u>Section 10 LOP</u> : up to 3 years <u>Section 404 IP/LOP</u> : potential for 20+ years	Same as the Project-specific 404 Permit	Regular term is 5 years or less. Longer terms may be authorized.	Same as the Project-specific 404 Permit	Permit specific	2 years unless otherwise noted

¹ Municipalities that have approved NCCP Plans and associated Incidental Take Authorizations that cover relevant species and channel maintenance activities will not need additional authorization from the USFWS and CDFG for the species covered.

² Processing time, between submittal of complete application packages and permit issuance, is estimated.

³ Permit processing times may be longer if awaiting separate processing of USACE/EPA Jurisdictional Determination.

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2.1.1 Clean Water Act Section 404¹

The federal government, acting through the USACE and the Environmental Protection Agency (EPA), has jurisdiction over all waters of the U.S.² (federal jurisdictional waters, which include wetlands³ and non-wetland waters) as authorized under Section 404 of the 1972 Clean Water Act (CWA).⁴ Section 404 prohibits the discharge of dredged or fill material⁵ into waters of the U.S. without a permit from the USACE, even if the jurisdictional area is dry when the activity takes place.



Concrete channel

Activities that require a permit under Section 404 include, but are not limited to, placing fill or riprap, grading, mechanized land clearing, and dredging within jurisdictional waters. Under the USACE's rules a "discharge of dredged material" occurs when dirt or other material is removed from a USACE jurisdictional water and is then placed back in that water at the same or another location.

Projects that include regulated activities must be reviewed by the USACE and receive technical input from the EPA, USFWS, National Marine Fisheries Service (NMFS), and other agencies as applicable (e.g., the Office of Historic Preservation). In California, the RWQCB must issue water quality certification under Section 401 before the USACE can permit an action under Section 404. In coastal areas, the CCC must also determine whether the action is consistent with the state's approved coastal programs before a permit under Section 404 can be issued. Foremost, however, as a result of 2006 U.S. Supreme Court decisions and subsequent guidance issued by USACE,⁶ for

Regulatory authorizations are needed even if the watercourse is dry when the activity is conducted.

¹ 33 CFR Part 320-331.

² As defined by the USACE at 33 CFR 328.3(a), "waters of the U.S." are those that "are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;" tributaries and impoundments of such waters; and all interstate waters including interstate wetlands; and territorial seas.

³ As defined by the USACE at 33 CFR 328.3(b); 40 CFR 230.3(t), "Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas."

⁴ 33 USC § 1251-1387.

⁵ As defined by the USACE at 33 CFR Part 323.2(e) and the EPA at 40 CFR Part 232.2 (as published in the May 9, 2002 Fed. Reg.), the term "fill material" is defined by the USACE and EPA to mean "... material placed in waters of the United States where the material has the effect of (i) replacing any portion of a water of the United States with dry land; or (ii) changing the bottom elevation of any portion of a water of the United States." The term fill does not include trash or garbage.

⁶ *Rapanos v. United States* and *Carabell v. United States*, 126 S. Ct. 2208 (2006); USEPA and USACE June 5, 2007 Joint Guidance Memorandum; USACE June 5, 2007 RGL 07-01; USACE January 28, 2008 Coordination Memorandum; and USACE June 26, 2008 RGL 08-02.

some waters (e.g., that require a significant nexus or an isolated waters determination) the USACE and EPA must formally determine the presence and extent of federal jurisdictional waters before a permit under Section 404 can be issued. Currently, for non-notifying general permits, or in emergency situations, federal jurisdiction can be assumed (see Section 5.1.1 herein for a discussion of federal jurisdiction). Applicants should discuss with USACE the information that will be required for a federal jurisdictional determination, including applicable form, and whether the information should be submitted prior to, or concurrent with, the 404 application submittal.

Nationwide Permit – Under Section 404, numerous activities in wetlands or waters may be conducted under the USACE’s Nationwide Permit (NWP) program as long as the activities meet the conditions of these general permits (e.g., impacts are below established thresholds and are reported to the USACE pursuant to established processes). Essentially, NWPs are existing authorizations. More than 40 NWPs have been issued by the USACE for categories of activities. Only impacts to jurisdictional waters that are minimal may be authorized under the NWP program.

Individual Permit – Proposed projects that would result in impacts to jurisdictional waters that exceed thresholds established in the NWP program or existing RGPs (i.e., impacts that are more than minimal), require an Individual Permit (IP). In addition, the USACE may take discretionary authority over any proposed impact to jurisdictional waters and require an IP, even if the loss would be under established general permit thresholds, if the project-specific impacts are considered to be more than minimal. In circumstances where the placement of fill in jurisdictional waters requires an IP from the USACE, public noticing, preparation of an alternatives analysis,⁷ “sequencing,”⁸ and development of a comprehensive mitigation and monitoring plan are also required. The alternatives analysis must determine that the proposed fill is unavoidable and there are no practicable alternatives. Specifically, the Section 404(b)(1) Guidelines prohibit the USACE from issuing the permit if there is a practicable alternative to the proposed discharge that would have less adverse impact on the aquatic environment. This requires the applicant to demonstrate that the proposed project is the least environmentally damaging practicable alternative (LEDPA).

⁷ CWA subsection 401 (b)(1) provides guidelines for determining whether the project/proposal is consistent with the guidelines and environmental criteria developed and set forth by the EPA in conjunction with the USACE.

⁸ Prior to approval of the IP, proposed impacts to wetlands (and other jurisdictional waters) must undergo a process known as sequencing. Sequencing is a review to assess the efforts made by the applicant to follow, in descending order, these principles: avoidance, minimization, reduction or elimination of impacts over time, and, if acceptable by the USACE, replacement (mitigation).

Regional General Permit – USACE Districts issue RGPs to augment the NWP program and authorize regionally occurring activities that are not addressed in the NWP program, i.e., to fill permitting needs specific to a region that may not be applicable nationwide. Examples of RGPs issued by the Los Angeles District of the USACE include RGP No. 41 for *Removal of Invasive, Exotic Plants* and RGP No. 63 for *Repair and Protection Activities in Emergency Situations*. Both of these RGPs may be used by any public or private project proponent as long as their activity meets the conditions of the District’s RGP, as confirmed by the USACE. Project proponents may obtain RGPs for categories of activities they conduct frequently and at many locations, and that have minimal individual and cumulative impacts. However, an RGP issued to a project proponent may only be used by that applicant. RGPs are processed similar to an IP in that they require public noticing and the USACE must prepare a NEPA document, with an alternatives analysis if needed, and a final Statement of Findings. Once the RGP is issued, the review of proposed actions is similar to the NWP process. Permitting control under an RGP is not delegated to the applicant but remains the responsibility of the USACE. As with NWPs and other general permits, RGPs are issued for 5-year periods, subject to expiration, modification, or renewal by the USACE.



Concrete channel

RGPs augment the NWP program and authorize regional activities.

Letter of Permission/Master LOP – Another type of available permit is the Letter of Permission (LOP), which may be used where, in the opinion of the USACE’s District Engineer, the proposed work would not have significant individual or cumulative impacts on environmental values and should encounter no appreciable public opposition. In such situations, the proposal is coordinated with federal and state resource agencies, and adjacent property owners who might be affected by the proposal. However, the public at large is not notified. Typically, LOPs are used to authorize activities that are regulated under Section 10 of the CWA (e.g., work on, or pertaining to, piers, wharves, docks, jetties, artificial reefs, beach fill, dredged material disposal, etc.). Only if the process for this type of review has been established via an IP, can LOPs be used to authorize activities regulated under Section 404 of the CWA. The resultant IP that would be issued may be referred to as a “Master LOP.” Impacts to Section 404 jurisdictional waters that are authorized under a Master LOP may have more than minimal impacts. The IP process used to issue the programmatic Master LOP and the subsequent reviews of site-specific LOPs issued under it (coordinated as needed with applicable agencies and adjacent property owners) provide for appropriate avoidance, minimization, and compensation of all potential effects.

Discussion

For municipalities that have numerous storm water and flood control facilities that require periodic, routine maintenance activities that typically result in **minimal** impacts to jurisdictional waters, an RGP would be the optimal type of 404 permit to pursue. For municipalities whose storm water and flood control system includes many facilities where typical maintenance activity impacts are minimal, as well as several facilities where impacts would be **more than minimal**, there are two primary options for programmatic permitting: (1) obtain both an RGP and a Master LOP to establish authorization processes for the less-than-minimal and more-than-minimal impacts, respectively, or (2) obtain one Master LOP to authorize both the less-than-minimal and more-than-minimal impacts.

As noted above, under the framework of the Master LOP a process for pre-activity submittal of site-specific information and focused review (by relevant agencies and adjacent property owners) is established, after which site-specific LOPs are issued. The types of more-than-minimal impacts that could be processed under the Master LOP potentially include limited **channel dredging, new channelizing, concreting, and bank stabilization** (none of these activities could be authorized via the RGP). In addition, the Master LOP establishes a longer permit term (e.g., potential for 20 or more years for the Master LOP, although the term for each site-specific LOP is generally 3 years) compared to the 5-year term of an RGP. Comparatively, although notifications are required after an RGP is issued, the pre-activity review is relatively abbreviated, can include multiple sites, and is limited to the regulatory agencies who will verify that the impacts remain minimal and that activities comply with conditions established in the RGP (see RGP pre-activity process described in Chapter 8). Once the activities have been verified as meeting the conditions of the RGP, the multiple activities may proceed per those conditions without further site-specific approval. Although less site-specific information may be required upfront, under the IP process to issue the Master LOP, extensive documentation must still be provided. In consideration of this, and the site-specific information and lengthier review needed before individual LOPs could be issued, municipalities that have **only a few facilities** where impacts would be more than minimal may prefer to pursue separate IPs for those few activities and address all activities with minimal impacts under an RGP.

Municipalities may pursue Section 404 permits according to their best interests, either choosing to cluster many activities under the programmatic options available under Section 404, or pursuing site-by-site permits. After determining how many maintenance activities

have the potential to result in more than minimal impacts, each municipality and the USACE can determine which type of 404 permit(s) is optimal for their storm water and flood control facility maintenance program.

2.1.2 Clean Water Act Section 401 and the Porter-Cologne Water Quality Control Act: California Water Code Section 13000 et seq.

Under Section 401 of the CWA, every applicant for a federal permit to discharge into a regulated water body must obtain **certification** from the state that the proposed activity will comply with state water quality standards and water quality objectives. As such, Section 401 provides the State Water Resources Control Board (SWRCB) and/or the relevant local RWQCB with the regulatory authority to certify or deny that compliance can be met. No permit to discharge into regulated waters may be issued by a federal agency until certification required by Section 401 has been granted. As noted above, the USACE cannot issue a standard permit (e.g., an IP) or authorize an activity under most existing general permits (e.g., NWP or RGP) until a 401 certification has been obtained. Some USACE-issued RGPs and NWPs have been pre-certified by the SWRCB under Section 401 of the CWA. However, for the existing general permits that have not been pre-certified, it is the applicant's responsibility to obtain 401 certification, whether or not notification to the USACE is required under the terms of the general 404 permit.

In addition to its authority under CWA Section 401, the SWRCB and RWQCB have regulatory authority over state waters under the 1969 Porter-Cologne Water Quality Control Act (Porter-Cologne).⁹ Under Porter-Cologne, the SWRCB and the RWQCB regulate the "discharge of waste" to waters of the state.¹⁰ The term "discharge of waste" is broadly defined in Porter-Cologne, such that discharges of waste include fill, any material resulting from human activity, or any other "discharge" that may directly or indirectly impact waters of the state relative to implementation of Section 401 of the CWA (see also Section 5.1.2 herein for a definition of state waters).

Porter-Cologne is the state equivalent of the CWA. Specifically, Porter-Cologne requires each RWQCB to formulate and adopt water quality plans for all areas within their region (aka "Basin Plans").¹¹



Basin

The Section 401 certification is a prerequisite for other permits.

⁹ California Water Code Sections 13000-13999.10.

¹⁰ "Waters of the state" is defined in Cal. Water Code Section 13050(e).

¹¹ California Water Code Chapter 4, Article 3 (Regional Water Quality Control Plans [§§ 13240 - 13247]) and Article 4 (Waste Discharge Requirements [§§ 13260 - 13274]).

Basin Plans establish beneficial uses,¹² water quality standards, and water quality objectives for major watershed areas (i.e., RWQCB boundaries) throughout the state. Parties proposing to discharge waste that could affect state waters (other than into a community sewer system) must file a Report of Waste Discharge (ROWD) with the appropriate RWQCB.¹³ The RWQCB will respond to an ROWD by issuing Waste Discharge Requirements (WDRs) in a public hearing, or by waiving the WDR (with or without conditions) for the proposed discharge into jurisdictional waters.

While 401 certification is typically issued or waived by RWQCB staff,¹⁴ WDRs must be issued by the Regional Board. Generally, when staff issue or waive 401 certification, WDRs are simultaneously waived. However, for large or multi-year projects that are being reviewed under Section 401 of the CWA, staff may determine that WDRs should also be issued, whereby additional review by the Board and a public hearing will be necessary.

Discussion

As mentioned above, the RWQCB will need to issue a 401 certification before the USACE can issue an RGP (or alternative programmatic authorization) for storm water and flood control facility maintenance activities. The 401 certification will include measures (in addition to those required by the USACE) that must be taken to ensure compliance with established water quality objectives. The RWQCB does not have an existing programmatic version of water quality certification. Rather, they review the category of activities for which the RGP (or alternative programmatic 404 authorization) is sought and determine the necessary water quality protection requirements. The RWQCB may deny certification for some activities/sites, which would affect the total list of activities/sites to be included in the RGP. Generally, however, most sites that the USACE would allow under its programmatic 404 permit would likely be able to obtain 401 certification from the RWQCB.

Basin Plans establish regional water quality policy and prescribe water quality standards and objectives.

Although not a particular focus of this guide, permit applicants should be aware of sensitive waterbodies within their jurisdiction or region to be permitted. As mandated by CWA Section 303, states are

¹² California Water Code Section 13050(f) describes the beneficial uses of surface and ground waters that may be protected against quality degradation. These include, but may not be limited to, domestic, municipal, agricultural and industry supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.

¹³ California Water Code Section 13260.

¹⁴ Projects that span more than one region require 401 certification or waiver from the SWRCB.

required to adopt water quality standards for all surface waters of the U.S. The water quality standards that are ultimately developed must be based on the most sensitive use when a given waterbody has multiple beneficial uses (which most do). In particular, Section 303(d) of the CWA requires states to identify waters that do not meet water quality standards or objectives. Waters found to not meet these thresholds are subsequently considered as “impaired.” From a permitting perspective, 303(d)-listed waterbodies will require greater study, analyses, and pollution controls when including them within a programmatic or individual permit.



Pipe outlet into earthen channel

2.1.3 Federal Endangered Species Act Sections 7, 9, and 10

The federal ESA of 1973,¹⁵ as amended (16 USC 1531 et seq.), provides for the protection and recovery of species threatened with extinction. The ESA includes, but is not limited to, the following:

- A requirement that all federal agencies ensure that their actions are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat (ESA Section 7)
- A prohibition on “take” of threatened and endangered species (ESA Section 9)
- A process for exemption from Section 9 take prohibitions when take is incidental to, and not the purpose of, otherwise lawful activities (ESA Section 10)

The ESA also provides a process to list species in danger of becoming extinct and a program for the conservation of habitat for threatened or endangered species that has been designated as critical in the Federal Register. The ESA is administered by the USFWS and NMFS. The USFWS is responsible for protection of birds, terrestrial, and resident (nonanadromous) freshwater species. The NMFS is responsible for protection of anadromous fish and marine species (e.g., marine mammals and saltwater fish).

The ESA defines a “threatened” species as a species likely to become endangered in the near future, and an “endangered” species as a species in risk of extinction throughout all or a substantial portion of its range.

Section 7 of the ESA outlines procedures for federal interagency cooperation to conserve federally listed species and **designated critical habitat**. The ESA mandates that all federal agencies participate in the conservation and recovery of listed threatened and endangered species and that each agency ensure that any action they authorize, fund, or carry out does not jeopardize the continued existence of a listed species or its critical habitat. Critical habitat identifies specific areas that have the physical and biological features

¹⁵ 50 CFR Part 402

essential to the conservation of a listed species, and that may require special management considerations for protection.

Formal consultation with the USFWS and/or NMFS is required under Section 7 of the federal ESA for all federal projects, projects receiving federal funding, and projects requiring federal permits (e.g., USACE permits) that could adversely affect any proposed or listed species. Pursuant to Code of Federal Regulations (CFR) Section 402.12, the lead federal agency of a proposed action that could adversely affect a listed species is required to prepare a Biological Assessment (BA). The BA is the initial step in a formal Section 7 consultation with the USFWS and/or NMFS. The USFWS and/or NMFS then prepares a Biological Opinion (BO), which is the end product of a formal consultation. The BO includes a determination on whether the federal action in question will jeopardize the continued existence of the species in question.

Section 9 of the ESA prohibits “take” (i.e., to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct) of any threatened or endangered species.

Section 10 of the ESA allows for the issuance of permits for certain actions that are otherwise prohibited under the ESA. Moreover, Section 10 provides a mechanism for “**incidental take**,” provided the “taking” will not jeopardize the continued existence of any listed species or destroy or adversely modify critical habitat.

Discussion

Before the USACE can issue an RGP (or alternative programmatic authorization) to a municipality for its storm water and flood control facility maintenance activities, they will need to consult with the USFWS and/or NMFS on whether the activities may affect federally listed species. The USFWS does not have a separate approach for consulting with a federal agency on a programmatic permit. Rather, the USFWS will review the category of activities for which the RGP (or alternative 404 authorization) is sought and determine the conditions that will be necessary to conclude that the activities will not adversely affect federally listed species. Through their review, the USFWS may determine that some activities at some sites have the potential to harm, harass, or cause other effects on one or more federally listed species but may also determine that such effects would not place the continued existence of the species in jeopardy. As long as a jeopardy determination is not made, the USFWS will prepare its BO on the proposed activities and will include conservation measures and other conditions that would avoid or minimize adverse effects from the activities.

Existing Incidental Take Authorization under the NCCP – Some San Diego County municipalities have approved plans under the state’s Natural Community Conservation Planning (NCCP) Act (see Section 2.2.2) that also qualify as habitat conservation plans under Section 10 of the ESA. Municipalities with these approved plans have been issued **incidental take** permits by the USFWS (and CDFG) for various listed species. For these municipalities, additional consultation with the USFWS will not be necessary for the species that are covered under their existing incidental take permits because these species have already been consulted on and are subject to agreements issued under those plans. For species that are not covered under existing incidental take permits, or for municipalities whose NCCP Plan does not cover channel maintenance or requires that separate consultation be conducted for activities that require wetland permits, the USACE will need to consult with the USFWS for the RGP those municipalities will pursue.



Concrete channel

2.1.4 California Fish and Game Code Sections 1600-1616

Under Sections 1600-1616 of the Fish and Game Code, the CDFG regulates activities that will alter the flow, bed, channel, or bank of a river, stream, or lake. Specifically, under Section 1602 of the Fish and Game Code, any project proponent must provide the CDFG with **written notification** before beginning any activity that will:

- Substantially divert or obstruct the natural flow of any river, stream, or lake;
- Substantially change or use any material from the bed, channel, or bank of any river, stream, or lake; or
- Deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into any river, stream, or lake.

Hence, an activity is subject to CDFG’s jurisdiction if it requires notification under Section 1602 of the Fish and Game Code.

Notification is generally required for any activity that will take place in or in the vicinity of a river, stream, or lake. This includes ephemeral, intermittent, and perennial rivers and streams. If CDFG determines that the proposed activity could adversely affect an existing fish and wildlife resource, a lake or streambed alteration agreement that includes measures to protect those resources will be required.

The CDFG must be notified for nearly any work conducted in a watercourse, flowing or non-flowing.

CDFG may issue different types of SAAs that are generally described in the fee schedule for SAAs in Section 699.5 of Title 14 of the California Code of Regulations. A “**standard**” agreement is typically issued for most construction projects (excluding gravel, sand, or rock extraction projects; timber harvesting; water diversion, extraction, or impoundment; or routine maintenance). A “**master**” agreement may be issued for proposed large-scale development projects that are composed of multiple smaller projects for which detailed plans have not yet been prepared. Once issued, master agreements describe a procedure that must be followed for project-specific construction, maintenance, or other activities the agreement covers. Among the additional types of SAAs that may be issued is a “**routine maintenance**” agreement, which can be issued for projects where the primary objective is to periodically maintain numerous existing private or public facilities, e.g., canals, channels, culverts, and ditches.

The CDFG may issue SAAs as either **regular** or **long-term**. A regular agreement is one with a term of 5 years or less, whereas a long-term agreement is one with a term greater than 5 years.

Maintenance and any other activities subject to Section 1602 in the Fish and Game Code may not begin until the CDFG either issues a final SAA, determines that an SAA is not required, or for agreements with regular terms (i.e., 5 years or less), fails to produce a draft SAA within 60 days of the notification being deemed complete (the 60-day time limit does not apply to long-term agreements). Issuance of any type of SAA is considered a discretionary action under CEQA; therefore, the CDFG must comply with CEQA either as a responsible or lead agency before it may issue a final SAA. By working with the CDFG to develop a draft SAA, the project applicant can modify project features to avoid or lessen potential impacts on fish and wildlife resources.

Discussion

Although other types of SAAs could apply, because the **primary objective** of storm water and flood control maintenance work is to conduct repeat, routine maintenance at varying time periods, the type of agreement that would likely be pursued by the municipalities is a regular or long-term **routine maintenance** agreement. To obtain a routine maintenance agreement, in addition to the standard notification form FG2023, a supplemental form specific to routine maintenance will need to be provided to CDFG. Another type of authorization that municipalities may want to consider is a **master** agreement, which can only be a long-term agreement. However, master agreements pertain to multiple projects that are **not exclusively routine maintenance** projects that would be completed at different times. Similar to the Master LOP that can be issued by the

USACE (see Section 2.1.1), if municipalities wish to include other types of activities in the agreement they pursue with the CDFG, a master agreement may be the more appropriate agreement for that municipality. Regardless of which type of agreement is pursued, the CDFG will review the category of activities for which the SAA and other permits are sought and determine the conditions that will be necessary to conclude that the activities will not adversely affect fish and wildlife resources. Each municipality and the CDFG can determine which type of agreement is optimal for their storm water and flood control facility maintenance program.



Dissipation structure

2.1.5 California Endangered Species Act: Section 2050 et seq. of the Fish and Game Code

The purpose of the CESA is to conserve, protect, restore and enhance endangered and threatened species and their habitat. Consistent with this purpose, CESA prohibits take of endangered, threatened, and candidate species, except as authorized by the CDFG. The CESA generally parallels the main provisions of the federal ESA and is administered by the CDFG. Unlike the CESA, however, the ESA does not prohibit take of species being considered for listing as endangered or threatened, which under the CESA are referred to as “candidate species” (Fish and Game Code, Section 2068).¹⁶ Section 86 of the Fish and Game Code defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.”

Sections 2080.1 and 2081 of the Fish and Game Code regulate the “take” of endangered, threatened, and candidate species under CESA by authorizing take under certain circumstances. As described below, such authorization may be in the form of a “consistency determination” for species listed under both the ESA and the CESA (under Section 2080.1), or an “incidental take permit” (under Section 2081(b) and (c)).

Fish and Game Code Section 2080.1 allows an applicant who has obtained a federal incidental take statement as part of a BO pursuant to a ESA Section 7 consultation or an incidental take permit under ESA Section 10(a) to notify the CDFG Director in writing that the applicant has been issued an incidental take statement or permit pursuant to the ESA and submit a copy of the federal incidental take

¹⁶ As part of CESA, the California Fish and Game Commission has authority under Section 2084 of the Fish and Game Code to promulgate regulations that prescribe terms and conditions for the take of candidate species. If such regulations are adopted, take of the candidate species is allowed through compliance with the prescribed terms and conditions. Without such regulations, take of a candidate species would require a consistency determination (if the candidate species is also listed under ESA) through Section 2080.1 or an incidental take permit through Section 2081(b) and (c) of the Fish and Game Code.

statement or permit to the CDFG Director. The Director then has 30 days to determine whether the incidental take statement or permit is “consistent” with the CESA in the form of a written “consistency determination.” If the Director determines that the incidental take statement or permit is consistent with the CESA, the applicant does not need to obtain separate take authorization from the CDFG in the form of an incidental take permit under Fish and Game Code Section 2081(b) and (c). However, consistency determinations apply only in those situations where the affected species is listed under both the ESA and the CESA. If the species is listed under the CESA only, an applicant must obtain an incidental take permit under Fish and Game Code Section 2081(b) and (c).

California legislation encourages cooperative and simultaneous consultation between the USFWS/NMFS and CDFG to coordinate the federal ESA Section 7 process (see Section 2.1.3) and the CESA process so that consistent and compatible findings result. In addition, a memorandum issued by the General Counsel to the CDFG states that if a federal BO has been prepared for a species, the CDFG must use the BO in lieu of its own findings unless it is inconsistent with the CESA. If the proposed project may affect species that are listed as threatened or endangered under both the CESA and federal ESA, the applicant should encourage the CDFG to participate to the greatest extent practicable in the ESA Section 7 consultation process, well before the federal BO is issued.

If the CDFG Director determines that the federal incidental take statement or permit is not consistent with the CESA, or if the project would result in take of a species that is listed under the CESA, but not the ESA, the applicant would need to obtain take authorization in the form of an incidental take permit under Fish and Game Code Section 2081(b) and (c).

Discussion

Routine maintenance activities have the potential to affect CESA-listed species that are also listed under the ESA (e.g., California least tern, southwestern willow flycatcher, and least Bell’s vireo), as well as CESA-listed species that are not listed under the ESA (e.g., California black rail and Belding’s savannah sparrow). Unless RCM Workgroup members have existing take authorizations (see below), they will need to obtain Section 2080.1 consistency determinations and/or incidental take permits from the CDFG for projects that could result in take of CESA-listed and/or candidate species.

The CDFG does not have a separate approach for processing an incidental take permit on a programmatic level. Rather, the CDFG

will review the category of activities for which the RGP and SAA are sought and determine the conditions necessary to conclude that the activities will not result in take of CESA- listed or candidate species.

Existing Incidental Take Authorization under the NCCP - Some San Diego County municipalities have approved plans under the state's NCCP Act (see Section 2.2.2). Municipalities with these approved plans have been issued incidental take permits by the CDFG (and USFWS) for various listed species. For these municipalities, additional consultation with the CDFG will not be necessary for the species that are covered under their existing incidental take permits because these species have already been consulted on and are subject to agreements issued under those plans. For species that are not covered under existing incidental take permits, or for municipalities whose NCCP Plan requires that separate consultation is conducted for activities that require wetland permits, consultation with the CDFG will be required.



Bridge structure

2.1.6 California Coastal Act and Coastal Development Permits, and Coastal Zone Management Act and Federal Consistency Determinations

Policy 30233 of the CCA allows for diking, filling, or dredging of open coastal waters, wetlands, estuaries, etc. where there is no feasible less damaging alternative and where feasible mitigation measures have been provided, but only for specific types of projects. The list includes new coastal-dependent industrial facilities, maintenance of navigational channels, entrance channels for boat facilities, new boat facilities or public recreational piers, incidental public service purposes, mineral extraction, restoration, or nature study/aquaculture.

Policy 30240 of the CCA provides for the protection of Environmentally Sensitive Habitat Areas (ESHAs)¹⁷ and states that these areas shall be protected against significant disruption of habitat values, and only uses dependent on those resources shall be allowed. That policy also states development in adjacent areas shall be sited and designed to prevent impacts, and to be compatible with the continuance of the habitat.

Coastal development permits (CDPs) are required for development within the coastal zone. For all coastal areas the CCC retains

¹⁷ The California Coastal Act defines an environmentally sensitive area as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities or developments."

permanent coastal permit jurisdiction for areas subject to tidal influence, for development on public trust lands, or for municipalities that have not developed their own Local Coastal Program (LCP). Municipalities with LCPs may issue their own CDPs for development in areas outside of CCC permanent jurisdiction. However, the CCC may appeal CDPs issued by a municipality if the development would affect an ESHA, wetlands, or is within an “appeals area” as shown on the municipality’s LCP. Specific to wetlands, the limits of appeal jurisdiction are specified in the California Code of Regulations Section 13577(b) of Title 14, Division 5.5, Article 18, as being 100 feet landward from the upland limit¹⁸ of the wetland.

Pursuant to the Coastal Zone Management Act (CZMA), an applicant for a federal license or permit (e.g., a Section 404 permit) to conduct an activity affecting any land or water use or natural resource of the coastal zone, must meet the federal consistency requirements of Section 307(c)(3)(A) of the CZMA. Under the California Coastal Management Program (CCMP), the requirements of Section 307(c)(3)(A) can be met by receiving CCC-issued CDPs which automatically satisfy federal consistency and no further submittal is needed. Local government-issued CDPs do not automatically satisfy federal consistency; therefore, the applicant will need CCC concurrence with a consistency certification or a CCC staff-issued waiver of the federal consistency provisions. In instances where locally issued CDPs are appealable (e.g., most coastal activities that require a 404 permit), the federal consistency unit of the CCC will usually issue a waiver. In California, the CCC’s federal consistency unit in San Francisco handles all federal consistency evaluations within the state.

Discussion

Coastal Development Permits – Certain activities may be exempt from a CDP under Section 30610(d) of the CCA, which authorizes development without a CDP for “[r]epair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities” [Ca. Pub. Res. Code Section 30610(d)]. Exemptions for repair and maintenance activities are granted on a case-by-case basis when it can be demonstrated that the proposed activity or project results in no

¹⁸ For purposes of the California Code of Regulations Section 13577(b), the upland limit of a wetland is defined as (a) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover; (b) the boundary between soil that is predominantly hydric and soil that is predominantly non-hydric; or (c) in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during the years of normal precipitation, and land that is not.

potential for impacts to ESHAs occurring within the coastal zone. The California Coastal Commission Code of Regulations Section 13252(a), however, notes that extraordinary methods of repair and maintenance, e.g., “any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area ... or within 20 feet of coastal waters or streams that include placement or removal, whether temporary or permanent, of ...any forms of solid materials... shall require a coastal development permit because they involve a risk of substantial impact.”



Detention Basin

The CCA does not include specifications for obtaining CDPs on a programmatic level. However, maintenance for numerous storm water and flood control facility sites can be included in one CDP application package. Coastal municipalities **with an approved LCP** would issue a CDP (or exemption) for their maintenance or repair activities that occur within the coastal zone. For these municipalities, wherever maintenance and repair activities are located within an “appeals area” as noted in their LCP, are coincident with an EHSA, or are in or within 100 feet of a wetland, the CCC may appeal the permit or exemption issued by the municipality. In areas where the CCC retains complete authority (e.g., tidelands, submerged lands, and public trust lands), or for coastal municipalities **without an approved LCP**, the CCC would issue the CDP or exempt qualifying activities within the coastal zone.

Federal Consistency Determination – All coastal municipalities that will apply for an RGP (or other type of 404 permit) for their storm water and flood control facility maintenance program will need evidence that their activities within the coastal zone are compliant and consistent with the CCMP. As noted above, the requirements of Section 307(c)(3)(A) of the CZMA can be fully satisfied by receiving CCC-issued CDPs.

The coastal consistency evaluation is a prerequisite for Section 404 permits that would authorize impacts to coastal waters.

Coastal municipalities with approved LCPs that issue their own CDPs for work in coastal federal waters, however, will need to provide the USACE with evidence of CCMP-compliance. This can be satisfied through CCC concurrence with a consistency certification.

Alternatively, in instances where the locally issued CDP is appealable to the CCC, the federal consistency unit will issue a waiver of the federal consistency provisions.

Coastal municipalities with approved LCPs that determine that a portion of their storm water and flood control facility maintenance activities are **exempt** from the need for a CDP still need to provide evidence of CCMP-compliance for those activities. This can be met by obtaining CCC concurrence with a consistency certification or a CCC staff-issued waiver as noted above.

The CZMA does not include specifications for obtaining CCC concurrence with a consistency certification or CCC staff-issued waivers on a programmatic level. However, the federal consistency unit of the CCC will review the numerous activities for which the RGP is being sought, the corresponding CDP(s) or exemption(s), and concur or issue waivers accordingly. The USACE cannot issue their 404 permit for fill in coastal federal waters until evidence of compliance with the CCMP is provided.

2.2 ADDITIONAL APPLICABLE OR POTENTIALLY APPLICABLE REGULATIONS

2.2.1 Federal

National Environmental Policy Act – NEPA requires the consideration of potential environmental impacts in the decision-making process for all major federal actions. Implementing procedures to ensure that federal programs comply with the purpose of NEPA are contained in the Council on Environmental Quality (CEQ) regulations. During the NEPA compliance process, coordination and consultation with government agencies is required to obtain regulatory input and guidance related to the proposed federal action. The purpose of this coordination and consultation is to verify that all applicable laws, rules, regulations, and policies have been identified and that the proposed federal action has been duly evaluated in light of these considerations.

Executive Order (EO) 11990, Protection of Wetlands¹⁹ – This EO is an overall wetlands policy for all agencies managing federal lands, sponsoring federal projects, or providing federal funds to state or local projects. EO 11990 requires that when activities involve wetlands, a finding must be made by the federal agency that there is no practicable alternative to the activity, and that the proposed action included all practicable measures to minimize impacts on wetlands resulting from such use.

Migratory Bird Treaty Act²⁰ (MBTA) – The goal of this Act is to provide protection for any migratory bird listed in 50 CFR 10. The MBTA makes it illegal to hunt, take, capture, kill, possess, sell, purchase, transport, or carry any migratory bird, including their feathers, parts, or nests. The definition of “take” includes any disturbance that would result in nest abandonment or impaired reproductive effort. Violations of the MBTA are punishable by law.

¹⁹ EO 11990, 1977

²⁰ 16 USC 703-712

Fish and Wildlife Coordination Act²¹ – The Fish and Wildlife Coordination Act directs the Department of the Interior to provide assistance to and foster cooperation between federal agencies and the state’s wildlife agency to promote wildlife conservation in water resource development programs. The federal lead agency for the project must consult with the USFWS, NMFS, and the state’s wildlife agency for activities that affect, control, or modify jurisdictional waters, and associated wildlife conservation measures to be implemented during construction and maintenance of the project.

U.S. Fish and Wildlife Service Mitigation Policy²² – The USFWS is guided by this policy, which places emphasis on the following: (1) ensure consistent and effective USFWS recommendations; (2) allow public and private projects to anticipate USFWS recommendations and plan for mitigation needs early; and (3) reduce project delays and conflicts between the USFWS and projects. This policy follows the sequence of steps recommended in the CEQ regulations for implementing the procedural provisions of NEPA in seeking to avoid, minimize, or compensate for negative impacts to wetlands and other jurisdictional waters.

Sustainable Fisheries Act of 1996²³ – The Sustainable Fisheries Act of 1996 (P.L. 104-297) reauthorized and amended the Magnuson-Stevens Fishery Management and Conservation Act (16 USC 1801) by providing a number of new mandates for the NMFS, regional fishery management councils, and other federal agencies to identify and protect important marine and anadromous fish habitat.²⁴ The councils, with assistance from the NMFS, are required to delineate “essential fish habitat” (EFH) for all managed species. The Act defines EFH as “... those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” Federal action agencies that fund, permit, or carry out activities that may adversely impact EFH are required to consult with the NMFS regarding the potential effects of their actions on EFH and respond in writing to NMFS recommendations.²⁵

Coastal Zone Management Act – The CZMA of 1972 creates a broad program of land use management based on control by each coastal state, with a focus on protecting sensitive resources that occur within the coastal zone. The CZMA requires that all applicants for federal permits and federal agency project sponsors obtain proof of

²¹ 16 USC § 661 (1954)

²² FR, V. 46, No. 15, pages 7644-7663, January 23, 1981, as corrected in the FR of February 4, 1981.

²³ P.L. 104-297

²⁴ Rosenberg et al. 2000

²⁵ 50 CFR 600.920

certification from the coastal state that the activity is consistent with the state's approved coastal program.

2.2.2 State

California Environmental Quality Act – CEQA requires that the public agency with the principal responsibility for carrying out or approving a discretionary project, referred as the “lead agency,” study and disclose the project’s potential water quality and other environmental impacts and specify means to avoid, minimize, and mitigate for those impacts in the form of an environmental document, unless the lead agency determines the project is exempt from CEQA. Agencies other than the lead agency that also have discretionary approval power over the project, such as the RWQCB (water quality certification) and the CDFG (SAAs and incidental take permits), must comply with CEQA before approving the project by considering the environmental document prepared by the lead agency. If the lead agency determines the project is exempt, and therefore does not prepare an environmental document, the responsible agency must make its own determination whether the project is exempt. If it decides it is not exempt, that agency would then need to prepare its own environmental document for the project.

Natural Community Conservation Planning Act – Statewide, multi-jurisdictional comprehensive habitat conservation planning efforts were initiated under the umbrella of the NCCP Act of 1991. The NCCP program creates a process for the issuance of federal and state permits and other authorizations under the ESA and CESA, and the state’s NCCP. Two NCCP subregional plans finalized for San Diego County include the Multiple Species Conservation Program, which includes 11 jurisdictions in the southwestern portion of the county, and the Multiple Habitat Conservation Program, which includes 7 jurisdictions in the northwestern portion of the county. Local jurisdictions that participate in these comprehensive habitat conservation planning efforts will prepare and implement their own subarea plans, which guide and provide for the protection of species and natural habitats. The subregional plans and each subarea plan prepared pursuant to them serve as multiple species habitat conservation plans pursuant to Section 10(a)(2)(A) of the ESA and NCCPs pursuant to the NCCP Act. As such, once approved by the USFWS and CDFG, authorizations are issued to the municipality that allow for future take of covered species and habitat, as long as all conditions of the plans are upheld.

California Fish and Game Code Section 3503 – Section 3503 makes it unlawful to “take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by [the Fish and Game Code] or any regulation adopted pursuant thereto.”

California Fish and Game Code Section 3503.5 – Section 3503.5 makes it unlawful to “take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by [the Fish and Game Code] or any regulation adopted pursuant thereto.”

California Fish and Game Code Sections 3511, 4700, 5050, and 5515 – These statutes list birds, mammals, reptiles and amphibians, and fish, respectively, that are fully protected under state law. As such, take of those species is prohibited, except in very limited circumstances.

California Fish and Game Code Sections 5650 – This statute makes it unlawful to deposit in, permit to pass into, or place where it can pass into waters of the state specified substances, such as petroleum, and generally any substance or material deleterious to fish, plant life, mammals, or bird life. However, Section 5650 does not apply to a discharge or release expressly authorized pursuant to, and in compliance with, the terms and conditions of a waste discharge requirement or waiver under Porter-Cologne, or a federal permit for which the State Water Resources Control Board or a Regional Water Quality Control Board has issued a water quality certification.

California Wetlands Conservation Policy – EO W-59-93 establishes a wetland conservation policy for the state and provides comprehensive direction for the coordination of statewide activities for the preservation and protection of wetland habitats. The Resources Agency of California and the California Environmental Protection Agency are designated as co-leads to implement the goals of the California Wetlands Conservation Policy, which include ensuring “no overall net loss” and achieving a “long-term net gain in the quantity, quality, and permanence of wetlands acreage and values in California.” Other stated goals are a reduction in the procedural complexity in the administration of wetland conservation programs, and to encourage partnerships to make landowner incentive programs and cooperative planning efforts the primary focus of wetlands conservation and restoration.

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3.0 Municipal Storm Water and Flood Control Systems



Detention basin

The features of a municipal storm water and flood control system are similar among most municipalities within the RCM Workgroup. An overview of these features is provided in this chapter.

A storm water conveyance system is a network of structures designed to collect, convey, detain, treat, and discharge runoff. Examples of these structures are storm sewer conduits (i.e., pipes), culverts, drainage ditches, and ponds (see Table 3-1). Generally, these structures act in a passive mode, relying on the force of gravity to move water. Occasionally, however, storm water is actively managed with devices such as pumps, gates, or valves. A conveyance structure may be as simple as an earthen ditch or as complex as an extensive system of inlets and subsurface piping.

Flood control systems are the same as storm water conveyance systems in that they both serve to reduce flooding potential. However, flood control systems are typically designed for detaining, retaining, or diverting unexpected large quantities of accumulated storm water. The term “flood control” should not be interpreted in an absolute sense because floods cannot be controlled completely.

Examples of some storm water conveyance features are depicted in the photographs included throughout this guide. The photographs were taken at various municipal storm water facility sites within San Diego County. Standardized drawings of various types of drainage system components have been compiled by the San Diego County Regional Standards Committee. All regional standard drawings relevant to drainage systems, and others, are available at <http://www.regional-stds.com/drawings.html>.

Table 3-1
Storm Water Conveyance Components

Component	Notes
Flowing Surface Waters	
Storm water/flood control channel	See concrete-lined channel and natural-lined channel below.
Concrete-lined channel <ul style="list-style-type: none"> • trapezoidal • parabolic • swale • ditch • brow ditch • v-shaped • u-shaped 	Open steel-reinforced concrete channels for storm water/flood control conveyance.
Natural-lined channel <ul style="list-style-type: none"> • natural-lined ditch • soft bottom trapezoidal channel • natural-lined swale • natural-lined brow ditch 	Open earth-bottom channels (e.g., creeks) with earthen or rock sides for conveyance of storm water/flood control.
Bio-swale <ul style="list-style-type: none"> • grass swale • wetland 	A low-lying or depressed, wet stretch of land. Often lined with grass and used as a conveyance for storm water that offers pollutant treatment capabilities depending on design.
Pipes <ul style="list-style-type: none"> • reinforced concrete pipe (RCP) • plastic • corrugated metal pipe (CMP) 	Generally, a long, closed (covered) conduit that conveys storm water runoff.
Culvert <ul style="list-style-type: none"> • circular • pipe arch • box/rectangular • metal box • elliptical • arch 	A short, closed (covered) conduit that passes storm water runoff under an embankment, usually a roadway. A rectangular or square concrete culvert is referred to as a box culvert.
Inlet Devices	
Drainage inlets <ul style="list-style-type: none"> • curb inlet • grate inlet • trench inlet • flared inlet • pipe inlet • combination inlet (combination of two or more of the above) 	An opening leading to an underground pipe or open ditch for carrying surface runoff, separate from the sanitary sewer or wastewater system.
Outlet/Outfall Devices	
Pipe outlet	The point where drainage discharges from a sewer pipe, ditch, or other conveyance to a receiving water body.
Flared outlet (wing wall)	Serves to spread the outflow and protect against eddy action flows from storm water exiting the outfall pipe.
Flapper gate	Steel or metallic hinged device connected at the end of an outfall/outlet pipe to prevent material/animals from entering the storm water conveyance system.
French drain/percolation pipe	Pipe drain constructed with holes throughout most of the pipe length to accept the draining water from overlying soils or materials.

Component	Notes
Structural Protection Devices	
Gabion structures	Wire basket filled with stones, used to stabilize banks or streambeds of a water course.
Energy dissipater	A device constructed in a waterway or at an outlet/outfall to reduce the kinetic energy of the discharge.
Riprap	A layer of large uncoursed stones and broken rock placed strategically on banks, discharge points, or watercourse bends for stabilizing soil and reducing erosion.
Spillways	
Weir spillway	An overflow structure built across an open channel to raise the upstream water level and/or to measure the flow of water passing over it.
Pipe spillway	A pipe, usually constructed of CMP, that extends from a type of holding pond/basin and extends through the bank horizontally. Allows water to be released at a selected height.
Riser spillway	Usually a vertical CMP established at a certain height relative to a holding pond/basin that protects against bank overflow by releasing the overflow water through a horizontal pipe to a protected spillway.
Basins	
Sediment basins • settling basin	Impoundment structures designed to promote water detention time for sediment fallout within the basin before water is released to the downstream conveyance or receiving water.
Detention pond • holding pond	A storm water system that delays the downstream progress of storm water runoff in a controlled manner (i.e., attenuation). This is typically accomplished using areas as temporary storage and releasing accumulated water through a metered outlet device (as opposed to a less common retention pond).
Retention pond	An impoundment that is not equipped with an outlet in order to promote percolation of accumulated water to the underlying geology. This differs from a detention basin, which holds water for a limited period of time and releases it at a pre-determined rate to the downstream conveyance or receiving water.
Plunge pool	A depression or basin used to buffer the impact of falling water. The pool may be protected by various lining materials to reduce scour.
Catch basin	An entryway to the storm drain system, usually located along a paved roadway.
Maintenance Devices/Structures	
Manhole cleanout	Concrete access opening, measuring 36 inches or less in diameter, that allows maintenance access.
Junction structures (cleanouts)	These structures can also be designed to provide maintenance access of large-diameter culverts (e.g., trunk lines greater than 36 inches) or pipelines.
Active Conveyance Devices	
Pumping systems • pumps • gates • valves	Devices used to actively convey storm water runoff where passive conveyance (e.g., force of gravity) cannot be relied upon.

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4.0 Maintenance Activities

Periodic maintenance and repair of a storm water and flood control system are needed to maintain function and capacity of the facility, minimize risk of damage, optimize flood-control capacity, and prevent flooding and erosion of adjacent roadways or properties during storm events. Operation and maintenance of these facilities are an essential component for the proper and efficient function of a municipality's infrastructure. These activities are typically conducted without altering or expanding the use of the systems beyond their original design.

The frequency of routine **maintenance** activities varies depending on site-specific physical properties, annual weather conditions, and upgradient conditions (soil stability, trash sources, fertilizer use, etc.). The need for maintenance can range from more than twice per year to once every 3 years or longer. Similarly, **repairs** conducted as part of routine maintenance measures may be necessary annually, biennially, or every 3 to 5 years.

Since receiving the directive letters from the RWQCB in 2004, many municipalities have had to substantially reduce their maintenance work. However, once the programmatic permits and other authorizations described herein are obtained, municipalities are expected to resume regular maintenance, conducted mostly at a high frequency of need. Such regular maintenance is also required per the Municipal Storm Water Permit for San Diego County.

A summary of typical storm water system maintenance and repair activities, and the frequency at which the work is generally conducted, is summarized in Table 4-1.



Concrete channel

Table 4-1
Storm Water and Flood Control Facility Maintenance Activities

Activity	Type ¹	Frequency	Equipment Used	Description
Storm Drain Channel and Basin Excavation and Dredging	OM/P/T	Currently on emergency basis only; goal is 2 to 3 years	<p><u>Mechanical:</u> Gradall, bulldozer, skidsteer, bobcat, excavator, backhoe, mechanical mowers, hydraulic barge, haul dump trucks, vactor, and mechanical dewatering plant.</p> <p><u>Manual:</u> String trimmers, chainsaws, mowers, and other handheld tools.</p> <p><u>Weed control:</u> AquaMaster™ or equivalent in wetlands, and approved herbicide for uplands; spray rig.</p>	<p>Excavation, dredging, and grading of storm drain channels to maintain hydraulic flow.</p> <p>May include surveying, vegetation removal, debris clearing, tree trimming, trash and debris clearing, sediment removal, slope stabilization, invasive vegetation control, sorting out recyclables, and installation of riprap. May require creating access routes, and equipment and material staging areas.</p>
Storm Drain Channel and Basin Vegetation Management and Inspection	OM/P/T	Currently on emergency basis only; goal is 2 to 3 years	<p><u>Mechanical:</u> Mechanical mowers.</p> <p><u>Manual:</u> Shovel, rakes, hoes, string trimmers, chainsaws, mowers, and other handheld tools.</p> <p><u>Weed control:</u> AquaMaster™ or equivalent in wetlands, and approved herbicide for uplands; spray rig.</p>	<p>Vegetation removal to allow clearance for inspections and/or to maintain hydraulic flow; includes tree trimming, invasive vegetation control, and removal of native vegetation where its presence is adversely affecting storm water conveyance.</p> <p>May require creating access routes, and equipment and material staging areas.</p>

¹ OM - Operations and Maintenance, P - Permanent Impact, R - Repair, T - Temporary Impact

Activity	Type ¹	Frequency	Equipment Used	Description
Storm Drain Pipe Inlet/Outlet Maintenance	OM/P/T	Goal of every 3 years	<p><u>Mechanical:</u> Gradall, backhoe, mechanical mowers, drain cleaner.</p> <p><u>Manual:</u> String trimmers, chainsaws, mowers, and other handheld tools.</p> <p><u>Weed control:</u> AquaMaster™ or equivalent in wetlands, and approved herbicide for uplands; spray rig.</p>	<p>Cleaning inlets and outlets to ensure hydraulic flowage.</p> <p>Activities may include vegetation removal, debris clearing, tree trimming, trash and debris clearing, sediment removal, invasive vegetation control. May require creating access routes, and equipment and material staging areas.</p>
Excavations or Repairs to Outfall Lines	R/P/T	As needed	<p><u>Mechanical:</u> Grader, excavator, loader, backhoe, trash pump, pickup truck, welding truck, crane truck, and dump truck.</p> <p><u>Manual:</u> Shovels, rakes, hoes, various repair and construction hand tools, string trimmers, chainsaws, mowers, and other handheld tools.</p> <p><u>Weed control:</u> AquaMaster™ or equivalent in wetlands, and approved herbicide for uplands; spray rig.</p>	<p>Repair drainage outfall lines.</p> <p>Activities may include vegetation removal, debris clearing, tree trimming, trash and debris clearing, sediment removal, channel cleanup, invasive vegetation control. May require creating access routes, and equipment and material staging areas.</p>

¹ OM - Operations and Maintenance, P - Permanent Impact, R - Repair, T - Temporary Impact

Activity	Type ¹	Frequency	Equipment Used	Description
Culvert Replacement	R/P/T	One-time repair or replacement	<u>Mechanical:</u> Loader, backhoe, pickup truck, dump truck. <u>Manual:</u> Various repair and construction hand tools.	Replacing or retrofitting failed culverts. Activities may include replacing or retrofitting in-kind capacity. May require creating access routes, and equipment and material staging areas.
Existing Road Maintenance	OM/T	Every 2 years	<u>Mechanical:</u> Grader and 3/4-ton pickup truck, dump truck, water truck.	Smooth out roads within existing easements by removing debris and filling road ruts with dirt to allow vehicular passage.
Other Drainage Facility Repairs or Rehabilitation	R/P/T	One-time repair or replacement	<u>Mechanical:</u> Loader, front-end loader, motor grader, backhoe, haul truck, mowing equipment, asphalt dike machine, and small dozer. <u>Manual:</u> Shovels, rakes, hoes, various repair, construction hand tools, string trimmers, mechanical mowers, and other handheld tools.	Repairs and rehabilitation of various drainage facilities. Structures may include access routes, erosion controls, structural best management practices, bank armoring, riprap, gunnite patching, roadway shoulders, and dikes. May require creating access routes, and equipment and material staging areas.

¹ OM - Operations and Maintenance, P - Permanent Impact, R - Repair, T - Temporary Impact

4.1 POTENTIALLY EXEMPT ACTIVITIES

Certain discharges and/or activities discussed in this guide may be exempt from regulation by the USACE, RWQCB, and CCC (see Appendix C for applicable regulations pertaining to exemptions). Also, some projects that require notification under Fish and Game Code Section 1602 might not require a SAA if the CDFG determines the project will not substantially adversely affect fish and wildlife

resources. There are no exemptions per se from the take prohibitions in the ESA and CESA for take of listed species, but, as discussed in Sections 2.1.3 and 2.1.5, take may occur if it is incidental to a lawful activity and authorized under the ESA through the issuance of an incidental take statement or permit or under the CESA through the issuance of a consistency determination or incidental take permit. Under CEQA, maintenance activities can qualify for a Categorical Exemption (CE). However, maintenance activities that would significantly affect federal and state regulated waters, potentially affect listed species, or result in some other significant adverse effect on the physical environment would not qualify for a CE. The determination of whether an impact is considered significant is made by the lead agency and, therefore, would vary by jurisdiction and, of course, be made on a project-by-project basis.



Box culvert

Activities conducted to maintain storm water and flood control facilities that may be exempt from agency permitting are listed in Table 4-2. The corresponding notes regarding potential agency exemption indicate that while one agency may exempt a particular activity, review and possibly permitting by another agency are likely still required. In particular, an agency is likely to require that application materials necessary to obtain authorization for work in regulated areas are submitted before the agency can determine whether an exemption may apply or whether the effect on regulated waters is not substantial and thus their formal authorization is not required. Because the determination of whether an activity is exempt from agency authorization may not be clear, and agencies have the discretion to regulate any activity that would affect resources under their jurisdiction, municipalities should contact the agencies to discuss site conditions and activities thought to be exempt. For the authorizations that are the subject of this guide, the agencies advised the municipalities to submit information about their entire storm water and flood control system maintenance program. Some sites appropriate for exemption may be identified during pre-application agency reviews. However, the agencies will likely require complete documentation on most sites before a site-specific permit exemption can be made.

Before working in jurisdictional waters municipalities should obtain concurrence from the agencies on activities thought to be exempt.

4.2 MAINTENANCE ALTERNATIVES THAT MAY ELIMINATE OR REDUCE MITIGATION REQUIREMENTS

It is incumbent on all municipalities to attempt to avoid and minimize impacts to jurisdictional waters (wetlands and non-wetland waters) to the greatest extent practicable when conducting storm water and flood control system maintenance activities. Whether a municipality pursues an RGP or Master LOP as their programmatic Section 404 permit (see discussion in Section 2.1.1), the Section 404(b)(1) Guidelines require that

Table 4-2
Potentially Non-Regulated Activities or Regulatory Exemptions Relevant
to Storm Water and Flood Control Maintenance

Activity within Jurisdictional Waters	USACE Federal Waters	RWQCB State Waters	CDFG Rivers, Streams, and Lakes	USFWS and/or CDFG Listed Species	CCC Coastal Resources
Maintaining drainage ditches	Section 404(f)(1)(C) ^{1,2}	Considered a discharge	Determined after notification ³	May affect a listed species ⁴	CCA Section 30610(d) ⁵ and CCC Code of Regs. Section 13252 ⁶
Maintaining or reconstructing structures that are currently serviceable ⁷	Section 404(f)(1)(B)/ Program Guidance Letter ²	Considered a discharge	Determined after notification ³	May affect a listed species ⁴	CCA Section 30610(d) ⁵ and CCC Code of Regs. Section 13252 ⁶
Hand removal of vegetation, trash, and debris	Not regulated	Not considered a discharge	Determined after notification ³	May affect a listed species ⁴	CCA Section 30610(d) ⁵ and CCC Code of Regs. Section 13252 ⁶
Mechanized removal of vegetation, trash, and debris	Case-by-case ⁸	Considered a discharge	Determined after notification ³	May affect a listed species ⁴	CCA Section 30610(d) ⁵ and CCC Code of Regs. Section 13252 ⁶
Graffiti removal with chemicals and/or power washing equipment	Case-by-case ⁸	May be considered a discharge ⁹	Determined after notification ³	May affect a listed species ⁴	CCA Section 30610(d) ⁵ and CCC Code of Regs. Section 13252 ⁶

¹ See Appendix C for Regulatory Guidance Letter 07-02 pertaining to the maintenance of drainage ditches, and Program Guidance Letter pertaining to maintenance and emergency reconstruction of currently serviceable structures.

² A recapture provision under Section 404(f)(2) states that the exemptions under Section 404(f) do not apply if the activity would violate toxic effluent standards or constitute a new use impairing the flow, circulation, or reach of waters.

³ CDFG requires a notification for all work that would divert or obstruct the flow of, or change the bed, bank, or channel of a river, stream, or lake. Upon review, CDFG will determine whether an SAA is required.

⁴ USFWS and CDFG require consultation on all activities that may affect listed species. Upon review, incidental take may be allowed.

⁵ Repair or maintenance activities that do not result in addition to, enlargement/expansion of, the object of the repair/maintenance; provided, there is no risk of substantial adverse environmental impact.

⁶ Any repair or maintenance located in an environmentally sensitive habitat area... or within 20 feet of coastal waters or streams that includes removal of any form of solid material or use of mechanized equipment shall require a CDP.

⁷ ATMaintenance does not include sediment removal. Structure must be reconstructed exactly as previously constructed, including use of same materials.

⁸ Burden is on applicant to show activity will not degrade/destroy federal waters.

⁹ Burden is on applicant to show activity will not adversely affect state waters.

the USACE must determine that the proposed project is the LEDPA. Municipalities will need to demonstrate that their maintenance activities are the least damaging methods feasible for clearing jurisdictional waters while meeting their objectives of maintaining and operating their storm water and flood control systems.

Unavoidable impacts to jurisdictional waters require mitigation. An overview of alternative mitigation approaches is provided in Chapter 9 of this document, and a summary of typical avoidance and minimization measures is presented in Appendix A. Some mitigation strategies are very similar to the concept of the LEDPA. In particular, the CEQ has defined mitigation in its regulations at 40 CFR 1508.20 to include avoiding impacts, minimizing impacts, rectifying impacts, reducing impacts over time, and compensating for impacts. These types of mitigation are consistent with the requirements of the Section 404(b)(1) Guidelines and, as a practical matter, can be combined to form three general types of mitigation: avoidance, minimization, and compensatory.

The resource agencies have requested that the municipalities consider all feasible methods for conducting their storm water and flood control system maintenance activities that will reduce impacts on the aquatic environment. Reducing impacts commensurately reduces the need for compensatory mitigation. While the accumulation of sediment and subsequent establishment of vegetation within storm water and flood control systems are among the major concerns for ongoing system operation, these very constituents mediate channel scour and provide nitrate cycling; water quality improvement; and other benefits, including localized habitat diversity and connectivity. Therefore, conducting channel maintenance in a manner that would minimize adverse effects on these aquatic system functions would correspondingly minimize the amount of compensatory mitigation needed for impacts to jurisdictional waters.

A number of methods have been successfully used for channel maintenance that enhance system operation while minimizing impacts to jurisdictional waters. In all cases, sediment management must be evaluated to protect downstream infrastructure and habitat. While contaminated sediments (e.g., fines, silts, trash, debris, etc.) need to be removed from a channel, channel stability (i.e., neither accreting nor incising) and function may be promoted in cases where clean coarse-grained sands can remain. Several methods of channel maintenance are summarized below that are generally presented in an order of least to most impacting.

- **Low-Growth Low-Flow Channel** – For channels that currently support riparian habitat, storm water flows can be facilitated by

the maintenance of a low-flow channel while leaving existing trees on either side (i.e., outside) of the main floodway intact.

Preserving adjacent trees and maintaining low growth and clean sediments within the low-flow channel (through periodic mowing and infrequent sediment removal) promotes nutrient cycling and improved water quality and minimizes downstream scour within the watershed. Moreover, by maintaining riparian overstory species (i.e., willows) outside of the low-flow channel, the natural shading minimizes the regrowth of freshwater marsh species (that increase the channel roughness coefficient and retain additional sediment), which in turn reduces the frequency of the low-flow channel vegetation maintenance.

- **Variable Width Strip-Mowing** – In relatively narrower channels, it may not be possible to maintain vegetation on either side of a low-flow channel. Instead, vegetation may be cleared from one side of the channel while leaving the remaining vegetation intact. The width of vegetation removal may vary somewhat at each maintenance event; however, one side is consistently left vegetated. Preserving vegetation on one side of the channel and maintaining low growth and clean sediments within the other side (through periodic mowing and infrequent sediment removal) promotes nutrient cycling and improved water quality and minimizes downstream scour within the watershed just as the first example would.

These first two examples avoid and minimize impacts by leaving some of the existing vegetation intact. Only the impacts to jurisdictional waters within the portion of the channel that is maintained would require mitigation. By managing the maintained portion of the channel through periodic mowing and retention of clean sediments, where feasible, mitigation requirements may be further minimized.

- **Rotating Variable Width Strip-Mowing** – This option is similar to the variable width strip-mowing described above, except the side of the channel where vegetation is removed or left intact rotates with each maintenance event. In narrower channels, these two managed strips would simply alternate. However, in relatively wider channels, the area maintained may sequentially move within the channel. The benefits of this maintenance approach are similar to the first two examples. Although the rotating strip of maintenance eventually affects the entire width of the channel, vegetation at varying growth stages is always present to provide various wetland functions. This approach provides structural diversity within the riparian habitat, a characteristic that can be beneficial for certain wildlife species. Under this

approach, the retention of alternating strips of vegetation should be positively factored into the determination of compensatory mitigation.

- **Low-Growth Low-Flow Channel with Maintained Sides** – This alternative is similar to the first example; however, vegetation and sediment on either side of the low-flow channel are maintained vs. left intact. Maintenance of a low-flow channel to carry typical flows promotes the types of wetland functions previously noted.
- **Whole Channel Low-Growth** – In channels where all woody vegetation must be removed (i.e., no trees greater than 6 inches in diameter at approximately 4 feet aboveground), the maintenance of low-growth vegetation throughout the channel promotes the types of wetland functions previously noted. However, if whole channel sediment removal must occur frequently, then very little wetland functioning could be claimed. In this example, a low-flow channel is not incorporated into the maintenance design.
- **Infrequent Whole Channel Clearing** – Clearing the entire width of a channel every few years would facilitate storm water flow efficiency; however, until sediment accumulates and vegetation reestablishes, all wetland functions would be lost from the area maintained. As low-growth vegetation returns to the site, nutrient cycling and certain water quality benefits would increase, and the potential for downstream scour would be mediated. Although temporary, these wetland functions would exist.
- **Annual Whole Channel Clearing** – Annual clearing of the entire width of a channel would provide very few wetland functions.
- **Site-Specific Measures** – The conditions at many storm water and flood control facility sites may present different opportunities for avoiding and minimizing adverse effects on the aquatic environment while enhancing system operation. Site-specific conditions and facility design may require more aggressive maintenance methods near culverts or at other key locations; however, methods that allow more of the existing wetlands to remain may be incorporated into neighboring reaches.

In all examples above, all impacts to jurisdictional wetlands would require compensatory mitigation at ratios commensurate with the type and quality of wetlands affected. Other mitigating measures that avoid or minimize adverse effects to the aquatic environment would also need to be upheld (e.g., applicable maintenance protocols as listed in Appendix A). Final mitigation requirements would be determined through site-specific review and agency negotiation taking into account precedent on similar projects and positive

maintenance approaches that can be implemented. Refer to Chapters 9 and 10 for additional discussion on mitigation planning and issues that were discussed with the resource agencies regarding anticipated mitigation ratios (e.g., Section 10.3). Each municipality will need to work with all of the resource agencies to identify those methods that will help reduce or eliminate mitigation requirements; allow the municipality to meet its ongoing operational objectives in timeframes necessary to protect the public; and streamline, as much as feasible, periodic maintenance needs and approval processes.

5.0 Regulated Resources and Jurisdictional Extent



Concrete-lined channel

The extent of federal and state waters, including wetlands, is very important to the regulatory purview of the agencies discussed in this guide. Because the extent of federal vs. state waters at a given location can vary, it is important for municipalities to determine the limits of these resources at their maintenance sites. In addition, the potential presence of listed or certain other sensitive species is important to the regulatory requirements that each municipality may need to uphold under their programmatic permits. These regulated resources are discussed below.

5.1 WATERS

Figure 5-1 depicts the extent of USACE, CDFG, and RWQCB regulated waters.

5.1.1 Federal Waters

Waters of the U.S. encompass both wetland and non-wetland aquatic habitats, such as streams, rivers, lakes, ponds, bays, and oceans, and are defined as follows:

- (1) all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (2) all interstate waters including interstate wetlands;
- (3) all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, **wetlands**, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including such waters:
 - (i) which are or could be used by interstate or foreign travelers for recreational or other purposes; or
 - (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (iii) which are

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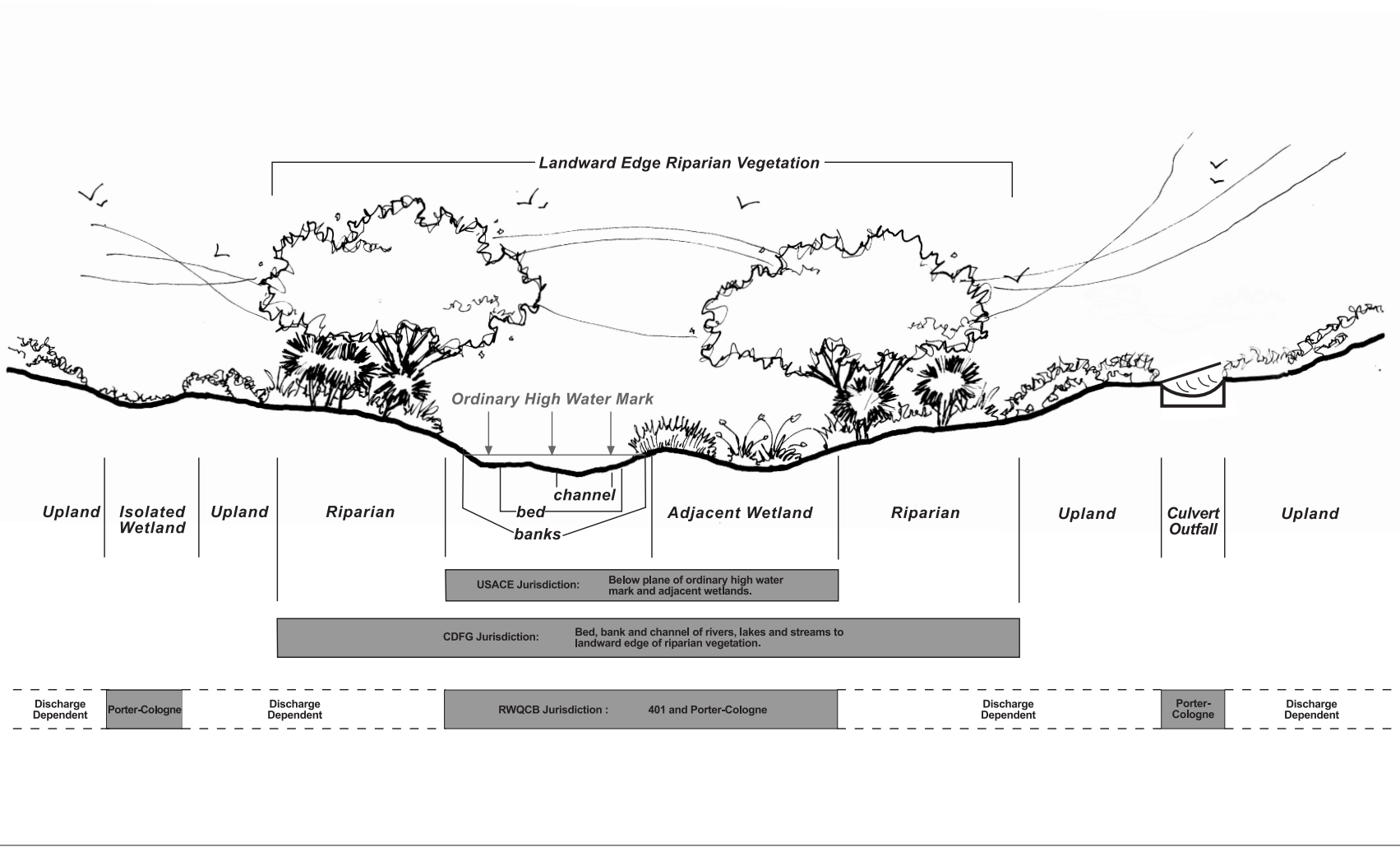


Figure 5-1
Federal and State Wetlands and Waters Jurisdiction

used or could be used for industrial purpose by industries in interstate commerce; (4) all impoundments of waters otherwise defined as waters of the United States under the definition; (5) tributaries of waters identified in paragraphs (1) through (4) of this section; (6) the territorial seas; and (7) wetlands adjacent to waters identified in paragraphs (1) through (6) of this section ...²⁶

The USACE defines wetlands as:

Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.²⁷

As a result of 2001 and 2006 U.S. Supreme Court decisions,²⁸ the USACE no longer has regulatory authority over many isolated intrastate waters, including isolated wetlands,²⁹ and may not have jurisdiction over certain other water bodies if a “significant nexus” to a regulated water body cannot be made.³⁰ However, USACE and EPA reserve the right on a case-by-case basis to determine that a particular water body within these categories can be regulated as a water of the U.S. At the time of this publication, a jurisdictional determination (approved or preliminary³¹) is necessary for most water bodies before a CWA Section 404 permit can be issued (see Section 7.1 for additional discussion about the process for obtaining a federal jurisdictional determination).



Concrete-lined ditch

²⁶ 33 CFR 328.3(a)

²⁷ 33 CFR 328.3(b); 40 CFR 230.3(t)

²⁸ Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, 531 U.S. 159 (2001), and Rapanos v. United States and Carabell v. United States, 126 S. Ct. 2208 (2006).

²⁹ Isolated wetlands (i.e., vernal pools [in most cases]) are not considered a water of the U.S. because of the lack of adjacency and connectivity to other waters of the U.S. Wetlands that are "adjacent" to traditional navigable waters, their tributaries, or other waters (33 Part 328.3[a][7]; 40 CFR 230.3[s][7]) are considered jurisdictional waters by the USACE. The federal regulations define the term "adjacent" to mean bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes and the like are "adjacent wetlands." (33 CFR 328.3[c]; 40 CFR 230.3[b]).

³⁰ The USACE and EPA will decide jurisdiction over the following waters based on fact-specific analyses to determine whether they have a significant nexus with a traditional navigable water: non-navigable tributaries that are not relatively permanent, and wetlands adjacent to such waters that may or may not directly abut such waters.

³¹ USACE June 26, 2008 RGL 08-02.

The USACE has developed standard methods to identify and delineate wetland boundaries for the purpose of Section 404 regulation. Nationally applicable methods are outlined in the *Corps of Engineers Wetland Delineation Manual* (Environmental Laboratory 1987). Supplements have also been issued that address regional wetland conditions, and wetland delineations conducted in San Diego County must be performed in accordance with the *Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region* (Environmental Laboratory 2006). Under the 1987 manual and the 2006 supplement, a wetland determination is based on the co-occurrence of hydrophytic vegetation,³² hydric soils,³³ and wetland hydrology.³⁴ Both USACE guidelines primarily use field-based indicators to determine whether the three parameters are present.

In the **absence of wetlands**, the limits of USACE jurisdiction in non-tidal waters, such as rivers, streams, lakes, and ponds, extends to the **ordinary high water mark (OHWM)**, which is defined as:

“...that line on the shore established by the fluctuation of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas” (33 CFR 328.3[e]).

A Regulatory Guidance Letter (RGL) issued by the USACE on June 27, 1988, further clarified the definition:

“The OHWM is the physical evidence (shelving, debris lines, etc.) established by normal fluctuations of water level. For rivers and streams, the OHWM is meant to mark the within-channel height flows, not the average annual flood elevation that generally extends beyond the channel” (RGL No. 88-6).

³² Hydrophytic vegetation can be considered as the sum total of plant life that has adapted to grow rooted within moist, wet, or inundated habitats.

³³ Soils that are saturated, flooded, or ponded during the growing season, that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition and/or growth of plants on those soils.

³⁴ The presence of recurrent, sustained inundation, or saturation at or near the surface of the substrate sufficient to produce physical, chemical, and biological features reflective of anaerobic conditions. The source and dynamics of wetland hydrology can vary. Some examples include overbank flooding from streams, upwelling of groundwater, or surface runoff from precipitation.

The OHWM can also be conceptualized as the lateral extent of the active channel, usually the area just below the first terrace. RGL 05-05, issued December 7, 2005, discusses the field practice and practicability of identifying, determining and applying OHWM for non-tidal waters under Section 404 of the CWA where the physical characteristics are inconclusive, misleading, unreliable, or otherwise not evident. In these instances, Districts may determine OHWM by using other appropriate means that consider the characteristics of the surrounding areas, provided those other means are reliable (e.g., lake and stream gage data, elevation data, spillway height, flood predictions, historic records of water flow, and statistical evidence). The criteria for frequency and duration for OHWM, however, have not been defined under the CWA or any guidance from the USACE for field delineators. Riparian habitat that is above OHWM and does not meet the three-parameter criteria for USACE jurisdictional wetlands would not be regulated as waters of the U.S.



Outfall

Finally, without a connection to jurisdictional waters the USACE does not generally consider “non-tidal drainage and irrigation ditches excavated on dry land” to be waters of the U.S. (and such ditches would therefore not be regulated by the USACE³⁵). Other areas generally not considered waters of the U.S. include:

- a. Artificially irrigated areas that would revert to upland habitat if the irrigation ceased.
- b. Artificial lakes and ponds created by excavating and/or diking of dry land to collect and retain water, used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
- c. Waste treatment ponds.
- d. Ponds formed by construction activities including borrow pits until abandoned.
- e. Ponds created for aesthetic reasons such as reflecting or ornamental ponds.³⁶

5.1.2 State Waters

California Department of Fish and Game

CDFG has permitting jurisdiction under Fish and Game Code Section 1600 et seq. over activities that will substantially divert or obstruct the

³⁵ 33 CFR Parts 320-330, November 13, 1986 Federal Register.

³⁶ 33 CFR Part 328.3.

natural flow of any river, stream, or lake; substantially change or use any material from the bed, channel, or bank of any river, stream, or lake; or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into any river, stream, or lake. Section 1600 et seq. applies to all perennial, intermittent, and ephemeral rivers, streams, and lakes in the state.

CDFG wetland boundaries often extend beyond USACE wetland boundaries.

In practice, the CDFG usually asserts its jurisdiction under Section 1602 to activities to the top of the bank (stream or lake), or to the outer edge of the riparian vegetation, **whichever is wider**. As a result, CDFG's jurisdiction under Section 1602 is usually broader than USACE's jurisdiction under Section 404 because it is not limited to the ordinary high water mark.³⁷

Although Fish and Game Code Section 1600 et seq. does not address jurisdiction over activities in or near altered or artificial waterways, in practice this has been based upon the value of those waterways to fish and wildlife. For example, natural waterways that have been modified and have the potential to contain fish, aquatic insects, and riparian vegetation should be treated like natural waterways. Similarly, artificial waterways that have acquired the physical attributes of natural stream courses are generally treated as natural waterways, whereas artificial waterways without such attributes generally are not. These parameters are not codified in the Fish and Game Code or CDFG regulations; therefore, project-specific discussions with the CDFG regarding their jurisdiction over altered or artificial waterways might be necessary.

Regional Water Quality Control Board

As previously noted, under Porter-Cologne, the SWRCB and RWQCB regulate the discharge of waste to waters of the state. The term "waters of the state" is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state" [Cal. Code Section 13050(e)]. This definition of waters of the state is broader than that for waters of the U.S. in that all waters are considered to be a water of the state regardless of circumstances or condition. Under this definition, an **MS4** is considered to be a water of the state. Both of the terms "discharge of waste" and "waters of the state" are broadly defined in Porter-Cologne, such that discharges of waste include fill, any material resulting from human activity, or any other discharge that may directly or indirectly impact waters of the state relative to implementation of Section 401 of the CWA.

³⁷ Cylinder, Paul D., Kenneth M. Bogdan, Ellyn Miller Davis, and Albert I. Herson, "Wetlands Regulation, A Complete Guide to Federal and California Programs," 1995.

California Coastal Commission

The CCA Section 30121 defines a wetland to mean those lands within the coastal zone that may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

As noted in Section 2.1.6 herein, the CCC specifies their limit of appeal jurisdiction associated with wetlands as 100 feet landward from the upland limit of the wetland. Specific to this “appeals” boundary, wetlands are defined in the California Code of Regulations [Section 13577(b) of Title 14, Division 5.5, Article 18] as “land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats.”

5.2 SPECIES AND HABITAT

5.2.1 Listed Species and Critical Habitat

As of 2007, a total of 60 species that are listed by the USFWS and/or the CDFG can be found within San Diego County, either as year-round residents, or as migrants that reoccur seasonally to breed or “winter-over” (i.e., they breed in other areas). Of these, 27 are wildlife species and 33 are plant species. Regional databases provide information on where many of these species occur. Wherever there is habitat suitable to support listed wildlife species and surveys have not been conducted within the past year, a current protocol survey or other appropriate focused survey must be conducted to determine the presence or absence of species. This 1-year expiration does not apply directly to surveys for listed plant species. Although the length of time since the last survey will be considered for plants, a more important consideration is whether past surveys were conducted during the appropriate time of the year to maximize detectability of the species (i.e., blooming periods), and year-specific variables that may have affected detectability (e.g., low rainfall).



Earthen channel

Although listed plant species have a potential to occur at storm water and flood control maintenance sites, the history of maintenance generally precludes or appreciably reduces the likelihood for the establishment of these and other sensitive plants within the maintenance areas. Listed plant species, however, have the potential to occur adjacent to maintenance sites wherever suitable habitat is present. Listed wildlife species may occupy storm water and flood control sites as well as neighboring areas, wherever suitable habitat and other necessary conditions are present.

Within San Diego County the USFWS has designated various areas as critical habitat for a number of listed species. **Critical habitat** is defined in Section 3 of the ESA as specific areas within the geographic area occupied by the species at the time it is listed on which are found physical or biological features that are (1) essential to the conservation of the species and (2) that may require special management considerations or protection. In addition, critical habitat includes specific areas outside the geographic area occupied by the species at the time it is listed, if it is determined that such areas are essential for the conservation of the species.

Of the 27 listed wildlife species that occur within the county, 7 are limited to areas well outside the incorporated municipal boundaries in San Diego County (e.g., desert pupfish, mountain yellow-legged frog, and peninsular bighorn sheep). The remaining 20 listed wildlife species that are considered to be the primary species potentially applicable to maintenance work **within incorporated city boundaries** are listed in Table 5-1, including aquatic species, wetland- or riparian-associated species, and upland species.

Of the 33 listed plant species that occur within the county, 11 are limited to higher elevations than occur within the incorporated municipal boundaries, or desert habitats that are well outside the incorporated boundaries in San Diego County (e.g., Gambel's watercress, Borrego bedstraw, and Dehesa nolina). The remaining 22 listed plant species that are considered to be the primary species potentially applicable to maintenance work **within incorporated city boundaries** are listed in Table 5-2, including wetland- or riparian-associated species, and upland species.

The extent of all USFWS designated critical habitat for listed wildlife and plant species that currently occurs **within incorporated city boundaries** in San Diego County is depicted in Figures 5-2a and 5-2b.

Table 5-1
Listed Wildlife Species Potentially Applicable to Citywide
Storm Water and Flood Control Maintenance Activities¹

Common Name	Scientific Name	Listing Status ²		Designated Critical Habitat within City Boundaries
		Federal	State	
Aquatic Species				
tidewater goby	<i>Eucyclogobius newberryi</i>	FE	CSC	Yes
unarmored three spine stickleback	<i>Gasterosteus aculeatus williamsoni</i>	FE	SE	No
southern steelhead trout	<i>Oncorhynchus mykiss irideus</i>	FE	CSC	No
San Diego fairy shrimp	<i>Branchinecta sandiegonensis</i>	FE	-	Yes
Riverside fairy shrimp	<i>Streptocephalus woottonii</i>	FE	-	Yes
Wetland/Riparian-Associated Species				
arroyo toad	<i>Bufo californicus</i>	FE	CSC	No
western snowy plover	<i>Charadrius alexandrinus</i>	FT	CSC	No
California black rail	<i>Laterallus jamaicensis coturniculus</i>	-	ST	No
California least tern	<i>Sterna antillarum browni</i>	FE	SE	No
light-footed clapper rail	<i>Rallus longirostris levipes</i>	FE	SE	No
California brown pelican	<i>Pelecanus occidentalis californicus</i>	FE	SE	No
American peregrine falcon	<i>Falco peregrinus anatum</i>	-	SE	No
southwestern willow flycatcher	<i>Empidonax traillii extimus</i>	FE	SE	Yes
western yellow-billed cuckoo	<i>Coccyzus americanus occidentalis</i>	Candidate ³	SE	No
Belding's savannah sparrow	<i>Passerculus sandwichensis beldingi</i>	-	SE	No
least Bell's vireo	<i>Vireo belli pusillus</i>	FE	SE	Yes
Upland-Associated Species				
Quino checkerspot butterfly	<i>Euphydryas editha quino</i>	FE	-	Yes
coastal California gnatcatcher	<i>Polioptila californica californica</i>	FT	CSC	Yes
Stephens' kangaroo rat	<i>Dipodomys stephensi</i>	FE	ST	No
Pacific pocket mouse	<i>Perognathus lonimembris pacificus</i>	FE	CSC	No

¹ Municipalities with approved NCCP Plans and associated incidental take permits may already have take authorization for several species listed in this table.

² Federally Endangered – FE, Federally Threatened – FT, State Endangered – SE, State Threatened – ST, State Species of Special Concern (CSC)

³ Species designated as candidates for listing by USFWS should be evaluated under guidelines used for listed species.



Flapper gate

Table 5-2
Listed Plant Species Potentially Applicable to Citywide
Storm Water and Flood Control Maintenance Activities¹

Common Name	Scientific Name	Listing Status ²		Designated Critical Habitat within City Boundaries
		Federal	State	
Wetland/Riparian-Associated Species				
Salt marsh bird's-beak	<i>Cordylanthus maritimus</i> ssp. <i>maritimus</i>	FE	SE	No
San Diego button-celery	<i>Eryngium aristulatum</i> var. <i>parishii</i>	FE	SE	No
Willow monardella	<i>Monardella viminea</i>	FE	SE	Yes
Spreading navarretia	<i>Navarretia fossalis</i>	FT	-	Yes
California Orcutt grass	<i>Orcuttia californica</i>	FE	SE	No
San Diego mesa mint	<i>Pogogyne abramsii</i>	FE	SE	No
Otay Mesa mint	<i>Pogogyne nudiuscula</i>	FE	SE	No
Upland-Associated Species				
San Diego thorn-mint	<i>Acanthomintha ilicifolia</i>	FT	SE	No
San Diego ambrosia	<i>Ambrosia pumila</i>	FE	-	No
Del Mar manzanita	<i>Arctostaphylos glandulosa</i> ssp. <i>crassifolia</i>	FE	-	No
Coastal dunes milk-vetch	<i>Astragalus tener</i> var. <i>titi</i>	FE	SE	No
Encinitas baccharis	<i>Baccharis vanessae</i>	FT	SE	No
Nevin's barberry	<i>Berberis nevinii</i>	FE	SE	No
Thread-leaved brodiaea	<i>Brodiaea filifolia</i>	FT	SE	Yes
Orcutt's spineflower	<i>Chorizanthe orcuttiana</i>	FE	SE	No
Otay tarplant	<i>Deinandra conjugens</i>	FT	SE	Yes
Short-leaved dudleya	<i>Dudleya brevifolia</i>	-	SE	No
Mexican flannelbush	<i>Fremontodendron mexicanum</i>	FE	Rare	No
Orcutt's hazardia	<i>Hazardia orcuttii</i>	Candidate ³	ST	No
Baja California birdbush	<i>Ornithostaphylos oppositifolia</i>	-	SE	No
Gander's ragwort	<i>Senecio ganderi</i>	-	Rare	No
Small-leaved rose	<i>Rosa minutifolia</i>	-	SE	No

¹ Municipalities with approved NCCP Plans and associated incidental take permits may already have take authorization for several species listed in this table.

² Federally Endangered – FE, Federally Threatened – FT, State Endangered – SE, State Threatened – ST, State Species of Special Concern (CSC)

³ Species designated as candidates for listing by USFWS should be evaluated under guidelines used for listed species.

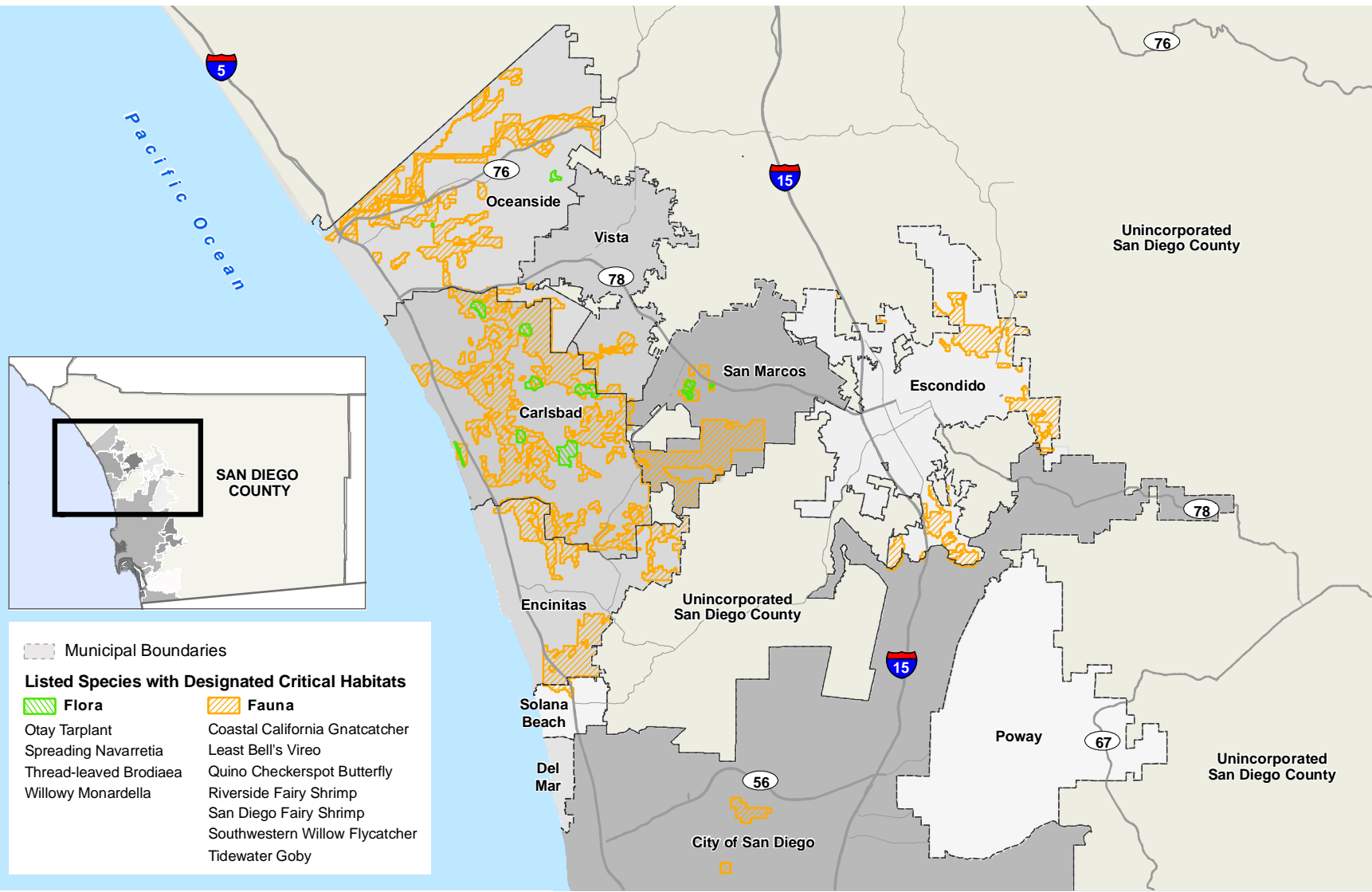
5.2.2 Other Sensitive Species and Habitats

In addition to the federal and state listed species that occur within San Diego County, numerous other species considered rare by the CDFG, or sensitive by the California Native Plant Society or other organizations and local municipalities occur within this region. The effect of the storm water and flood control facility maintenance activities on these species, and the habitats that support them, will need to be addressed under CEQA.

As noted in Section 2.1.2, the RWQCB may designate beneficial uses for particular waters of the state in the regional Basin Plan. Once beneficial uses are designated, the RWQCB will review proposed activities that would affect that water to ensure that protection of its beneficial use(s) is maintained. Relevant to habitats, beneficial use designations include water uses that support warm or cold freshwater, inland saline water, estuarine, marine, and terrestrial habitats. Beneficial use designations also include water uses that support designated biological habitats of special significance, e.g., refuges, parks, sanctuaries, and reserves. The effect of the use on the vegetation, fish, or wildlife, including invertebrates associated with these habitats, is also considered. Specific to species, uses of water that support habitats necessary, at least in part, for the survival of federal or state listed species; and the migration, reproduction, and early development of aquatic species are also evaluated under the Basin Plan.

As each municipality collects and synthesizes baseline data for their storm water and flood control facility maintenance permits, the relevance of the species listed in Tables 5-1 and 5-2, the critical habitat depicted in Figures 5-2a and 5-2b, and other sensitive species or wildlife reviewed under CEQA or regional Basin Plans will be determined.

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Source: SanGIS 2006; USFWS 2006

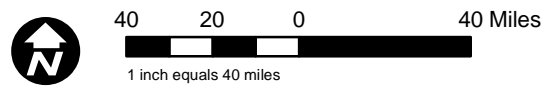
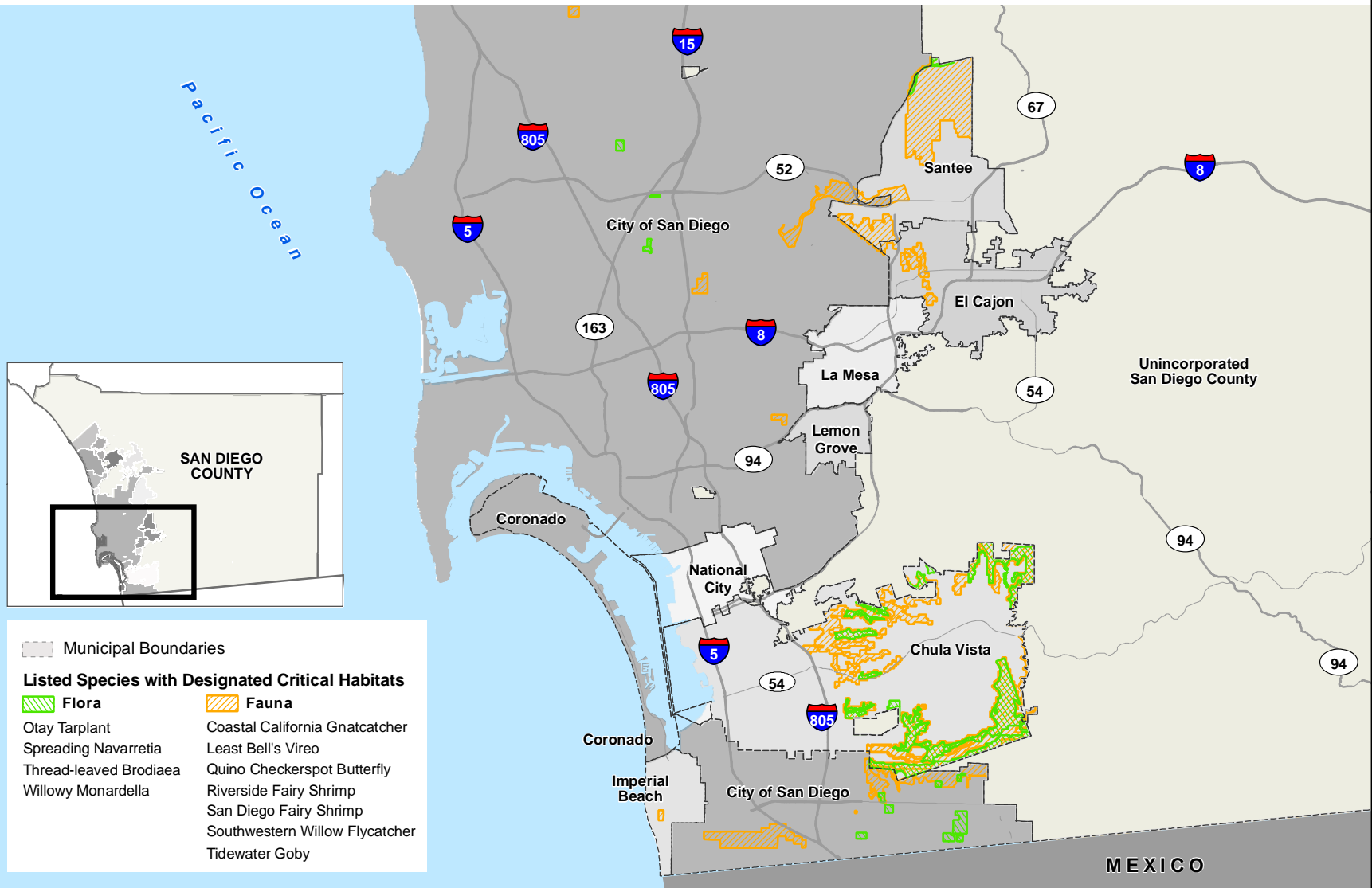


Figure 5-2a
Northern San Diego County
Designated Critical Habitat Potentially Applicable to
Storm Water and Flood Control Maintenance Activities



Source: SanGIS 2006; USFWS 2006

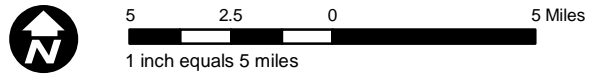


Figure 5-2b
Southern San Diego County
Designated Critical Habitat Potentially Applicable to
Storm Water and Flood Control Maintenance Activities

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6.0 Environmental Documentation

The programmatic permits and approvals described in this guide require federal (NEPA) and state (CEQA) environmental documentation. The data collected for this documentation will also be summarized in the permit application packages. Because comprehensive data collection is instrumental in development of the environmental documents as well as all permit submittal requirements, it is presented first below.

6.1 DATA COLLECTION RELEVANT TO FEDERAL AND STATE ENVIRONMENTAL PROCESSES

6.1.1 Compilation of Existing Data

This initial task is an important step in developing a thorough representation of the anticipated activities to be performed as part of each municipality's ongoing operations and maintenance requirements. Consequently, the following baseline data gathering should be conducted:

- Prepare a list of all storm water and flood control facilities, location information, and unique identifying code.
- Prepare a detailed description of maintenance activities, including:
 - frequency of the activity
 - typical associated area of impact
 - any support activities (staging, access, disposal of material removed, etc.)
 - typical duration of the activity
- Illustrate the primary types of storm water and flood control facilities where periodic maintenance is required (e.g., schematic drawings of typical inlets, outfalls, culverts, desilting basins, dissipation structure, etc.).
- On a geographic information system (GIS)-based map, spatially depict maintenance areas that will be addressed in regulatory authorizations and/or permits, and label each site with a unique identifying code.



Corrugated metal pipe outfall

- Prepare other GIS jurisdictional maps that illustrate the information listed below. The use of regional data for vegetation and species occurrences facilitates the preparation of summaries of sensitive resources that have the potential to be affected by the maintenance program and indicates where specific types of field assessments may be needed. Generally, GIS summaries of site-specific information for maintenance areas, using regional biological data, should include all available information within a **500-foot buffer** surrounding the facility.
 - Environmentally sensitive areas
 - NCCP Preserve areas
 - Lakes, streams, and other water bodies (e.g., National Hydrology Dataset blue-line stream channels)
 - Watershed boundaries
 - Regional vegetation mapping
 - Recorded observations of federally and state listed species
 - Designated Critical Habitat
 - Roadways
 - Topography
 - Land uses
 - Utilities
 - Recreational facilities and public open spaces
- Prepare a database that identifies maintenance site features (e.g., channel with improved slopes), estimated vegetation impacts, potential for listed species, BMPs to be employed and other information (see Appendix D for example database format).
- Prepare descriptions of the hydrological conditions that require ongoing maintenance.

Detailed information should be gathered for each maintenance area and a surrounding 100-foot buffer area.

6.1.2 Supplemental Data Collection

Field assessments will be necessary to obtain current maintenance facility information. A minimum of two date-stamped, digital photographs should be taken of the maintenance facility, showing the facility and maintenance issue (e.g., sediment and vegetation buildup, debris accumulation), and general setting (i.e., habitat within and adjacent to the maintenance area). Information about the site, facility characteristics (e.g., earthen bottom, concrete-lined, etc.), the maintenance need, and the area wherein periodic maintenance work is conducted (length, width, and depth) must also be collected. Detailed information should be gathered for the facility area, plus a

minimum **100-foot buffer** area surrounding the facility (the outer limits of detailed site-specific evaluation may be expanded if determined necessary by a qualified biologist or the agencies). Additional general resource information should be noted for a buffer area extending out **500 feet** from the facility.

To ensure that comprehensive information relevant to all permits is collected during the data collection phase, a **Channel Maintenance Report (CMR)**, or similar form, should be developed prior to conducting the site assessments. An example CMR form is included in Appendix E (municipalities may develop their own report form to suit their specific needs). Electronic files of each site's CMR should be developed and maintained. These reports, revised as needed throughout the term of the permits that will be issued, will also be submitted as part of the pre-activity reports that will be required before site-specific work can begin (see Chapter 8). Therefore, each municipality should consider opportunities to organize data for their long-term data management and reporting.

The CMRs, site photographs, and regional data should be reviewed by qualified biologists for completeness. Some concrete-lined channels or other structures that are clearly located in highly disturbed areas, or facilities in settings that are readily evaluated via the photographs and for which the regional data indicate there are no biological resource issues of concern, may need no further site review. Qualified biologists should segregate the CMRs for these sites so that subsequent review by the resource agencies at pre-application meetings can verify that field assessments are not needed.

For sites that support wetlands or other habitat potentially suitable for listed species, or that are adjacent to sensitive uplands or habitats potentially suitable for listed species, field assessments by qualified biologists will be necessary to collect and/or confirm natural resource information for the area. Where determined necessary, **focused surveys for listed species (i.e., protocol-level surveys) must be conducted during this data collection phase.** The biologists should supplement the CMRs, including additional photographs where needed, with the data they will collect, including:

- Extent of jurisdictional waters and wetlands
- Description of adjacent uplands
- Habitat quality
- Habitat suitability for listed species
- Location within or adjacent to designated critical habitat



Trapezoidal concrete channel

Data from the CMRs should be entered into the comprehensive database noted above. Agency-specific outputs, as needed, can be generated from the database. In particular, the information collected can be used to prepare federal Jurisdictional Determination forms necessary to obtain a formal response from the USACE and EPA regarding the jurisdictional status of the stormwater channels to be maintained (see Section 7.1).

6.2 NEPA PROCESS

The USACE's decision to permit an action first requires evaluation in a NEPA document. For the RGPs, it is anticipated that the USACE will prepare an **Environmental Assessment (EA)** summarizing information about the proposed activities and addressing comments that were received during the required Public Notice. It is further anticipated that the findings in the EAs will conclude that the impact of the applicant's proposal is not significant and there are no "unresolved conflicts concerning alternative uses of available resources" (Section 102(2)(E) of NEPA). Furthermore, most of the proposed activities that would be conducted in storm water channels are expected to be considered "water dependent," as defined in 40 CFR 230.10(a)(3). Based on these anticipated findings, the NEPA document for the RGPs may not need to include a discussion on alternatives.

The USACE's District Engineer must complete their NEPA document as soon as practicable after all relevant information is available. The NEPA document will include a Statement of Findings. Again, it is anticipated that the EAs prepared for the RGPs will be able to conclude with a Finding of No Significant Impact (FONSI) (40 CFR 1508.13); therefore, preparation of an Environmental Impact Statement will not be necessary. Confirmation will be needed for each municipality.

The permittee typically provides the USACE with much of the information they need to prepare their NEPA document. Assisting the USACE with this document will expedite issuance of the RGP.

6.3 CEQA PROCESS

The agency approvals and associated permit conditions will provide long-term guidance for each municipality to implement routine maintenance in and along their storm water and flood control facilities in a feasible, cost-effective, and environmentally sensitive manner. Routine maintenance activities may be considered categorically exempt from further environmental review per CEQA

(CEQA Guidelines Section 15300 et seq.). CEQA exemptions that most closely apply to flood control channel maintenance include:

- Existing Facilities Maintenance, Section 15301(b);
- Maintenance of Existing Native Growth, Section 15301(h);
- Maintenance of Stream Channels, Section 15301(i); and
- Minor Alterations to Land, Section 15304.

However, an exemption cannot be used for activities where there is a reasonable possibility that there would be a significant effect on the environment. Given the long-term and programmatic nature of the maintenance program and potential significant impacts that may occur with these repetitive activities in or near sensitive resources, it is anticipated that preparation of an Initial Study and other environmental documentation would be required. In most cases, application of avoidance and minimization measures (i.e., operational protocols, BMPs, and typical permit conditions) will mitigate potential significant impacts to below a level of significance.

In some cases, municipalities have already prepared a programmatic Environmental Impact Report (EIR) as part of a larger planning program for drainage improvements. These planning documents and associated EIRs can also serve as the CEQA documentation required to obtain state-issued programmatic permits and no additional CEQA documents would be required.

As part of the environmental document preparation, the following materials would need to be developed:

- Project description that summarizes information contained in the CMRs;
- Operational protocols and/or BMPs that would avoid and/or minimize environmental impacts (see Appendix D for measures expected to be applicable to channel maintenance work); and
- Mitigation requirements and strategies to address permanent impacts associated with loss of suitable habitat for threatened and endangered species and loss of sensitive plant species (see Chapter 9 for a discussion of potential mitigation strategies).



Earthen swale with inlet

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7.0 Permitting Processes and Application Contents



Curb inlet

To obtain approval from the resource agencies, municipalities will need to compile, summarize, and categorize the nature, intent, and scope of their maintenance activities as discussed at the beginning of Chapter 6 herein. Similarly, the operational protocols and/or BMPs developed to avoid and/or minimize environmental impacts, and included in the CEQA document (in addition to typical permit conditions), will be included in the permit packages submitted to each agency.

During the series of meetings that were held to develop this guide, the regulatory agencies encouraged the municipalities to submit with their application packages as much information as possible about their entire storm water and flood control maintenance program, including a comprehensive list of the various sites that need to be maintained. Completion of the database and CMRs described in Chapter 6 will facilitate preparation of a comprehensive summary of site-specific attributes and maintenance needs. This comprehensive summary would be provided to each of the agencies, who would review information relevant to their permit processes.

At a minimum, a municipality would submit information on all sites that would need maintenance during the initial term of the permits that will be issued (i.e., 5 years). Each time a municipality pursues reissuance of its permits, additional sites can be added to the list of those authorized under the permit. With this approach, over time, the majority of activities conducted by a municipality for storm water and flood control maintenance will be covered under these programmatic authorizations (assuming associated impacts are minimal).

Table 7-1 lists the permits and authorizations that each municipality will need to obtain for the maintenance activities described herein, including prerequisites for submittal.

The following sections describe the agency-specific permit processes concurrent with and following the general data collection phase. Tabular summaries of information required by the regulatory

agencies are provided in these sections. Bulleted lists provide additional detail about each agency’s permit review process; steps that are common across multiple agencies are indicated with an **asterisk**. Agency-specific forms and submittal instructions are included in Appendix F. Figure 7-1 generally depicts each agency-specific process and the interrelationship among these processes.

Table 7-1
Major Permits and Approvals Required for Maintenance of Storm Water and Flood Control Facilities

Agency and Associated Permit or Approval	Prerequisites for Initiation of Formal Agency Review
Federal	
USACE Clean Water Act Section 404 Regional General Permit or Master LOP*	<ul style="list-style-type: none"> ▪ Completed Department of the Army Application, with supplemental comprehensive data summaries and maps ▪ Jurisdictional determination (may initiate concurrently) ▪ Draft Public Notice ▪ Section 401 water quality certification application package ▪ BA for submittal to USFWS/NMFS/CDFG ▪ Coastal zone management consistency information ▪ Determination on potential effect on historic properties ▪ Mitigation concept
USFWS/NMFS Endangered Species Act Section 7 Consultation**	<ul style="list-style-type: none"> ▪ Request for formal consultation from USACE ▪ BA
State	
RWQCB Clean Water Act Section 401 Water Quality Certification	<ul style="list-style-type: none"> ▪ Section 401 certification application, with supplemental comprehensive data summaries and maps ▪ Section 404 permit application package ▪ Streambed Alteration Agreement Application ▪ Draft CEQA documentation ▪ Mitigation concept ▪ Application fee
CDFG Fish and Game Code Section 1602 Streambed Alteration Agreement	<ul style="list-style-type: none"> ▪ Notification of Lake or Streambed Alteration Application (with Attachment D for Routine Maintenance), with supplemental comprehensive data summaries and maps. ▪ Section 404 permit application ▪ Section 401 water quality certification application package ▪ Draft CEQA documentation ▪ Mitigation concept ▪ Application fee

Agency and Associated Permit or Approval	Prerequisites for Initiation of Formal Agency Review
CDFG California Endangered Species Act Section 2080.1 Consistency Determination or 2081 Incidental Take Permit**	<ul style="list-style-type: none"> ▪ Federal biological opinion and incidental take statement, if requesting a consistency determination for species that are both federal and state listed ▪ Application, if requesting a 2081 Incidental Take Permit
CCC Coastal Development Permit or Exemption	<ul style="list-style-type: none"> ▪ Application ▪ Draft CEQA documentation ▪ Mitigation Plan
Local	
LCP Coastal Development Permit or Exemption	<ul style="list-style-type: none"> ▪ Application process will vary by municipality



Detention pond

- * The RGP is the anticipated type of programmatic 404 permit that most municipalities will pursue. Another programmatic option is the Master LOP. In addition, until the programmatic 404 permit is issued, site-specific activities may be permitted under the USACE’s NWP program; e.g., NWPs 3, 7, 12, and 18, or others that may apply on a case-by-case basis.
- ** Municipalities that have approved NCCP Plans and associated Incidental Take Authorizations that cover relevant species and maintenance activities will not need additional authorization from the USFWS and CDFG for the species covered.

7.1 U.S. ARMY CORPS OF ENGINEERS, SECTION 404 RGP OR MASTER LOP

As noted in Section 2.1, the process for developing an RGP or Master LOP is similar to the process for developing an IP. Because the RGP is the type of programmatic permit that most municipalities will pursue, the RGP process is described below. Once an RGP is issued to an applicant, however, the process for pre-activity review under the RGP is similar to the USACE’s review process under their NWP program (i.e., most activities require notification to the USACE so they can verify the action will have only minimal adverse effects on water quality and the aquatic environment, and would otherwise be compliant with the conditions of the RGP). This pre-activity review process is summarized in Chapter 8.

To issue an RGP, the USACE must (1) determine that the water body that would be affected by the activity is under federal jurisdiction; (2) determine generally that the types of activities that would be covered are similar in nature and would result in no more than minimal impacts, individually and cumulatively; (3) develop and publish a Public Notice and consider public input; (4) determine that the activity they would permit would not cause adverse, unmitigated impacts on endangered species, water quality, or historic properties, as well as other public interest factors, and is consistent with local coastal zone management; (5) document their decision in a NEPA

document; and (6) the District Engineer must issue a FONSI reflecting their decision (assuming an EA will be prepared). The process for submittal, agency review, and issuance of an RGP is summarized below. This process is also generally depicted in Figure 7-1. The content for the RGP application package is summarized in Table 7-2.

7.1.1 Process

The actions listed below represent a general chronology of the steps undertaken to obtain authorization from the USACE. Some actions/steps may occur concurrently, or in an order other than noted below. However, all actions/steps are relevant to the permit process for this agency.

- * Compile data summaries (i.e., CMRs) for as many maintenance sites as possible and calculate anticipated cumulative impacts to jurisdictional waters, including wetlands (i.e., complete the spreadsheet listing all sites).
- * Identify alternatives to avoid/minimize impacts.
- * Identify potential mitigation sites.
- Conduct pre-application meeting one-on-one with USACE and discuss maintenance program and **basic and overall project purpose**. Discuss the jurisdictional determination process for the various maintenance sites, confirm the information that USACE and EPA will require, and determine what Jurisdictional Determination form (i.e., approved or preliminary) is appropriate.
- If needed, compile additional information in response to input from USACE at first meeting (and other agency one-on-one meetings as discussed in this section).
- * Conduct multi-agency meeting(s).
- * View CMRs at multi-agency meetings.
- Submit Jurisdictional Determination forms to USACE.
- * Conduct site tours.
- * Refine/supplement project BMPs and/or conservation measures based on multi-agency input.
- * Prepare conceptual mitigation plan based on multi-agency input.
- Assist USACE with preparation of the Public Notice.

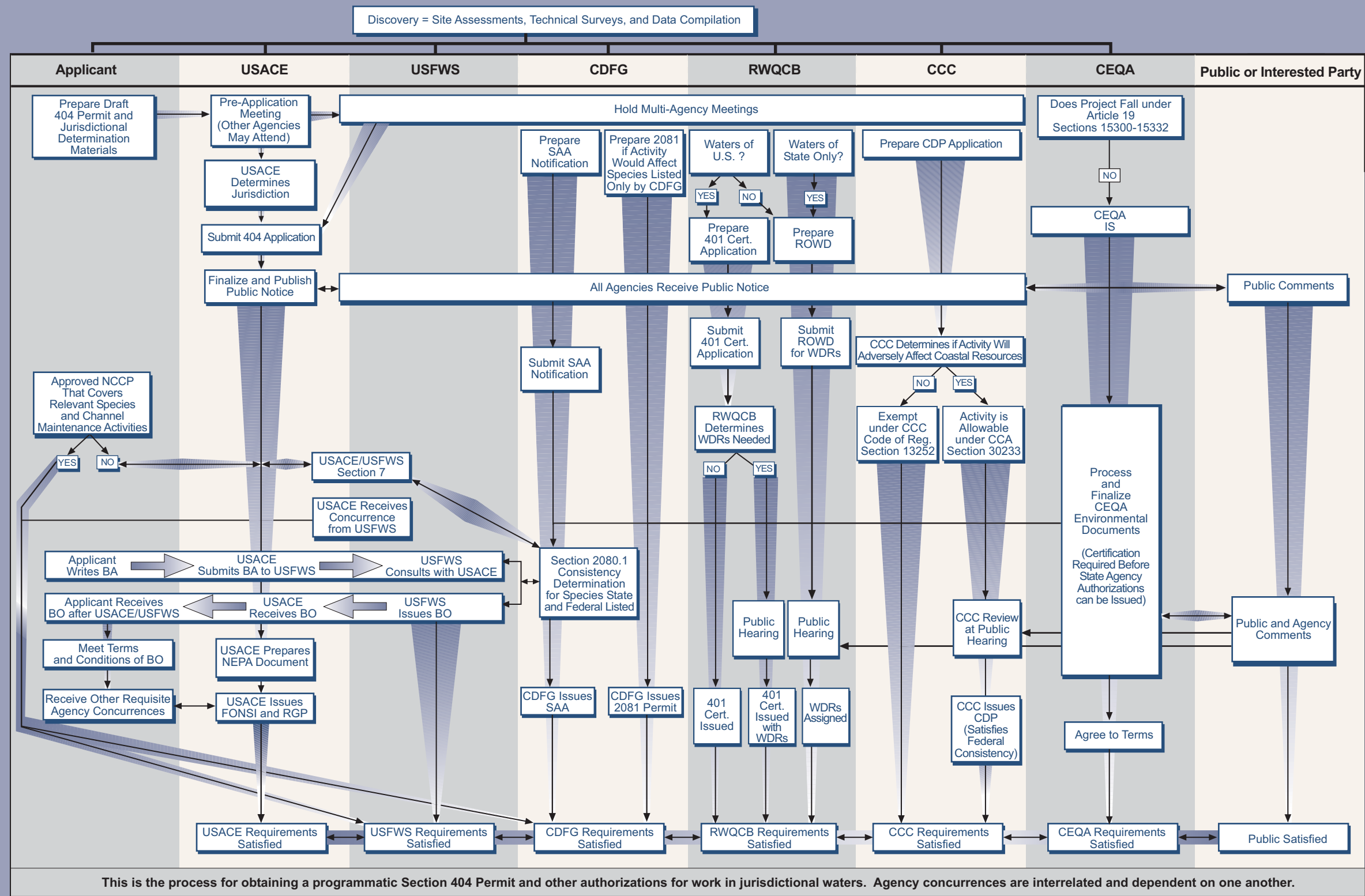


Figure 7-1
Programmatic Permit Process Relevant to Channel Maintenance Activities

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Table 7-2
USACE Permit Submittal Package

Item #	Information	Notes
Application		
1	Applicant's name and contact information; optional information regarding Authorized Agent that may act on behalf of the Applicant	Form Blocks 5-11.
2	Project Name or Title	Form Block 12. Storm water and flood control facility maintenance work.
3	Name of waterbody affected	Form Block 13. Provide table of major named creeks and rivers that contain storm water or flood control facilities.
4	Street address (if applicable) and location	Form Blocks 14 and 15.
5	Location of project and directions	Form Blocks 16 and 17. Provide map of facilities with I.D. codes included to callout sites that can be cross-referenced to tables that will be included in application package to summarize site-by-site impact estimates (see below), and to CMRs that must also be prepared. Maps should be reproducible at 8.5 by 11 inches.
6	Description of the activity	Form Block 18. Prepare table summarizing types of activities that are conducted for channel maintenance and repair. See example in Chapter 4 herein. Descriptions and illustrations (as feasible) are important. Include approximate frequency of conducting the activity, and equipment typically used.
7	Project Purpose	Form Block 19.
8	Reasons for Discharge	Form Block 20.
9	Type of material being <i>discharged</i> within jurisdictional wetlands or other waters	Form Block 21. Note in table the type of material to be discharged within USACE jurisdiction (e.g., rock, sand, clay, concrete, etc.). Note: <i>Discharges</i> associated with storm water and flood control maintenance are generally incidental to the material removal work that is the focus of most of these activities. For Blocks 21 and 22 of the USACE form, the area of the maintenance work is the most relevant quantitative data to collect. Information on type of material being <i>removed</i> must be provided. See example spreadsheet in Appendix D.



Earthen channel

Item #	Information	Notes
10	Amount (<i>cubic yards and/or length, width, height</i>) of material being <i>discharged</i> within jurisdictional wetlands or other waters	Form Block 21. As noted for Block 20, the area of the maintenance work is the most relevant quantitative data to be noted. Indicate in table (approximate) the depth of material to be removed from within USACE jurisdiction. This will allow calculation of the cubic yards of material removed. See example spreadsheet in Appendix D.
11	Surface acreage (<i>length and width</i>) of wetlands or other waters to be filled (permanent and temporary)	Form Block 22. Generally, most fill will be incidental to the maintenance activities. As noted above, the area of the maintenance work is the most relevant quantitative data to collect. If relevant, however, indicate in table the amount of area to be filled. See example spreadsheet in Appendix D.
12	Equipment and methods by which work will be done	Form Block 22. Describe means by which the work will be done. Include in the table a summary of the types of activities conducted, as prepared for Block 18.
13	Background on whether any part of the proposed project is already completed	Form Block 23.
14	Adjacent landowners	Form Block 24. Prepare summary table of adjoining property owners, lessees, etc. Provide enough detail to allow the site to be easily located during a field visit. Discuss with USACE representative how to address this for the numerous maintenance sites that will be covered under the RGP.
15	Information about authorizations or denials by other agencies	Form Block 25.
16	Signature of applicant	Form Block 26.
Additional Information Required/Recommended		
17	Cover letter	Recommended to summarize materials provided and the organization of the package.
18	Nationwide Permit Pre-Construction Notification (PCN form)	Completion of this form will facilitate USACE review of the application package, including their assessment of whether complete information has been provided, and general conditions are being met.
19	Jurisdictional Determination form	Currently, the USACE must process these forms for most 404 submittals. Applicants typically provide draft versions of these forms. Check with the USACE to determine future need and whether assistance can be provided.

Item #	Information	Notes
20	Illustrations that depict work to be undertaken; Vicinity Map, Plan View, or Typical Cross-Section Map	Representative drawings of the types of maintenance work that will be conducted should be provided. All drawings should be black and white, and 8.5 by 11 inches.
21	Fee	No fee for municipalities.
22	Mitigation Plan	Cannot be finalized until impact avoidance and minimization is deemed complete.
23	Biological Assessment to comply with the ESA	Coordinate with USFWS (and CDFG for federal and state listed species) on species to include. Incorporate input given at pre-application meetings.
24	Cultural resources inventory report to comply with NHPA Section 106 report	January 2007 USACE memorandum requires coordination with the State or Tribal Historic Preservation Officer for all 404 authorizations or verifications. May conduct records search prior to RGP issuance for entire storm water facility system, or as part of annual pre-activity data summary.
25	Miscellaneous	Entire Public Notice with figures in pdf must be less than 3 megabytes in size.



Flared outlet (wing wall)

- Submit Draft Final Public Notice, 404 application form, and mitigation plan to USACE.
- USACE finalizes and publishes Public Notice.
- USACE notifies adjacent property owners [applicant provides data base with property ownership data (Parcel Number, Mailing Address) to USACE for their distribution purposes].
- USACE requests formal consultation with USFWS regarding the effect of the maintenance program on federally listed species.
- Applicant assists USACE with responses to public comments.
- * As needed, revise mitigation plan to reflect final impact avoidance and minimization measure.
- Applicant provides information to USACE for preparation of the EA by USACE.
- USACE concludes EA with FONSI and issues RGP (following receipt of BO from USFWS, 401 water quality certification from RWQCB, coastal zone management consistency statement from CCC, and receipt of approved jurisdictional determinations from USACE or EPA headquarters, if needed).

7.2 REGIONAL WATER QUALITY CONTROL BOARD, SECTION 401 WATER QUALITY CERTIFICATION

The 401 certification through the RGP process follows the same steps as in an individual 401 certification. As mentioned in Section 2.1.2, every applicant for a federal permit that may result in a discharge to a water body must obtain certification from the state that the proposed activity will comply with state water quality standards. Furthermore, projects that have the potential to discharge pollutants are required to comply with established water quality objectives also known as a “Technically Conditioned Certification.” Technically Conditioned Certifications will most likely be issued for any RGP activities, due to discharges and impacts to federal and state waters. These conditions spell out measures for site-specific activities to limit impacts to surface waters.

The process for submittal, agency review, and issuance of the 401 certification is summarized below. This process is also generally depicted in Figure 7-1. The content for the Section 401 certification application package is summarized in Table 7-3.

Table 7-3
RWQCB Permit Submittal Package

Item #	Information	Notes
Application		
1	Applicant/Agent Information and Property Ownership Information	Include Statement of Authorization if identifying an agent. Include owner information if property not owned by applicant.
2	Project name or title	Storm water and flood control facility maintenance work.
3	Affected water bodies	Prepare table of major named creeks and rivers with facilities.
4	Location of project and directions to project site	Prepare map of facilities with I.D. code to be cross-referenced to tables included in application package summarizing amount of impact (see below), and to pre-activity and annual reports to be prepared after permit is issued. Maps should be reproducible at 8.5 by 11 inches.
5	Project purpose	Describe the reason or purpose for the overall project.
6	Description of activity	Prepare table summarizing types of activities that are conducted for channel maintenance and repair. See example in Chapter 4 herein. Descriptions and illustrations (as feasible) are important. Include approximate frequency of conducting the activity, and equipment typically used.

Item #	Information	Notes
7	Avoidance and minimization of impacts	Describe efforts to avoid and minimize direct impacts to waters of the U.S.
8	Avoidance and minimization of impacts (construction)	Describe efforts to avoid and minimize impacts to water quality during the project construction.
9	Avoidance and minimization of impacts (post-construction)	Describe efforts to avoid and minimize impacts to water quality following the project construction.
10	Impaired water bodies	Determine if work activities will take place in or upstream of an impaired water body 303 (d) or TMDL. See RWQCB web page for listing of all 303(d) and TMDL water bodies.
11	Fill information	Impacts (i.e., fill material) to waters of the U.S., either permanent or temporary, recorded in acres and linear feet.
12	Dredging	Description of dredging activity, location, and quantity (cubic yards).
Additional Information Required/Recommended		
13	Other Licenses/Permits/Agreements	RWQCB should be provided copies of any draft or final federal, state, and local agency licenses, permits, and agreements required for actions associated with the proposed activity.
14	BMPs to avoid/minimize water quality impacts to waters of the U.S.	Provide a list of the measures that will be done to avoid or minimize adverse impacts to water quality.
15	Mitigation Plan	Cannot be finalized until impact avoidance and minimization is deemed complete.
16	Fee	Fees are project specific and are based on area and length of jurisdictional waters affected. Fee schedules are revised, as needed. Always check the RWQCB website, or with your representative, regarding the applicable fee schedule.
17	CEQA document	Provide draft CEQA document with application submittal; final CEQA document is needed before 401 can be issued.
18	Past/Future impacts	List/describe other projects carried out in the prior 5 years, or planned for the next 5 years, that are related to the proposed maintenance activities. Discuss with RWQCB representative how to address this cumulative assessment for the maintenance sites that will be covered under the RGP.



Retention pond

7.2.1 Process

The actions listed below represent a general chronology of the steps undertaken to obtain authorization from the RWQCB. Some

actions/steps may occur concurrently, or in an order other than noted below. However, all actions/steps are relevant to the permit process for this agency.

- * Compile data summaries for as many maintenance facilities as possible and calculate anticipated cumulative impact to jurisdictional waters (i.e., complete the database).
- Identify sites associated with state impacted waters (e.g., 303(d) and total maximum daily load [TMDL]).
- * Identify alternatives to avoid/minimize impacts.
- * Identify potential mitigation sites.
- Conduct pre-application meeting with the RWQCB and discuss maintenance program and **basic and overall project purpose**.
- If needed, compile additional information in response to input from RWQCB at first meeting (and other agency one-on-one meetings as discussed in this section).
- * Conduct multi-agency meeting(s).
- * View CMRs at multi-agency meetings.
- * Conduct site tours.
- * Refine/supplement project BMPs and/or conservation measures based on multi-agency input.
- Develop and provide water quality BMPs for work activities within water bodies.
- * Prepare conceptual mitigation plan based on multi-agency input.
- Submit application to RWQCB.
- Submit final CEQA document (if a draft CEQA document was submitted initially).
- * As needed, revise mitigation plan to reflect final impact avoidance and minimization measures.
- RWQCB determines whether WDRs are required or can be waived (if required, then additional review by the Regional Board also required).
- RWQCB issues certification.

7.3 U.S. FISH AND WILDLIFE SERVICE, SECTION 7 CONSULTATION

Because the storm water and flood control facility maintenance activities that would be permitted could affect federally listed species or modify critical habitat, Section 7 consultation with the USFWS, and possibly the NMFS, would be required. The consultation process, required documentation, and the applicant's role with the local USFWS representative prior to issuing the BO is summarized below. This process is also generally depicted in Figure 7-1. No application form is needed for initiation of formal consultation; however, the content for the BA is summarized in Table 7-4 (USFWS annotated outline for preparing BAs is included in Appendix F).



Earthen channel

Table 7-4
USFWS Consultation Information Needs

Item #	Information	Notes
Biological Assessment Information Required		
1	Listed species considered in the document	Coordinate with USFWS about which species to include and discuss in detail.
2	Candidate species, sensitive species, and species of concern considered in the document	USFWS has the additional responsibility to help prevent these species from becoming listed. Discuss with USFWS which species must be addressed for the maintenance activities.
3	Designated Critical Habitat	Identify whether designated critical habitat coincides with any maintenance areas.
4	Consultation to date	Summarize meetings and correspondence important to determining which species would be addressed in the BA.
6	Project description and action area	Describe what the project or action is, where it is located, when it will occur and the duration of activities, contact information, equipment to be used, and impact avoidance and minimization measures.
7	Species accounts and status of species in the area	Describe species, associated habitat and use (e.g., breeding, feeding), aspects of biology relevant to the proposed activity (e.g., sensitivity to noise), presence in vicinity and region, and survey information.

Item #	Information	Notes
8	Effects, and cumulative effects	Discuss and quantify all direct and indirect effects per ESA, and cumulative effects
9	Conclusion and determination	For each species, determine overall effect of the proposed action.
Additional Information Required/Recommended		
10	Maps	Include area and vicinity maps and project location map(s).

7.3.1 Process

These steps listed apply to municipalities that do not have an approved NCCP plan and associated take authorizations for all of the listed species potentially affected by the maintenance activities that will be covered under the RGP, or if channel maintenance activities are not a covered activity in the municipality's approved NCCP. Some actions/steps may occur concurrently, or in an order other than noted below. However, all actions/steps are relevant to the consultation process for this agency.

- USACE/municipality requests list of applicable species.
- * Compile data summaries for as many maintenance sites as possible, and determine which sites have the potential to affect listed species.
- Conduct protocol-level or other appropriate focused surveys where needed. Findings from these surveys will indicate what listed species could be affected, allowing the development of all necessary and appropriate impact avoidance and minimization measures. (Note, once the consultation process is complete, protocol-level or other focused surveys for federally listed species will not need to be repeated prior to the maintenance event unless a listed species is found incidentally in an area previously identified as unoccupied. If this occurs, the applicant must re-initiate consultation to analyze the effects to the species.)
- * Identify alternatives to avoid/minimize impacts.
- * Identify potential mitigation sites.
- * Conduct site tours.
- * Conduct multi-agency meeting(s).
- USACE/municipality informally discusses with USFWS/NMFS maintenance activities and potential effects on listed species and/or designated critical habitat.

- ❑ Develop BMPs and conservation measures to avoid or sufficiently minimize impacts to federally listed species and/or designated critical habitat.
- ❑ Municipalities prepare draft BA on behalf of USACE addressing:
 - any existing incidental take authorization (e.g., for upland species),
 - relevant ecosystem and recovery goals associated with the species potentially affected,
 - BMPs specific to avoiding/ minimizing impacts to listed species and/or designated critical habitat, and
 - anticipated effect of channel maintenance on listed species and/or designated critical habitat, including an estimated worst-case acreage impact of suitable habitats.
- ❑ USACE submits BA to USFWS (and NMFS, if applicable) and requests initiation of formal consultation.
- ❑ Formal consultation begins; ESA establishes a time frame of 90 days (unless agencies mutually agree to an extension, with the applicant's consent).
- ❑ Submit BA to CDFG for their consideration under 2080.1 (see also Section 7.5) if the federally listed species are also listed by the state. Continue to coordinate with CDFG for development of the BO.
- ❑ After formal consultation concludes, USFWS (and NMFS, if applicable) prepares a BO stating whether the project would jeopardize the continued existence of the species.
- ❑ If USACE does not concur with the findings in the BO, it may request further discussion to resolve the issue.
- ❑ The BO may authorize a certain level of incidental take contingent upon the implementation of specified terms and conditions to minimize such take and mitigate for its effects.



Soft bottom trapezoidal channel

7.4 CALIFORNIA DEPARTMENT OF FISH AND GAME, STREAMBED ALTERATION AGREEMENT

In accordance with Fish and Game Code Section 1602, the municipalities addressed in this guide are required to notify the CDFG before beginning any activity that will substantially change the natural flow of, or use any material from, a river, stream, or lake. If maintenance staff are not certain whether a proposed activity requires notification, the CDFG recommends that they be notified, so that SAA team staff can evaluate what type of review may be required.

To notify the CDFG about their storm water and flood control maintenance activities, municipalities must submit a complete notification package and fee to the CDFG regional office in San Diego. The notification package must include the standard notification form, as well as the CDFG's Attachment D, which is specific to routine maintenance activities. Both the standard form and Attachment D are available from the CDFG San Diego office and the CDFG website, and are included in Appendix F herein.

The CDFG will require an SAA for a project if it determines that the project, as described in the notification, could substantially, adversely affect an existing fish or wildlife resource. The process for submittal of a notification package, CDFG review, and issuance of the SAA is summarized below. This process is also generally depicted in Figure 7-1. Notes regarding completion of the CDFG SAA notification, Attachment D, and other required materials for the notification package are summarized in Table 7-5.

Table 7-5
CDFG Notification

Item #	Information	Notes
Notification Form		
1	Applicant's name and contact information proposing project. Information about applicant's representative.	The applicant's representative must be an employee of the applicant.
2	Contact person	List all contact information for CDFG.
3	Property owner	List all contact information for CDFG.
4	Project name and agreement term	Summarize five categories in detail: Project Name, Agreement Term Requested, Project Term, Seasonal Work Period, and Number of Work Days.
5	Agreement type needs to be identified	Type E, for routine maintenance, is applicable to storm water and flood control maintenance activities. The applicable supplemental form that needs to be filled out in detail and accompany the notification package is provided in CDFG's Attachment D.
6	Project fees: project cost, project fee, base fee, and total fee enclosed	Routine Maintenance Agreements: standard term \$1,200 base fee; long-term \$2,400 base fee; plus \$100/project/year.
7	Prior notification and orders	Check applicable box.
8	Project location	Provide a spreadsheet and accompanying map(s) summarizing the locations of the activities that

Item #	Information	Notes
		are submitted as part of the application.
9	Project category and work type	Work type described and project category identified.
10	Project description	Summarize project activity, if water is present, and if work will take place in a wetted channel.
11	Project impacts	Issues to address are modifications to (1) river, stream, or lake; (2) vegetation; and (3) special status species. This information should be summarized in the CMRs and further summarized in a spreadsheet. Identify the sources of information that were used. If prepared, a biological study and/or a hydrological study must be provided.
12	Measures to protect fish, wildlife, and plant resources	Describe methods for (1) erosion control; (2) impact avoidance/minimization measures; and (3) mitigation/compensation measures. This may be provided in a summary of project BMPs, a mitigation plan, and other documentation as required by CDFG.
13	Other permits	List other local, state, and federal permits required for the project. Enclose a copy of each issued permit with application.
14	Environmental review	Any CEQA documents associated with the project must accompany the application. A draft document may be submitted and will allow SAA team staff to initiate their review; however, the final CEQA document must be provided before the SAA can be finalized.
15	Site inspection	Additional site inspection may be required during CDFG's review of the notification package. Pre-application site tours should minimize the need for additional site inspections during the notification review.
16	Digital format	Any information included as part of the notification package may be submitted in digital form; however, the notification package must also be completed and submitted in paper format.



Upstream of inlet along natural-lined channel

Item #	Information	Notes
17	Signature	Only the applicant or an authorized employee of the applicant can sign the notification. Proper signature is vital; CDFG will deem the notification invalid with an improper signature.
Attachment D - Routine Maintenance		
18	Section I. Regularly reoccurring maintenance activities	Check the boxes that apply to the various storm water and flood control maintenance activities that are being submitted as part of the SAA.
19	Section II. Map or mapbook	Provide maps or a mapbook depicting the applicant's jurisdictional boundaries, watercourses where maintenance work will occur, and a key to cross-reference the maintenance sites with other summary information provided (e.g., the spreadsheet listing all sites and associated estimates of impacts).
20	Section III. Special status species locations	Provide maps or a mapbook depicting the known locations of special status species coincident with or near the maintenance sites.
Additional Information Required/Recommended		
21	Fee	Fees are project specific.
22	CEQA document and certification	Provide draft CEQA document to initiate the SAA review; CEQA certification is required before SAA can be issued.
23	Other local, state, or federal permits, agreements, or other authorizations that apply to the project.	Provide copies of other permits or submittal packages.
24	Mitigation plan	Cannot be finalized until impact avoidance and minimization is deemed complete.

7.4.1 Process

The actions listed below represent a general chronology of the steps undertaken to obtain an SAA from the CDFG. Some actions/steps may occur concurrently, or in an order other than noted below. However, all actions/steps are relevant to the authorization process for this agency.

- * Compile data summaries for as many maintenance activities as possible and calculate anticipated cumulative impact to jurisdictional waters, including wetlands.

- Provide as much detail as possible so CDFG can properly evaluate all activities, determine which need to be addressed in the SAA and whether any may be exempt from further review and processing.
- * Identify alternatives to avoid/minimize impacts.
- * Identify potential mitigation sites.
- Conduct pre-application one-on-one meeting with the CDFG SAA team to discuss the overall channel maintenance program and preliminary mitigation concepts.
- If needed, compile additional information in response to input from CDFG at first meeting (and other agency one-on-one meetings as discussed in this section).
- * Conduct multi-agency meeting(s).
- * View data summaries at multi-agency meetings.
- * Conduct site tours.
- Determine whether CDFG will require supplemental studies (e.g., biological or hydrological) so those findings may be included in the notification package.
- Refine/supplement project BMPs and/or conservation measures based on multi-agency input.
- * Prepare conceptual mitigation plan based on multi-agency input.
- Submit the completed notification form with all required enclosures (e.g., a draft of the CEQA documentation if the final documentation is not yet certified) and fees to the CDFG San Diego office (CDFG will not begin review of the notification until it determines the package is complete).
- After submittal of a notification package, CDFG determines whether the package is complete.
- CDFG determines whether additional on-site inspections are required.
- CDFG provides a draft SAA to the applicant.
- The draft agreement will include measures CDFG deems necessary to protect biological resources while conducting the project.



Natural-lined ditch

- After receiving the draft SAA, the applicant notifies CDFG if the measures are acceptable; if so, the applicant signs the SAA and returns it to CDFG. Applicant must notify CDFG in writing about any measures that are not acceptable.
- * As needed, revise mitigation plan to reflect final impact avoidance and minimization measures.
- After both CDFG and the applicant agree on the draft SAA, the applicant has paid the filing fee (when CDFG acts as a responsible agency) or been reimbursed for its CEQA-related costs (when CDFG acts as a lead agency), and CDFG complies with CEQA for the project, it will issue a final SAA.

7.5 CALIFORNIA ENDANGERED SPECIES ACT, INCIDENTAL TAKE AUTHORIZATION

Because the storm water and flood control facility maintenance activities that would be permitted could affect state listed species, consultation with the CDFG would be required. The state consultation process, required documentation, and the applicant's role with the local CDFG representative prior to issuance of the consistency determination under Fish and Game Code Section 2080.1 or an incidental take permit under Fish and Game Code Section 2081 is summarized below. This process is also generally depicted in Figure 7-1. No application form is needed for initiation of formal consultation; however, the content for the CESA incidental take permit application or request for Section 2080.1 consistency determination is summarized in Table 7-6.

7.5.1 Process

The actions listed below represent a general chronology of the steps undertaken before and during formal consultation with the CDFG regarding the effect of the activities on listed species. Some actions/steps may occur concurrently, or in an order other than noted below. However, all actions/steps are relevant to the consultation process for this agency. Because many of the potentially relevant listed species to channel maintenance activities are both federal and state listed, the process for a Section 2080.1 consistency determination is noted first below. The process for obtaining a separate incidental take permit under Fish and Game Code Section 2081 (i.e., for species that are state listed only) follows.

Table 7-6
CDFG Incidental Take Determination Information Needs

Item #	Information	Notes
Consistency Determination		
1	Federal BA	Provide federal BA discussing species that are both federal and state listed. Include CDFG during federal consultation.
2	Federal BO and incidental take statement	Provide federal BO; CDFG will determine if analysis and measures are consistent with CESA.
Incidental Take Permit		
3	Describe known and potential distribution of state-listed species within the activity area	Species that are only state listed must be addressed in a separate document; the 2081 permit application.
4	Analyze possible effects on state-listed species	Discuss and quantify all direct and indirect effects per CESA, and cumulative effects.
5	Analyze alternatives to avoid or minimize effects on state-listed species	Provide a summary of alternatives discussed in the environmental document, and measures to avoid/minimize effects.



Circular culvert and natural-lined channel

Consistency Determination

- Municipality requests list of applicable species from CDFG.
- * Compile data summaries for as many maintenance sites as possible, and determine which maintenance sites have the potential to affect state listed species.
- Conduct appropriate focused species surveys where needed.
- * Identify alternatives to avoid/minimize impacts.
- * Identify potential mitigation sites.
- * Conduct multi-agency meeting(s).
- * Conduct site tours.
- Municipality informally discusses maintenance activities and potential effects on listed species.
- Develop BMPs and conservation measures to avoid or sufficiently minimize impacts to state listed species.
- Include CDFG at meetings with USFWS to develop consistency.

- Provide CDFG with federal BA so they can review document concurrent with USFWS.
- Provide CDFG with USFWS BO so they can determine whether federal opinion is consistent with CESA.
- If consistent, CDFG adopts federal BO, adding supplemental conditions, if needed.

Incidental Take Permit

- Municipality prepares documentation necessary for 2081 permit.
- CDFG reviews 2081 “application” and issues an incidental take permit under Fish and Game Code Section 2081(b) and (c) with conditions of approval for species that are listed under CESA only.

7.6 CALIFORNIA COASTAL COMMISSION, COASTAL DEVELOPMENT PERMIT AND FEDERAL CONSISTENCY REQUIREMENTS

Municipalities with an approved LCP would determine whether their storm water and flood control maintenance activities are exempt or require a CDP on a case-by-case basis pursuant to their applicable CDP requirements. LCPs may have areas where permitting authority is retained entirely by the CCC. In the case of appeals areas, municipalities would issue the CDP, and the CCC or other interested persons would retain the right to appeal any permit decision.

In areas where the CCC retains permanent and complete authority (e.g., development proposed on tidelands, submerged lands, and public trust lands) or if a municipality does not have an approved LCP, then the CCC has direct permit authority for activities occurring within the coastal zone coincident with the municipality’s jurisdiction.

Pursuant to the CZMA, the USACE cannot issue an RGP until the federal consistency requirements of Section 307(c)(3)(A) of the CZMA have been met. Under the CCMP, the requirements of CZMA Section 307(c)(3)(A) can be met by receiving CCC-issued CDPs and no further submittals are necessary. However, for CDPs or exemptions issued under LCPs evidence of CCMP-compliance must be provided, either by obtaining CCC concurrence with a consistency certification or a CCC staff-issued waiver.

The processes for submittal, agency review, and issuance of the CDP are summarized below. This process is also generally depicted in Figure 7-1. Because waivers of federal consistency provisions are generally issued for appealable local CDPs for activities that require 404 permits, only the process for obtaining waivers is also summarized below. The content for the CDP application package is summarized in Table 7-7. The content of a request for waiver of the federal consistency provisions is summarized in Table 7-8.

Table 7-7
CCC Development Permit Submittal Package

Item #	Information	Notes
Application: CDP San Diego Region		
1	Section 1. Applicant contact information and declaration of campaign contributions	Include all representatives who will communicate with CCC on behalf of applicant.
2	Section 2. Project details, including project location, description, amount of grading, and tree/vegetation removal	Various details required, e.g., assessor's parcel number(s), grading cut and fill, and utility needs.
3	Section 3. Additional project impact information, including impacts on public access to the beach, wetlands/streams/waters, sensitive habitats, recreation, floodplains, and cultural and paleontological resources	Detailed information regarding cubic yards of fill/dredge and habitat impact information is required in this section.
4	Section 4. Required attachments are listed in this section	Required attachments are listed in the Additional Information section of this table.
5	Section 5. Notice to applicants	Box must be checked to obtain notice of requests made for additional information on project submittal.
6	Section 6. Communication with Commissioners statement	Restrictions on discussion of CDP with commissioners.
7	Section 7. Certification - Signature	Applicant or representative must sign the application.
8	Appendix A. Declaration of Campaign Contributions	Must be completed by applicant or agent.
9	Appendix B. Local Agency Review Form	Must be completed by local agency planning departments prior to application submittal.
10	Appendix C. List of property owners and residents within 100 feet of project	At the discretion of the Commissioner, alternative noticing can be done.



Box culvert and natural-lined ditch

Item #	Information	Notes
11	Appendix D. Declaration of posting	Notice must be posted prior to submittal. Given the nature of these projects, more than one notice may be necessary. Prior to submittal, coordinate with a CCC representative to determine appropriate noticing locations.
12	Appendix E. Permit Application Fee Schedule	Public works facilities submitted by a government agency are not required to pay a fee.
Additional Information Required/Recommended		
13	Proof of legal interest in property	I.e., copy of recorded deed, lease, or easement.
14	Assessor's parcel maps	Provide maps of property and others within 100 feet.
15	Copies of all local approvals	Include zoning variances, use permits, etc. as noted on CDP form Appendix B.
16	Stamped, addressed envelopes for property owners within 100 feet of the property line and all those parties known to be interested in the proposed development	Alternative noticing is available at the discretion of the Commission staff.
17	Vicinity or location maps	Project site must be clearly marked.
18	Copies of plans	Include channel maintenance forms, photographs, erosion control plans.
19	Verification of all other permits, permissions, or approvals applied for or granted by public agencies	Provide copies of permits from CDFG, USACE, RWQCB, and USFWS.
20	CEQA/NEPA document	Also provide public comments and responses to comments.
21	Mitigation plan	Cannot be finalized until impact avoidance and minimization is deemed complete.

Table 7-8
Federal Consistency Provisions – Waiver Submittal Package

Item #	Information	Notes
Waiver for activities requiring a Local CDP and 404 permit		
1	Map	Provide area and vicinity maps and project location map(s).
2	Project Description	Describe what the project or action is, where it is located, when it will occur and the duration of activities, equipment to be used, and impact avoidance and minimization measures.
3	Local government permit conditions and findings (or a timetable for local government review if it has not been completed)	Submit all materials to the CCC's federal consistency coordinator.
Additional Information Required/Recommended		
4	Local government contact information	Provide a staff contact name and phone number for locally issued CDPs.
5	Other state or federal review or consultation	Provide information on whether CDFG, USFWS, or NMFS review is occurring, include contact names and phone numbers.

7.6.1 Process

The actions listed below represent a general chronology of the steps undertaken to obtain authorization from the CCC. Some actions/steps may occur concurrently, or in an order other than noted below. However, all actions/steps are relevant to the consultation process for this agency.

CDP

The CDP application process in an area with an approved LCP will vary by local municipality. Therefore, below is the process for submitting to the CCC for a permit in areas where the CCC retains jurisdiction.

- * Compile data summaries for as many maintenance sites as possible and calculate anticipated cumulative impact to wetlands/habitats (i.e., complete the spreadsheet listing all sites).
- * Identify alternatives to avoid/minimize impacts.

- * Identify potential mitigation sites.
- Schedule pre-application meeting with the CCC and discuss maintenance program and basic and overall project purpose.
- * Conduct multi-agency meeting(s).
- * View CMRs at multi-agency meetings.
- * Conduct site tours, as requested by the agencies.
- * Refine/supplement project BMPs and/or conservation measures based on multi-agency input.
- * Prepare conceptual mitigation plan based on multi-agency input.
- Submit CDP application package.
- CCC deems application complete or requests additional information.
- CCC reviews project at public hearing.
- * As needed, revise mitigation plan to reflect final impact avoidance/minimization measures.
- CCC issues permit/exemption.

Federal Consistency

As previously noted, CCC-issued CDPs automatically satisfy federal consistency and no further submittal is needed. In instances where the locally issued CDP is appealable to the CCC (which is often the case for activities needing 404 permits), the federal consistency unit will usually issue a waiver of the federal provisions. The process to obtain this waiver for work in coastal waters that require a 404 permit is summarized below.

- Send request for waiver from the federal consistency provisions to the CCC's federal consistency coordinator. Package should include project map, project description, and the local government permit conditions and findings (or a timetable for local government review if it has not been completed).
- CCC federal consistency unit reviews waiver request, contacts local CCC office that reviewed appealable CDP, and issues waiver if appropriate.

8.0 Pre- and Post-activity Notification after Permit Issuance



Rectangular culvert and soft bottom channel

Through the processes described in this guide, each municipality will obtain authorizations that will allow them to proceed with their maintenance program, following a notification procedure that will be a condition of these authorizations. It is understood that maintenance at each facility will not be conducted within a given year, nor might the entire maintenance program be conducted within a single permit term. Therefore, to understand how the work will proceed the agencies need notification of the maintenance anticipated to be conducted within a given period (e.g., 6 or 12 months). This notification allows the agencies to **verify** that the upcoming activities are among those covered under their permit. Subsequently, the agencies require after-impact notification so they can **verify** the work complied with permit conditions and otherwise account for the permitted impacts and required mitigation. These pre- and post-activity notification processes are further described below.

8.1 PRE-ACTIVITY NOTIFICATION

The pre-activity notification is “project-driven,” i.e., it pertains to the maintenance that a municipality needs to conduct in the near future. Municipalities must notify the agencies as early as possible about their near-term maintenance plans and cannot begin most activities until notified by the agencies they may proceed under the terms of the permit. To illustrate a potential annual schedule for this pre-activity notification process, dates are noted below based on RGP No. 53 that was issued to the County DPW. However, as needed, municipalities may negotiate different dates that are better suited to their particular maintenance needs during their separate pre-application agency meetings.

- Each year, municipal public works divisions identify maintenance activities that need to be conducted and the list is typically reviewed by municipal planning divisions.
- Using CMRs prepared for the permit submittals (see Section 6.1.2), each municipality determines whether the activities at the sites

identified have the potential to impact sensitive resources (e.g., wetlands, listed species).

- If sensitive resources are present, technical specialist (e.g., biologist and/or archaeologist) conducts focused surveys to confirm site-specific impact information, determine whether supplemental surveys are needed, and identify impact avoidance/minimization measures and other relevant protocols. As noted in Section 7.3.1, supplemental focused or protocol-level surveys for federally listed species will not need to be repeated prior to the maintenance event unless a listed species is found incidentally in an area previously identified as unoccupied. The appropriate protocols for each activity are determined through review of the protocol checklist (see example checklist in Appendix A), which should be a compilation of all specific conditions of the permits that were issued and other general BMPs that promote impact avoidance and minimization.
- Specialist adds supplemental information to CMR.
- Where needed, specialists implement impact avoidance measures (e.g., stake, flag, or otherwise mark impact limits specified for each site), and photograph the area when completed.
- If sensitive resources are not present, municipalities should have technical specialists confirm this via review of photographs or other available information, and if confirmed, complete the CMR without additional site inspection.
- Completed/updated CMRs are compiled for submittal to agencies. As part of this compilation process, upcoming activities should be organized per the type of facility (e.g., concrete-lined channel, detention basin) to expedite reviews by the agencies. The database described in Section 6.1.1 will facilitate this recommended organization.
- The municipalities **notify** the agencies by November 1 of each year with a complete list of proposed maintenance activities for the upcoming season. As needed, the list and associated CMRs may be provided via fax or email with simultaneous phone notification to inform the agencies of the method of transmittal. Although maintenance activities for the upcoming year should be compiled as a comprehensive list, municipalities may submit supplemental notifications within a given year for additional sites if later determined necessary.
- The agencies review the notification and determine whether the activities fall within the guidelines of the permits/authorizations they issued (activities that exceed the criteria authorized will be

reviewed separately for potential authorization under another permit).

- Agencies respond to the notifications to verify that the activities are covered and the work may proceed. Verifications are generally quick, especially after the initial year of the permit term when both the applicant and the agencies are more familiar with applying the various conditions required under the permit. Specific timeframes for the pre-activity notification and abbreviated agency review may be established by each municipality when they negotiate their permit.
- Municipalities conduct maintenance at those sites that were reviewed under the pre-activity notification process, and photograph the impact areas after the work is complete.
- After work is conducted, municipalities supplement their CMRs with information about the work performed, including an account of the wetland or sensitive upland habitats that were impacted. These reports are compiled for inclusion in the annual post-activity reports that must be submitted to the agencies.

8.2 POST-ACTIVITY NOTIFICATION

To demonstrate compliance with the permits and authorizations that have been issued, the municipalities must provide the agencies an annual report that summarizes how the work proposed in their pre-activity report was implemented, and verifies which conservation measures were upheld. This “after impact” annual reporting is summarized below.

- By June 1 of each year, the municipalities must submit a report of the activities that were conducted the previous year.
- The annual reports will consist of the site-specific CMRs (including photographs of the impact area), plus summary tables and scaled maps. This information is provided to document that the impacts that occurred did not exceed those allowed under the permits.
- Based on the cumulative impacts noted in the summary tables the associated amount of mitigation will be identified.

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9.0 Mitigation Planning

An important component of the permit packages that municipalities will compile is the mitigation plan that describes what will be done to compensate for impacts associated with maintenance activities. This chapter provides a general overview of mitigation terms and typical mitigation approaches for jurisdictional waters (wetlands and non-wetland waters) as well as uplands. General mitigation concepts that could be pursued by the municipalities were discussed with the USACE, RWQCB, USFWS, CDFG, and CCC in the meetings held during the development of this guide; a summary of these concepts is provided in Section 10.3 herein. In addition, the impact avoidance and minimization measures presented in Section 4.2 provide mitigation as defined by the CEQ.



Earthen channel with riprap slopes near culvert

9.1 MITIGATION OVERVIEW

Each resource agency with respective jurisdiction over aquatic resources, federal and state waters, riparian habitat, and sensitive uplands has regulations, policies, and/or guidelines that determine how appropriate compensatory mitigation should be identified and implemented for individual projects and within a larger regional context. Although there are some differences in how the agencies interpret and regulate compensatory mitigation, many of their requirements and goals are similar. The similar regulatory and application/implementation elements of compensatory mitigation, generally accepted by agencies, are presented below.

9.1.1 Mitigation Types

The four primary types of habitat mitigation include habitat enhancement, restoration, creation, and preservation. The word “restoration” is often used broadly to refer to activities that enhance, restore, or create habitat and increase habitat functions; however, these activities are distinct as described below.

- **Enhancement** – Improving existing habitat, i.e., the manipulation of the physical, chemical, or biological characteristics of an existing habitat to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement results in a positive change in habitat function(s) but does not result in an increase in acres. An

example of enhancement is the removal of non-native, invasive exotic plants, followed by native plant revegetation.

- **Restoration** – Restoring habitat where it once existed but has since been eliminated, i.e., the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former habitat that is currently not functioning as the former habitat. Reestablishing a former habitat results in a gain in acres. For wetlands, an example of restoration is removal of fill deposited in a former wetland to reestablish wetland hydrology and functions to a site.
- **Creation** – Creating habitat where it did not previously exist. This is typically associated with mitigation where it pertains to the manipulation of the physical, chemical, or biological characteristics present to develop wetlands, or non-wetland waters on an upland site (USACE 2002). Creation (establishment) of wetlands or non-wetland waters results in a net gain in acres of these resources. An example of wetland creation is excavation grading within disturbed upland habitat adjacent to wetlands to establish new wetlands. Although the physical conditions of an existing upland type may be altered to create conditions more favorable for another upland type, the conversion of wetlands to uplands as mitigation is not intentionally pursued.
- **Preservation** – Protecting a habitat in perpetuity. This pertains to the removal of a threat to, or preventing the decline of, habitat conditions by an action in or near the habitat. This term includes the purchase of land or easements and dedication of the land (i.e., rezoning) as open space in perpetuity, and sometimes additional protection measures such as fencing. Preservation does not result in a gain in acres.

Specific to wetlands, one goal of mitigation is to provide for no net loss of the area of wetland that will be impacted. Only through the **restoration** of former wetlands or through the **creation** of new wetlands can no net loss be achieved (CCC 2007). **Enhancing** existing wetlands (e.g., degraded) as mitigation does not provide additional wetland acreage but does increase the function and value of the area enhanced. Only in exceptional circumstances (e.g., special aquatic resources) will the USACE authorize **preservation** as the sole basis for generating mitigation credit (USACE 2002). As part of a proposed rule change (USACE 2006), however, the USACE stated that in coastal and urban areas preservation might be the most appropriate form of compensatory mitigation because of the difficulty of restoring wetlands in developing areas and the importance of ensuring that coastal and urban areas do not become devoid of aquatic resources. More often the resource agencies only consider preservation a component of mitigation in conjunction with enhancement,

restoration, and/or creation activities. Regarding uplands, there is no stated goal of the resource agencies to provide for no net loss of the area of specific uplands that will be impacted.

9.1.2 Mitigation Mechanisms

The three primary mechanisms through which mitigation can be accomplished are summarized below.

- Permittee-Responsible Mitigation** – A permit applicant may implement compensatory measures at the impact site (i.e., on-site mitigation) or at another location usually within the same watershed (or for uplands, within the same municipal jurisdiction) as the permitted impact (i.e., off-site mitigation). Additionally, mitigation for impacts to waters and wetlands within the coastal zone must be located within the coastal zone. The permittee retains responsibility for the implementation and success of the mitigation.
- Mitigation Banks and Conservation Banks** – A permit applicant may purchase credits from a mitigation bank within a designated “service area” (generally, mitigation must be within the same watershed as the impacts and within the coastal zone for coastal impacts). Specific to wetlands, a mitigation bank may be created when a government agency, corporation, non-profit organization, or other potential bank sponsor undertakes wetland restoration, creation, and/or enhancement and preservation and protection activities under a formal agreement with the USACE and other agencies included in the Mitigation Bank Review Team. This formal agreement describes the restoration plan for the area and establishes the number of environmental credits the restoration work can potentially generate. Banks can be established for single or multiple users. Permittees, upon approval of the resource agencies, can acquire these credits to meet their requirements for compensatory mitigation. Conservation banks primarily involve habitat preservation and are generally established to protect threatened and endangered species habitat. Conservation banks must be approved by the wildlife agencies including CDFG and USFWS. Mitigation banking is the same concept as conservation banking but is specifically for the restoration, creation, and enhancement undertaken to compensate for unavoidable wetland losses (CDFG 2007).
- In-lieu Fee Mitigation** – A permit applicant may make a payment to an in-lieu fee program within a designated “service area.” In-lieu fee programs are generally administered by public agencies or non-profit organizations that have established an agreement with regulatory agencies to use in-lieu fee payments collected

from permit applicants to conduct habitat restoration, creation, enhancement, or preservation activities. Unlike mitigation banks, in-lieu fee programs generally provide mitigation only after collecting fees, and there is often a substantial time lag between permitted impacts and implementation of in-lieu fee compensation projects. Because of concern that the structure and implementation of in-lieu fee programs have historically resulted in less reliable and quantifiable compensatory mitigation, the USACE's Proposed Compensatory Mitigation Rule (USACE 2006) proposes requiring existing in-lieu fee programs to conform with the rule's standards for mitigation banks within 5 years of finalization of the rule, ensuring that all forms of third-party compensation are held to the same standards.

9.1.3 Mitigation Location

There is a general and flexible preference that mitigation should occur on-site (and in-kind) when it is feasible and ecologically appropriate. On-site mitigation generally compensates for locally important functions, such as flood control and replacement of wildlife habitat in the same area where the impact occurred. However, it is recognized that departure from this preference can be environmentally superior where mitigation is designed and situated to address specific regional environmental issues, and to bring maximum ecological benefit to the watershed. The USACE, for example, suggests where appropriate and practicable, compensatory mitigation decisions should be made from a watershed perspective in which the type and location of compensatory mitigation follows from an analytically based watershed assessment to ensure the proposed compensation furthers watershed goals.

In general, the success, sustainability, and function of a mitigation project will be higher if the site is part of a larger open space configuration and located adjacent to a functioning ecosystem. Isolated mitigation sites will probably have a lower chance of sustaining maximum functions and values, due to isolation from seed sources, and limitations on the migration and dispersion of wildlife (CCC 2007). Although mitigation projects located within a larger open space configuration tend to have a higher functional value, mitigation efforts in more isolated and developed areas can still be valuable by improving water quality in developed areas, and by providing habitat "stepping stones" for wildlife dispersal and contributing to constrained wildlife corridors.

9.1.4 Mitigation Compensation and Ratios

Mitigation for Permanent Impacts³⁸

Resource agencies often require additional mitigation acreage beyond the amount **permanently** lost (i.e., more than 1:1 replacement) because of interim (temporal) losses in acreage and functional capacity, and because the success and resulting value of compensatory mitigation projects are uncertain. Specific to wetlands, in cases where wetland mitigation for a project is completed and approved as successful by the agencies prior to initiation of the permitted impacts (e.g., through purchase of credits from a wetland mitigation bank), a 1:1 replacement mitigation ratio may be approved by the agencies. For uplands, often preservation alone is appropriate and acceptable for mitigation, although more than a 1:1 ratio may be required. For wetland or upland mitigation, replacement ratios vary primarily depending on the acreage, functions, and values of the habitat affected compared to the type of mitigation proposed, and the temporal period of loss between impact and establishment of the mitigation habitat.

USACE regulations, for example, require appropriate and practicable compensatory mitigation to replace functional losses to aquatic resources, including wetlands (USACE 2002). USACE Districts will determine what level of mitigation is appropriate based on the functions lost or adversely affected as a result of impacts to aquatic resources. When determining practicability, Districts will consider the availability of suitable locations, constructability, overall costs, technical requirements, and logistics.

The resource agencies have traditionally used acres as the standard measure for determining impacts and required mitigation. There is increasing direction from the resource agencies to incorporate functional assessment methods (e.g., a Hydrogeomorphic Assessment or Wetland Rapid Assessment Procedure) into the process of determining appropriate compensatory mitigation, with the intent of moving away from the acre-based standard. At this time, however, functional assessments should not be relied upon in this region as the primary method for determining appropriate compensatory mitigation.

³⁸ “Permanent impacts” generally refer to the irreversible direct removal of the resource, e.g., wetlands, from development. This assessment may also include permanent indirect effects, i.e., an irreversible change in temperature resulting from shading and the associated effect on the resource. Note, the CCC considers any destruction of vegetation, even where restoration will later occur, to be a permanent loss of the resource.

To achieve the “no overall net loss of wetlands” goal endorsed by the resource agencies, typically either wetland restoration or creation (both of which increase wetland acreage) is included in mitigation programs for individual projects. Between these two options the resource agencies have indicated that **restoration is preferable**. The following is stated in a Memorandum of Agreement between the EPA and USACE (EPA and USACE 1990), “because the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, **restoration should be the first option considered.**” The CCC has stated their “staff should be very cautious in recommending wetland creation projects as mitigation for the loss of existing wetlands” (CCC 2007).

Specific to wetlands, for projects that require more than a 1:1 mitigation replacement ratio to compensate for permanent losses, typically a 1:1 replacement is provided by either wetland restoration or creation, and the balance of the ratio is met by any combination of enhancement, restoration, or creation activities (depending on the opportunities that are available and appropriate). There may be instances where USACE permit decisions, for example, do not meet the “no overall net loss of wetlands” goal because compensatory mitigation would be impracticable or would only achieve inconsequential reductions in impacts (USACE 2002). Consequently, this goal may not be achieved for each and every permit action, although all Districts will strive to achieve “no overall net loss of wetlands” on a cumulative basis so that the USACE will achieve this goal programmatically. As noted above, there is no stated goal of the resource agencies to provide for no net loss of particular upland types; often, preservation alone is appropriate.

Typically in-kind habitat mitigation (i.e., same or similar habitat type as the habitat impacted) is required by the resource agencies particularly when a unique habitat is impacted, although out-of-kind mitigation can be appropriate and approved by the resource agencies in certain circumstances when it provides equal to or more ecological benefit than in-kind compensation. In addition to a “core” mitigation area for a project, the resource agencies in some cases may also approve compensatory mitigation credit for adjacent riparian or upland buffer areas to the degree that the protection and management of such areas increase the overall ecological functioning of the mitigation site.

Mitigation for Temporary Impacts³⁹

In addition to the mitigation ratios described above to compensate for permanent losses of habitats, the agencies generally require compensation for **temporary** impacts that occur during project implementation. Typically, temporary impacts are mitigated in-place at a 1:1 ratio by the restoration of the area that was temporarily affected. In some cases the agencies may require more than a 1:1 replacement ratio, for example, if a unique habitat is affected or if there would be an extended period of time between the temporary impact and when restoration would proceed. As needed, grading to reestablish pre-construction grades and ecological conditions must be conducted. The primary goals of restoring areas temporarily impacted are to minimize the establishment of invasive, non-native plant species on the disturbed land surface, control erosion, and monitor and maintain the native habitat restoration until establishment is deemed successful by the agencies. In the case of restoring areas that were temporarily impacted, a net gain of area is not achieved. However, the restoration effort provides for the expedited establishment of native vegetation (compared to natural recruitment), and better ensures that there will be no net loss of the quality and functioning of the area compared to the pre-impact condition. Specific to wetlands, if more than a 1:1 in-place replacement is required, the supplemental mitigation would likely involve enhancement of “off-site” wetlands (i.e., a neighboring area or separate location) via removal of exotic species from existing wetlands. For uplands, however, off-site mitigation in addition to on-site restoration is typically not required to compensate for temporary impacts.

9.1.5 Recommended Mitigation Planning Steps

To identify and plan for a successful mitigation project, the following steps are recommended.

- Evaluate the quality, functions, and values of habitat(s) that would be impacted.
- Evaluate opportunities and constraints for providing mitigation on-site and within adjacent areas.
- Evaluate property owned by the permittee within the watershed (for wetlands) or municipal boundaries (for uplands) where

³⁹ “Temporary impacts” generally refer to reversible effects from development or activities. However, the CCC considers any destruction of vegetation, even where restoration will later occur, to be a permanent loss of the resource. The CCC considers a temporary impact to be an effect that stresses the habitat and individual species, but does not remove them.

impacts would occur to determine if ecologically appropriate locations exist for mitigation.

- Review watershed management plans (where available) to identify priority mitigation locations and goals.
- Determine if mitigation banks, in-lieu fee programs, or conservation banks exist or are in the process of development within the watershed where impacts would occur.
- Review land ownership information to identify public entities (e.g., Land Conservancies) and private landowners with property potentially available and suitable for mitigation.
- With permission of the landowners, perform reconnaissance assessments to evaluate the ecological suitability of the land for sustaining mitigation, as well as other factors affecting installation and long-term management at the site (e.g., access, utility easement, etc.).
- Compare and rank potential mitigation sites relative to factors including ecological suitability and long-term success, type of mitigation that could be performed (e.g., enhancement, restoration, or creation), land use, sensitive species, access and other logistics, and cost.
- Consider establishing a mitigation area larger than what is needed for the current permitted activity. If the condition of the larger area and the intent to use the additional area as mitigation for future impacts is documented with the agencies, then in time (i.e., after the site is established and deemed successful by the agencies) the additional area can compensate for the permittee's future impacts at a 1:1 ratio. If an applicant pursues this approach, the additional area may be established as a mitigation or conservation bank under a formal agreement with the agencies.
- Identify the preferred mitigation sites and present them to the resource agencies for input and preliminary comment on the appropriateness of the site to mitigate for the proposed impacts. Although some agencies may be limited by regulation on the level of pre-application input they can provide, to the extent feasible, obtain preliminary comments on the mitigation offset (e.g., ratio and approximate acreage) anticipated to be necessary.
- Perform more detailed site investigations as necessary (e.g., wetland delineation, protocol wildlife surveys, hydrology analyses, cultural resource surveys, hazardous materials assessments, etc.).

- Identify the entity that will perform long-term management after the 5-year maintenance and monitoring period is complete, and determine necessary endowment funds.
- Obtain concurrence from the resource agencies for a preferred site, and prepare a conceptual wetland mitigation plan and long-term management plan for agency review. (Note, if using an existing wetland mitigation bank, a separate mitigation and long-term management plan is not needed.)
- After the agencies approve the conceptual mitigation plan and permits have been issued, prepare grading (if necessary) and erosion control, landscape, and temporary irrigation plans (i.e., construction bid documents), and construction cost estimates for the mitigation site.
- Record a conservation easement or similar mechanism for the mitigation site (if the property is not already protected) and establish endowment funding for long-term maintenance and management (if funds have not already been earmarked for this purpose).
- As needed, post a performance bond (typically not required of public agencies) for the proposed mitigation effort.

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10.0 Issues Clarified/ Resolved

In addition to the permit processes described in previous chapters, several general permitting issues were discussed with the regulatory agencies during meetings held to develop this guide. These issues ranged from discussions of activities and resources that may be exempt from regulatory requirements, to innovative approaches to mitigate for unavoidable impacts. The discussions helped to clarify many issues. While complete resolution may not have been reached on all topics discussed, the information gathered will benefit the municipalities as they pursue their individual permits for storm water system maintenance. Issues that were discussed are summarized below. Margin notes adjacent to most topics further highlight key issues for that topic. Where relevant, the margin notes also highlight inconsistencies among agency regulations. It is hoped that through future discussions with the agencies a more consistent approach to authorizing maintenance activities can be developed.

10.1 REGULATORY AND JURISDICTIONAL ISSUES

- Some regulations provide guidance regarding the **types of waters and wetlands** that are excluded from regulation; however, site-specific conditions can recapture these normally excluded resources. The following two features in particular can cause confusion as to whether they are subject to agency regulation.
 - **Brow ditches** – These features are constructed adjacent to roadways for the purpose of conveying storm runoff from the road surface. Typically, such drainage ditches are constructed in areas similar to the roadway itself (i.e., in an upland area not otherwise subject to USACE jurisdiction under Section 404 of the CWA). Such ditches are a road feature and are maintained on a periodic basis just as the roadway would be. Therefore, USACE exempts such actions from needing a permit. Activities in brow ditches, as described above, would be regulated by the RWQCB under Porter-Cologne. In addition, if the ditch displays a bed, bank, or channel; supports wetland vegetation; or connects to jurisdictional waters it may not be considered a brow ditch as described above. If such a ditch is determined to be jurisdictional, proposed impacts would be regulated by the USACE, RWQCB, CDFG, and CCC, and possibly the USFWS.



Brow ditch adjacent to roadway

Brow ditches constructed in uplands are exempt from USACE permitting but regulated by RWQCB. Regulation by other agencies may also apply.

Sediment and vegetation in concrete-lined channels are a maintenance concern. Removal of these materials may be regulated by all agencies.

- **Concrete-lined channels** – The federal or state waters that are conveyed via concrete-lined channels are regulated by each of the USACE, RWQCB, CDFG, and CCC; therefore, activities that are conducted within them have the potential to require authorization from these agencies. The USACE and RWQCB will regulate discharges into concrete-lined channels that convey federal and state waters, even if the concrete-lined channel is dry at the time of the discharge. The CDFG similarly regulates activities in concrete-lined channels and would be particularly concerned with the effect of an activity within a concrete-lined channel on downstream resources. The accumulation of sediment and establishment of vegetation within concrete-lined channels are a maintenance concern of the municipalities. Both the sediment and the vegetation can provide habitat to wildlife, including potentially sensitive species, and these conditions could be considered an ESHA by the CCC. The removal of sediment and vegetation from these types of channels has the potential to be regulated by all agencies addressed in this guide.
- Similarly, certain **types of activities** are excluded from regulation; however, project-specific conditions can recapture these normally excluded activities. These activities, and notes on potential exemption, include the following.
 - **Maintaining or reconstructing structures that are currently serviceable** – Section 404(f)(1)(B) of the CWA exempts from Section 404 permit requirement the discharge of dredged or fill material into federal waters conducted for the purpose of maintaining structures that are currently serviceable. This exemption also applies to the emergency reconstruction of recently damaged parts of structures. Region 9 of the EPA and the South Pacific Division of the USACE jointly developed a Program Guidance Letter (PGL) to assist program personnel in the application of this exemption (see Appendix C 1). USACE and EPA regulations pertaining to this section of the CWA provide that such maintenance does not include modifications that change the character, scope, or size of the original fill design, and that emergency repairs must occur within a reasonable period of time after the damage occurs to qualify for the exemption. However, a recapture provision under Section 404(f)(2) states that exemptions under Section 404(f) do not apply if the activity would violate toxic effluent standards or constitute a new use impairing the flow, circulation, or reach of waters. Where qualifications noted in the PGL are met, the activity is not regulated by the USACE. However, authorizations from the RWQCB, CDFG, and possibly USFWS and CCC, may be needed. Dischargers have the burden to

defend their reliance on a Section 404(f) exemption, and are encouraged, but not required, to consult with USACE before commencing work.

- **Maintaining drainage ditches** – CWA Section 404(f)(1)(C) specifically provides that dredge or fill discharges for the purpose of maintenance (but not construction) of drainage ditches are not subject to regulation under Section 404. For the purpose of determining whether a proposed activity falls under the provision for ditch maintenance at 404(f)(1)(C), the maintenance must preserve the physical, original, as built configuration of the ditch (RGL 07-02 *Exemption for Construction or Maintenance of Irrigation Ditches and Maintenance of Drainage Ditches Under Section 404 of Clean Water Act*), among other conditions. Where qualifications are met, the activity is not regulated by the USACE (see Appendix C-1 for RGL 07-02). However, authorizations from the RWQCB, CDFG, and possibly others, may be needed (e.g., USFWS and CCC). As noted above, dischargers have the burden to defend their reliance on a Section 404(f) exemption.
- **Removal of vegetation** – Cutting and removing vegetation (leaving at least the base of the plant and roots intact) within jurisdictional areas in itself does not constitute a discharge of dredge or fill, and thus is not regulated under Section 404. However, this activity is regulated by the CDFG and CCC, and potentially the USFWS if listed species may be affected. Removing vegetation from jurisdictional areas, including the roots, via mechanized methods, is likely to result in more than incidental fallback (see below) into the jurisdictional area and thus would be regulated by the USACE and RWQCB, and potentially all other agencies discussed in this guide. Whether clearing vegetation by hand or via mechanized equipment, cut vegetation left within jurisdictional waters is considered a discharge.
- **Removal of silt** – Where this activity is conducted within state or federal waters, it is regulated by the USACE (if fallback is more than incidental, see below), RWQCB, CDFG, CCC, and potentially the USFWS if listed species may be affected.
- Specific regulations or requirements related to 404 and 401 permitting have particular relevance to activities associated with maintenance of storm water and flood control systems. These include the following.
 - **Incidental fallback** – The USACE’s Tulloch “Incidental Fallback” Rule (66 Fed. Reg. 4550, January 17, 2001) provides that activities that cause only incidental fallback of fill into

Drainage ditch maintenance may not be subject to USACE regulation. Other authorizations may still be needed.

Removing wetland vegetation without discharging dredge or fill is not regulated by USACE. Authorizations from other agencies are required.

Excavation with only incidental fallback is not regulated by USACE. Other authorizations may still be needed.

jurisdictional areas do not constitute a regulable discharge. Fallback associated with excavation activities may only be considered incidental if the excavation is conducted in such a manner that material is only lifted up and out of the jurisdictional area, i.e., material is not pushed, dragged, reshaped, or stockpiled in the jurisdictional area. If this type of excavation can be claimed, then the activity is not regulated under Section 404. In cases where fallback is proved to be incidental and the activity is not regulated by USACE, regulation by the RWQCB and/or CDFG (and CCC in coastal areas) may still apply.

Obtaining evidence required to use NWP 31 can be problematic. If authorized under NWP 31, other authorizations are also needed.

- **NWP 31, Maintenance of Existing Flood Control Facilities** – Among the existing general permits that have been issued by the USACE, NWP 31 seems particularly suited to some of the maintenance work that municipalities must conduct in their storm water and flood control systems. However, to qualify for NWP 31, the flood control facility (debris basin, retention/detention basin, channels) must have (1) previous authorization under Section 404 or must not have required a permit when it was constructed, or (2) been constructed by USACE and transferred to a non-federal sponsor for maintenance. In practice, NWP 31 can be problematic to use if records do not exist to demonstrate the qualifications noted above, that the capacity of the flood control facility is diminished compared to the original design, and that all work will be conducted within the “maintenance baseline” of the facility. Where these qualifications are met, however, NWP 31 is an option to permit maintenance under Section 404. If NWP 31 is used, authorizations from the RWQCB, CDFG, and possibly others, would also be needed (e.g., USFWS and CCC). Where these conditions are not met, NWP 31 may be used only after the applicant obtains an IP that establishes a maintenance baseline and other conditions (e.g., one-time mitigation).
- **Site-specific wetland delineations and jurisdictional determinations** – Generally, federal jurisdictional delineations in accordance with the 1987 manual and the 2006 regional supplement are required as part of Section 404 permit submittal packages so that an accurate accounting of impacts to federal wetlands can be made. Similarly, an accurate map of the limits of state waters is required for state permit submittals. Because the municipalities will be submitting information for possibly hundreds of sites, not all of which may be channels, the option of deferring wetland delineations to the pre-activity notification process was discussed. However, the USACE will need an accounting of the proposed

impacts to jurisdictional areas before they can issue the RGP. Other agencies require similar detail to issue their authorizations. Therefore, site-by-site analysis will be required for the storm water and flood control sites that municipalities want covered under their permits. Additionally, as a result of the 2006 U. S. Supreme Court decision in *Rapanos v. United States*, the USACE is currently requiring Jurisdictional Determination forms for most waters. Until further guidance is given, applicants should check with the USACE before conducting site investigations to confirm the types of information that will need to be provided to USACE to assist them in determining whether the waters that would be affected are under federal jurisdiction.

An alternative to measuring jurisdictional data for permit submittals would streamline pre-application requirements.

- **RWQCB Waiver Policy** – RWQCB has conditionally waived regulation under Porter-Cologne for a number of types of waste discharges. These waivers are collectively known as the RWQCB’s Waiver Policy (see Appendix C-2). Dredging project wastes up to 5,000 cubic yards is waived where a Section 401 certification has been issued; however, flood channel maintenance projects regularly exceed 5,000 cubic yards of material. No other waivers or exemptions applicable to storm water and flood control maintenance activities have been issued by the RWQCB.

Channel maintenance activities commonly exceed the threshold established in the RWQCB Waiver Policy.

10.2 GENERAL ISSUES

- **Transfer of Permit Condition Performance after Permit Issuance** – Some publicly owned storm water and flood control features are located on private lands, and these features are maintained by the municipality. Once the authorizations described in this guide are issued to the municipality, they can transfer the performance of the maintenance requirement and associated permit conditions to the landowner or associated private entity (e.g., a Home Owners Association). Municipalities will remain responsible for the conditions of their permits; therefore, they will need to monitor the sites to ensure proper maintenance is conducted by the private entity.

Where maintenance areas coincide with private land, the municipality can transfer the performance of the permit conditions to the private entity; however, ultimate responsibility lies with the municipality.

10.3 MITIGATION ISSUES

As municipalities pursue their RGPs and other authorizations, appropriate and necessary mitigation will be determined through the multi-agency review that will occur. Determining the appropriate mitigation that will compensate for impacts associated with the maintenance activities that municipalities need to conduct has unique circumstances to consider. Foremost is the fact that municipalities appreciably reduced the amount and frequency of maintenance work they were conducting in response to the directive letters each received

in September 2004 from the RWQCB. Without regular maintenance at storm water and flood control sites, the extent and development of jurisdictional wetlands and native uplands may increase. Because much of the regular maintenance schedules have been postponed, additional growth of habitat at maintenance sites may be expected. The resultant “improved” condition of habitat at many maintenance sites and the resultant type and amount of mitigation that may be required by the resource agencies are primary concerns of the municipalities. Other issues and concerns and general mitigation concepts that were discussed between the RCM Workgroup members and the agencies are presented below.

A primary goal of maintenance departments is to mitigate for their activities once and thereafter conduct necessary maintenance without additional mitigation.

- Permanent v. Temporary Impacts and Associated Mitigation –** Because maintenance work is ongoing, the distinction between permanent and temporary impacts is sometimes less clear (except within the coastal zone where the CCC considers any destruction of vegetation as a permanent impact). Maintenance activities that need to be conducted annually or every other year, for instance, are so frequent that they permanently alter the type and amount of habitat that can establish at the site. However, maintenance activities conducted less frequently, e.g., every 3 years or longer, may provide a sufficient period between activities such that plant species that establish can develop more and provide temporary habitat for wildlife and other benefits. For RGP No. 53 issued to the County, DPW, this distinction between high and low frequency of activities was made and allowed for two corresponding approaches for mitigation: (1) compensate for high frequency activities as permanent losses and mitigate once via a plan that includes habitat creation, and (2) compensate for low frequency activities as temporary impacts and mitigate through a program of exotic species removal each time that maintenance activity occurs. However, during the development of this permit guide most resource agencies indicated that maintenance by infrequent, periodic vegetation removal at a site would no longer be considered a temporary impact.

A primary goal of the RCM Workgroup members is to be able to mitigate for their activities once and thereafter conduct necessary periodic site maintenance in compliance with their issued permits/authorizations without further mitigation. All agencies noted that one-time mitigation could apply for maintenance impacts that are considered permanent. To qualify for one-time mitigation, however, after permits are issued the maintenance work must be conducted when needed so that the habitat does not develop to a quality higher than was initially impacted under the permit. For activities proposed within the coastal zone, it should be noted that the CCC considers any removal of vegetation to be

a permanent impact regardless of whether the area is restored in-place after the activity is completed.

- Mitigation Ratios** – Anticipated mitigation ratios were discussed with all of the agencies. If a municipality has an approved NCCP document and implementing agreement, at a minimum, the mitigation ratios established therein must be met. In addition, for impacts within the coastal zone, mitigation ratios established in approved LCPs must be met. However, depending on site-specific conditions the agencies may require higher ratios than identified in approved NCCP or LCP documents. All agencies noted that conditions of the habitats to be affected will factor into the mitigation they require (e.g., did the habitat establish as a result of a man-made feature or cause); therefore, the better they understand the parameters about the maintenance sites the more flexible they can be about applying mitigation ratios. In particular, mitigation is expected to be relatively low for impacts to wetlands that have become established in manufactured channels, basins, and pipe outfalls, or wetlands that were voluntarily planted for pollution control or to make a flood control feature more visually appealing to neighboring residents.
- Transfer of Conditions Across Permit Terms** – The RGP has a term of 5 years; therefore, this permit and other associated authorizations (e.g., the 401 certification, USFWS BO, coastal zone management consistency statement) must be reissued in the fifth year before they expire. Another concern of the RCM Workgroup members is whether the mitigation requirement would “reset” with the reissuance of the permits, i.e., would additional mitigation be required for maintenance conducted under the new term of the permits, at sites that were mitigated under the previous term of the permit. The agencies noted that the majority of permit conditions would be continued when permits are reissued, and mitigation, once provided for a site, would not have to be provided again. Exceptions to this include those noted above (i.e., as long as the maintenance work did not lapse causing habitat to develop to a quality higher than previously mitigated for), and whether other conditions applicable to the site changed, e.g., a listed species not previously known for the area was detected. Another exception would be if a larger area needed to be cleared at a maintenance site than was mitigated for under a previous term of the permit.
- Cessation of Maintenance and Resultant Vegetation Growth** – Since the directive letters were issued by the RWQCB, this agency specifically noted they would consider the municipalities’ inability to do regular maintenance over the past few years, and the resultant unchecked growth of vegetation that has occurred at

Agencies may require higher ratios than noted in approved NCCP or LCP documents. However, impacts to man-made habitat should require commensurately low mitigation ratios.

Mitigation, once provided for a site, would not be required again under a renewed permit term.

Mitigation should be commensurate with previously maintained conditions, not based on increased vegetative growth that resulted from agency-directed curtailed maintenance.

some maintenance sites. This atypical situation will be considered when determining the mitigation the RWQCB will require under the 401 certification.

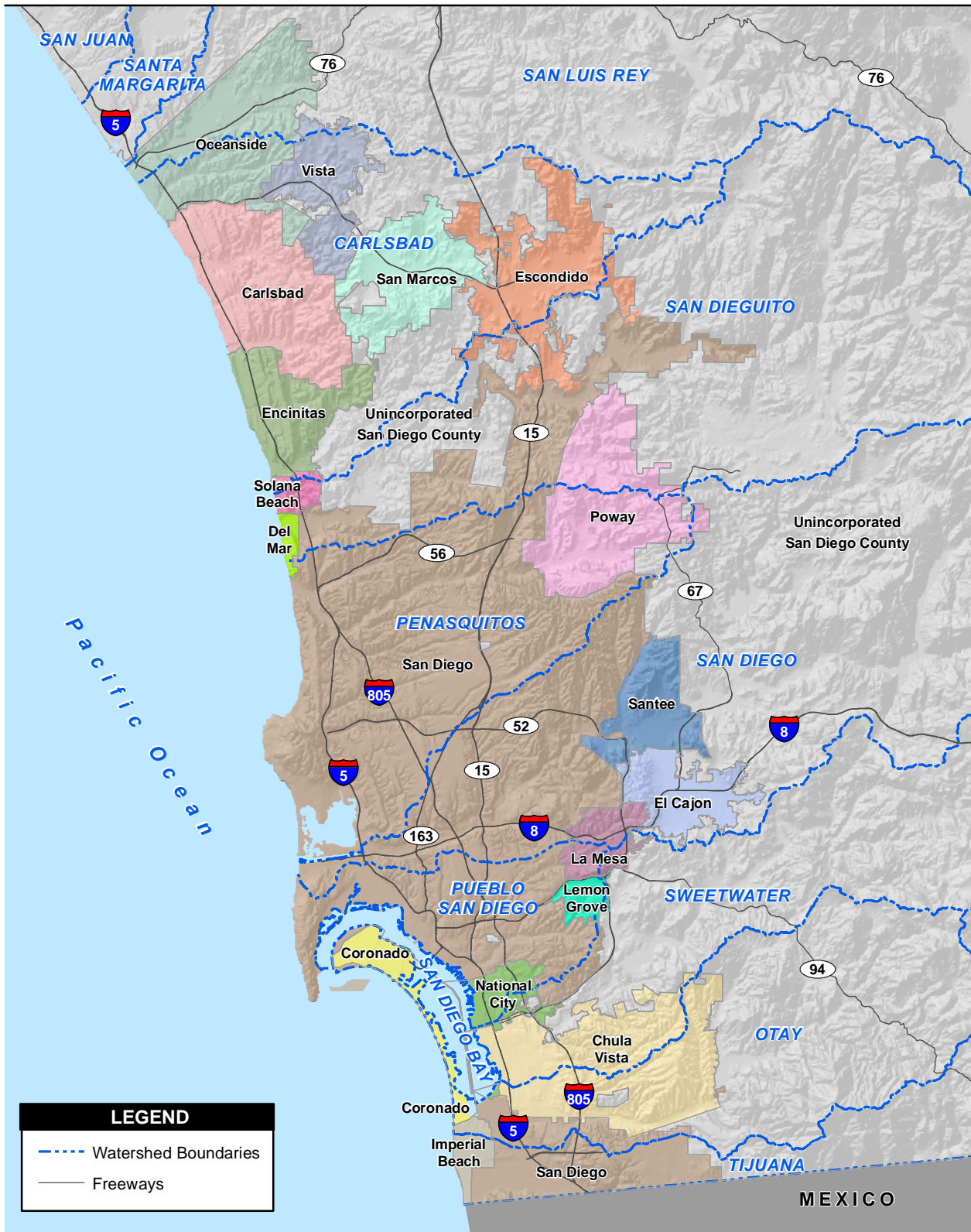
If a third party takes long-term ownership of conservation easements, that entity must be acceptable to both the agencies and municipality.

Establishing mitigation prior to impacts may allow for a 1:1 mitigation ratio.

Co-location of mitigation sites among two or more municipalities may be pursued.

- **Conservation Easements** – Several agencies reminded the municipalities that, to compensate for permanent impacts, a conservation easement or similar legally binding document must be recorded for the mitigation site (if the site is not already protected as open space to the satisfaction of the agencies), and an endowment must be established to provide for the maintenance and management of the site in perpetuity (if funds have not already been earmarked for this purpose).
- **Mitigation Pre-impact** – Although some municipalities have several hundred or more maintenance sites, many will only be able to conduct maintenance at a portion of their sites during the first term of the permits they will pursue. The option of establishing a mitigation area larger than that needed for the activities to be covered under the initial permit was discussed. As long as this approach is documented with the agencies before such “pre-mitigation” is conducted (i.e., an approved mitigation bank), the agencies verified that once the larger mitigation area was established and deemed successful by them, the additional area could generally compensate for future maintenance impacts under the reissued permits at a 1:1 ratio. Occasionally, however, site-specific conditions could warrant a higher mitigation compensation.
- **Mitigation Location** – Agencies emphasized the importance of locating wetland mitigation within the watershed where the impacts will occur (see municipal and hydrologic watershed boundaries in Figure 10-1). Furthermore, the CCC requires that mitigation for coastal impacts (wetlands or uplands) is located in the coastal zone. Although municipalities will pursue their permits separately, the option of co-locating mitigation was discussed, and the agencies were open to that approach. The importance of identifying mitigation sites early was also emphasized, because mitigation options diminish over time. Priority should be placed in identifying the greatest threats to the watershed, and providing mitigation that would eliminate or reduce those threats.
- **Non-traditional Mitigation** – The agencies also noted a few non-traditional approaches to mitigation that could apply to some storm water and flood control facility sites. Where these methods are possible, impacts may be reduced whereby the amount of mitigation necessary will be lowered, or, where a net increase in function of the ecosystem at the site can be demonstrated, the

required mitigation ratios should be lower than usual. All methods would need to be discussed with the agencies in consideration of the site where these non-traditional approaches are proposed. The approaches discussed include (1) remove existing culverts or channelization and restore or create habitat where these facilities were located; (2) conduct maintenance work in a manner that only a portion of the wetland vegetation that exists is removed thereby leaving habitat intact for wildlife, erosion protection, control of stream velocities, and other attributes (see Section 4.2 for a discussion of such maintenance alternatives); and (3) plant riparian overstory species (e.g., willows) along the banks of channels dominated by freshwater marsh habitat to increase natural shading thereby minimizing the recurring growth of the freshwater marsh species and the future need for maintenance.



Source: SanGIS 2006

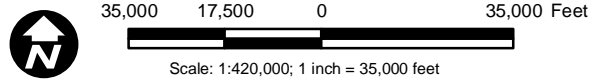


Figure 10-1
Municipal Jurisdictional Boundaries and
Hydrological Watersheds

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12.0 Glossary

Anaerobic Conditions	Lack of oxygen in either a gaseous or dissolved form.
Banks	The side slopes of a stream or channel between which the flow of water is normally confined.
Bed (or Streambed)	The bottom of a stream or channel bounded by banks.
Best Management Practice (BMP)	Includes schedule of activities, prohibition of practices, maintenance procedures, and other management practices to prevent or reduce adverse effects. BMPs also include treatment requirements, operating procedures, and practices to control runoff spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
Biological Resources	Plants, wildlife, habitats, migration corridors, streams, lakes, the ocean, wetlands and sensitive or protected areas.
Channel	The low-flow part of the streambed, or the part where water is flowing at some portion of the year. The channel may cover the entire bed or be just a portion of the bed. Many local streams have “braided channels” within the streambed.
Coastal Zone	The Coastal Zone is generally defined as the distance from the ocean shoreline to 1,000 yards inland, or more in some locations. Projects in the Coastal Zone often require additional regulatory review.
Compensatory Mitigation	Mitigation implemented to offset impacts on aquatic areas that cannot be offset through impact avoidance and minimization. Types of compensatory mitigation include habitat establishment (creation), restoration, enhancement, and protection/maintenance.
Cumulative Impacts	The combined impacts resulting from all programs occurring concurrently at a given location.

Delineation	The identification and mapping of the boundaries of wetlands and other waters of the U.S.
Direct Impact	Effects resulting solely from the proposed action.
Discharge	The federal CWA uses the term “discharge” to refer to release of pollutants into waters of the U.S. The California Water Code views discharges as encompassing any activity that results in the potential for a water body’s beneficial uses to be impacted. Under Section 404 of the CWA, “discharge” includes the placement of imported fill or substantial redistribution of native (streambed) fill.
Discharge of Dredged Material	Pursuant to the CWA and USACE regulations, pollutants that enter water through the use of earth-moving equipment to conduct land clearing, ditching, channelization, in-stream mining or other earth-moving activity.
Dredged Material	Material that is excavated or dredged from waters.
Dripline	The area created by extending a vertical line from the outermost portion of the tree limb canopy to the ground.
Emergency	The official definition of “emergency” varies by agency. Generally an emergency is defined by regulators as a sudden, unexpected occurrence involving a clear and imminent danger demanding <i>immediate</i> action to prevent or mitigate loss of or damage to life, health, property, or essential public services. Emergencies include such occurrences as fire, flood, earthquake, other soil or geologic movements, riot, accident, or sabotage.
Endangered Species	A plant or animal class with potential for extinction throughout all or a significant portion of its range; an official designation under the California and/or federal Endangered Species Acts.
Exempt	Not subject to, as in not subject to a given regulation.

Fill Material	Pursuant to the federal CWA, material such as rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from excavation activities, and materials used to create any structure or infrastructure placed in waters where the material has the effect of either replacing any portion of the water with dry land or changing the bottom elevation of the water body.
Floodplain	The land area adjacent to a river, stream, watercourse, ocean, bay, or lake that is likely to be flooded.
Grading	The excavation and/or filling of land to a desired shape or elevation.
Habitat	The area or environment where a plant or animal or ecological community naturally or normally lives and grows.
Impacts	An assessment of the meaning of changes in all attributes being studied for a given resource; an aggregation of all the adverse effects, usually measured using a qualitative and nominally subjective technique.
Jurisdiction	The area or resource regulated by an agency.
Jurisdictional Waters	Water subject to the jurisdiction of the USACE and RWQCB as waters of the U.S. or the CDFG as waters of the State.
Listed Species	A species that is protected because it has been identified as endangered or threatened under the California or federal Endangered Species Acts.
Mitigation	Mitigation includes feasible actions designed to offset or reduce the impacts of a project. This includes measures that avoid, minimize, or compensate for adverse impacts.
Monitoring	Collecting data over time to document the success or failure of a mitigation site.
Municipal Separate Storm Water Sewer System (MS4)	MS4 is a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) designed or used for collecting or conveying storm water; (ii) which is not a combined sewer; and (iii) which is not part of a Publicly Owned

	Treatment Works as defined at Title 40 of the Code of Federal Regulations (CFR) 122.2.
Native Vegetation	Plant life that occurs naturally in an area without agricultural or cultivational efforts. It does not include species that have been introduced from other geographical areas and have become naturalized.
Ordinary High Water Mark	The ordinary high water mark is an identifiable natural line visible on the bank of a stream or water body that shows the upper limit of typical stream flow or water level. The mark is made by the action of water on the streambank over the course of years.
Pre-application Meeting	A meeting between the project proponent and the regulatory agencies conducted prior to application for permit or other authorizations and often attended by the USACE, USFWS, RWQCB, CDFG, and other relevant state or local agencies.
Regulatory Agency	A federal, state, or local agency or department with jurisdiction and approval authority over a project.
Riparian	Adjacent to a river, stream, lake, or other body of water. Riparian habitats are transitional zones between wetland and upland habitats.
Runoff	The non-infiltrating water entering a stream or other conveyance channel shortly after a rainfall event.
Stream	A body of water that flows through a bed or channel having banks.
Take	In reference to listed plant or animal species, take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct (as defined by the federal Endangered Species Act); to hunt, pursue, catch, capture, or kill, or to attempt to do any of these things (as defined by the California Endangered Species Act).

Threatened Species	Any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range; an official designation under the California and/or federal Endangered Species Acts.
Unincorporated Area	The areas of a county not within city boundaries.
Upland	Any land area that does not qualify as a stream, wetland, or riparian habitat.
Waters of the State	Waters that are subject to the Porter-Cologne Water Quality Control Act, State Water Code Section 13000 et seq., and the Fish and Game Code Sections 1600 et seq. (as rivers, streams, or lakes) and 5650. Any surface or groundwater, including saline waters, within the boundaries of California. Waters of the State include natural streams, irrigation ditches or canals, ponds, and waters in privately operated channels.
Waters of the U.S.	Waters that are subject to the federal CWA. These include both deep water aquatic habitats and special aquatic sites, including wetlands. Waters regulated under Section 404 of the CWA include waters that extend (a) up to the ordinary high water mark; (b) beyond the ordinary high water mark to the limit of the adjacent wetlands, when present; and (c) to the limit of the wetland when only wetlands exist.
Watershed	A geographic area of land that drains water to a common destination (e.g., stream, lake, ocean). Also called a drainage basin.
Wetland	Different agencies define “wetland” differently, but all variations involve these three elements: (1) wetland hydrology, (2) wetland soils, i.e., hydric soils, and (3) wetland plants, i.e., hydrophytic plants.
Wetland Buffer (area, zone, or habitat)	An intervening area (typically upland) that separates aquatic resources from developed or disturbed areas and reduces impacts on the aquatic resources that may result from human activities.

**Wetland
Delineation**

The process by which the boundaries of a particular wetland are defined and mapped. A federal wetland delineation adheres to the guidelines of, and has been approved by, the USACE.

**Wetland
Hydrology**

The presence of recurrent, sustained inundation, or saturation at or near the surface of substrate sufficient to produce physical, chemical, and biological features reflective of anaerobic conditions.

Wetland Soils

Soils associated with wetlands that develop under saturated conditions and are low in oxygen.

**Wetland
Vegetation**

The sum total of plant life that has adapted to grow rooted within moist, wet, or inundated habitats. Also referred to as “hydrophytic” vegetation.

Appendix A

Example Operations & Maintenance Protocols

APPENDIX A
EXAMPLE OPERATIONS & MAINTENANCE PROTOCOLS

The following protocols are examples and all may not apply to a particular municipality. Protocols relevant to a municipality will need to be reviewed and finalized with the regulatory agencies.

Timing		No.	Operations & Maintenance Protocol
Pre-activity	Ongoing		
General Measures			
	X	1	Keep vehicles on existing approved access roads. Turn vehicle around only in designated areas.
	X	2	Operations and maintenance (O&M) activities will be designed not only to avoid or minimize new disturbance, erosion on manufactured slopes, and off-site degradation from accelerated sedimentation, but also to reduce maintenance and repair costs.
	X	3	Potential hydrologic impacts will be minimized through the use of best management practices such as water bars, silt fences, staked straw bales, and mulching and seeding of all disturbed areas. These measures will be designed to minimize ponding; eliminate flood hazards; and avoid erosion and siltation into any creeks, streams, or other bodies of water.
	X	4	The City will comply with applicable environmental laws and regulations including, but not limited to, those regulating and protecting air quality, water quality, and sensitive biological and cultural resources.
	X	5	Hazardous materials will not be disposed of or released onto the ground, into underlying groundwater, or into any surface water.
X		6	To avoid or minimize impacts to sensitive environmental resources, all City field crews will obtain the necessary training to learn about the established protocols and measures necessary to avoid and minimize impacts during O&M activities.
X		7	Prior to O&M activities, the boundaries of sensitive vegetation communities, plant populations, cultural resources, and other resources will be delineated with clearly visible flagging. Where necessary, a specialist will be present to monitor the work to ensure impacts to the resource are avoided.
	X	8	No wildlife, including rattlesnakes, will be harmed except to prevent serious injury or death.
	X	9	Feeding wildlife is not allowed.
	X	10	Pets are not allowed into any O&M area to minimize harassment or killing of wildlife and to prevent the introduction of destructive animal diseases to native wildlife populations.
	X	11	Plant or wildlife species will not be collected for any reason.
Maintenance and Repair Activities			
	X	12	In areas where recontouring is not required, vegetation will be left in place wherever feasible and original ground contour will be maintained to avoid excessive root damage and to allow for regrowth of vegetation.
X		13	Whenever feasible, tree trimming activities in environmentally sensitive areas, such as areas of riparian or native scrub vegetation, will be scheduled outside of the breeding and nesting season for sensitive wildlife species (February through September). If tree trimming activities must occur during the breeding season, a qualified biologist will conduct a focused pre-activity nest survey to determine if any raptors or other sensitive bird species are utilizing the area. Based on the results of the pre-activity survey, the biologist will determine if tree trimming activities may proceed or if these activities will be delayed to avoid any significant impacts to sensitive biological resources.
Emergency Repairs			
	X	14	During emergency repairs, the protocols will be followed to the fullest extent practicable. Once the emergency has been abated, unavoidable impacts will be reported to the USACE, USFWS, CDFG, RWQCB, CCC, and/or other applicable regulatory agencies.

Timing		No.	Operations & Maintenance Protocol
Pre-activity	Ongoing		
Biological Resources — Sensitive Fish			
X		15	Prior to maintenance activities being conducted at known localities for listed fish species (i.e., stickleback, goby), a biologist will determine the presence/absence of flowing/standing water and/or the presence/absence of the species. If there is flowing/standing water, a biological monitor will accompany the maintenance crew and supervise the activities. If listed species are observed or detected on-site, all maintenance activities will cease and additional consultation will be initiated with the USFWS and/or CDFG.
Biological Resources — Sensitive Amphibians and Reptiles			
	X	16	Within potential arroyo toad habitat, maintenance activities will be avoided during the breeding season (March 15 through May 30), where possible. If maintenance activities must occur during the breeding season, protocol-level surveys by a qualified biologist will be conducted to determine the presence/absence of arroyo toads. Any individuals found within a site to be maintained will be relocated, by a qualified biologist, to suitable unimpacted habitat within the same drainage.
	X	17	Direct loss of arroyo toad habitat will be offset, on a one-time basis for each site through habitat enhancement at a 2:1 ratio by exotic species removal.
	X	18	If O&M activities must occur within suitable habitat for other highly sensitive aquatic species (e.g., southwestern pond turtle) surveys must be conducted to determine absence/presence. If any of these species are detected, avoidance or minimization measures (e.g., exclusionary fencing, dewatering of the activity area, live-trapping, and translocation to suitable habitat) must be implemented.
Biological Resources — Sensitive Avian Species			
	X	19	Direct impacts to least Bell's vireo or southwestern willow flycatcher will be avoided through timing restrictions. Maintenance activities at sites with potential habitat will be avoided during the breeding season (March 15 through September 30), unless protocol-level surveys by a qualified biologist have determined that these species are not present.
	X	20	Direct impacts to vireo or flycatcher habitat will be offset, on a one-time basis, at a minimum replacement ratio of 3:1 by either creation of habitat and/or exotic species removal. Vireo habitat sites may also be designated as habitat for the flycatcher. Impacts to overlapping habitat will be offset once for total acreage rather than for each species.
	X	21	Direct impacts to breeding coastal California gnatcatchers will be avoided through timing restrictions. Maintenance activities at sites with potential habitat will be avoided during the breeding season (February 15 through August 31), unless protocol-level surveys by a qualified biologist have determined this species is not present.
	X	22	Direct impacts to gnatcatcher critical habitat will be offset, on a one-time basis, at a compensation ratio of 2:1. The type of compensation will be determined by the type of habitat impacted. Impacts to coastal sage scrub will be offset through restoration of disturbed areas or preservation of existing high-quality habitat in permanent open space. Impacts to wetland habitats containing constituent elements of gnatcatcher habitat will be offset through creation of habitat and/or exotic species. In areas where gnatcatcher critical habitat overlaps vireo or flycatcher habitat, compensation will be for total acreage rather than for each species.
	X	23	To the maximum extent feasible, activities within or adjacent to habitat suitable for raptor species (i.e., eucalyptus and riparian woodlands) and other migratory birds (i.e., most habitats) will be conducted outside of the breeding season (generally, January 1 through August 31).
X		24	If O&M activities need to occur during the breeding season and would be located within or adjacent to habitat suitable for raptors or other bird species covered by the MBTA, then a pre-activity nesting survey will be conducted to determine whether active nests are present. Nesting surveys will be conducted by a qualified biologist within three days prior to the start of O&M activities. All nests found will be recorded. If O&M activities must occur within 300 feet of an

Timing		No.	Operations & Maintenance Protocol
Pre-activity	Ongoing		
			active nest of any raptor or other sensitive bird species, with the exception of an emergency, then a qualified biologist will monitor the nest on a weekly basis, and the activity will be postponed until the biologist determines that the nest is no longer active.
X		25	If O&M activities need to occur during the breeding season, are located within or adjacent to habitat suitable for raptors or other sensitive bird species, and the activity would result in noise levels that exceed 60 dBA (or exceed ambient levels, if the existing noise levels are above 60 dBA), then temporary noise attenuation measures (e.g., barriers) will be required to reduce ambient noise levels within the sensitive habitat to remain at or below 60 dBA (or ambient levels if the existing ambient noise levels were made above 60 dBA).
Biological Resources – Sensitive Mammal Species			
X		26	If ground-disturbing activities must occur within habitat suitable for sensitive mammal species (i.e., Stephens' kangaroo rat, Pacific pocket mouse) focused habitat assessments and surveys must be conducted by a qualified biologist certified by the USFWS to determine presence/absence. If present, live-trapping and exclusionary fencing must be installed to ensure impact minimization.
Biological Resources – Sensitive Habitats and Plant Species			
X		27	If O&M activities must occur within areas supporting listed plants, the boundaries of the plant populations designated sensitive by the resource agencies will be clearly delineated with flagging or temporary fencing that must remain in place for the duration of the O&M activity. Flagged or fenced areas must be avoided. Where these areas cannot be avoided, proper rehabilitation of the impact area will occur and compensatory mitigation must be provided, e.g., (1) salvaging and relocating the plants or collecting seeds for use at an off-site location, (2) enhancement of habitat at an off-site location that supports the species impacted, and/or (3) securing comparable habitat at an off-site location. Mitigation will be at a minimum 1:1 ratio within an area as close to the impact zone as feasible.
X		28	If O&M activities must occur within sensitive vegetation areas, whether or not the habitat is occupied by sensitive species, mitigation will be required, e.g., (1) restoration of the impacted area using a native seed mix applicable to the affected habitat, (2) creation, restoration, and/or enhancement of habitat of in-kind value, or greater value, at an off-site location, and, as needed (3) implementation of a monitoring plan to report the success of the restoration efforts.
Cultural Resources			
X		29	Areas not previously investigated for cultural resources will be surveyed prior to any excavation or grading activities.
X		30	Vehicles will stay within existing access roads.
	X	31	Disturbance of known cultural resources will be avoided. If avoidance is not possible, then the resource(s) will be evaluated by a qualified archaeologist for eligibility for listing in the California Register of Historical Resources (CRHR). Evaluation may include archival research and excavation. If resources are found to be eligible for the CRHR, then a plan for mitigation will be prepared in consultation with the City. This plan may include additional excavation and/or archival research.
	X	32	If previously unidentified cultural resources are revealed during ground-disturbing O&M activities, work will be temporarily halted in that area until resources are evaluated by a qualified archaeologist for eligibility for listing in the CRHR.
Geology and Soils			
X		33	O&M activities involving disturbance of soils will be scheduled to avoid the rainy season when feasible.
	X	34	The area of ground disturbance will be minimized and existing vegetation will be preserved to the extent feasible.
	X	35	Excavations will be backfilled with the original soil.

Timing		No.	Operations & Maintenance Protocol
Pre-activity	Ongoing		
Traffic and Transportation			
	X	36	Traffic control will be implemented for O&M activities that encroach on a public roadway.
	X	37	Proper signage will be placed to warn drivers of the O&M activities.

Appendix B
Regional Channel Maintenance
Agency Contact Information

Regional Channel Maintenance Workgroup - Agency Contact Information

Agency Address	Representative and Title	Phone and Email
U. S. Army Corps of Engineers Regulatory Branch San Diego Section 6010 Hidden Valley Road, Suite 105 Carlsbad, CA 92011	Robert Smith* Senior Project Manager	Phone (760) 602-4831 robert.r.smith@usace.army.mil
	Jeannette Baker** Senior Project Manager	jeannette.m.baker@usace.army.mil
	Kari Coler* Project Manager	Phone (760) 602-4834 kari.j.coler@usace.army.mil
California Regional Water Quality Control Board San Diego Region 9174 Sky Park Court, Suite 100 San Diego, CA 92123-4340	John Robertus Executive Officer	Phone (858) 467-2987 JRobertus@waterboards.ca.gov
	Michael McCann Supervising WRC Engineer, Watershed Branch	Phone (858) 467-2988 MMcCann@waterboards.ca.gov
	Mike Porter* Engineering Geologist	Phone (858) 467-2726 MPorter@waterboards.ca.gov
	Christopher Means* Environmental Scientist	Phone (858) 637-5581 CMeans@waterboards.ca.gov
U.S. Fish and Wildlife Service Carlsbad Fish and Wildlife Office Department of the Interior 6010 Hidden Valley Road Carlsbad, CA 92011	Kathleen Brubaker* Inland San Diego Division Chief	Phone (760) 431-9440 Kathleen_Brubaker@fws.gov
	David Zoutendyk* North San Diego Division Chief	Phone (760) 431-9440 David_Zoutendky@fws.gov
	Felicia Sirchia * Biologist, ESA/Section 7 and 10	Phone (760) 431-9440 Felicia_Sirchia@fws.gov
California Department of Fish and Game South Coast Region 4949 Viewridge Avenue San Diego, CA 92123	Kelly Fisher* Environmental Scientist, SAA Team	Phone (858) 467-4207 kfisher@dfg.ca.gov
	Tamara Spear* Environmental Scientist, SAA Team	Phone (858) 467-4223 tspear@dfg.ca.gov
California Coastal Commission San Diego Coast District 7575 Metropolitan Drive, Suite 103 San Diego, CA 92108	Lee McEachern* Supervisor of Permits	Phone (619) 767-2370 lmceachern@coastal.ca.gov
	Deborah Lee District Manager	Phone (619) 767-2370 dlee@coastal.ca.gov
California Coastal Commission 45 Fremont St., Suite 2000 San Francisco, CA 94114	Larry Simon Federal Consistency Coordinator	Phone (415) 904-5288 lsimon@coastal.ca.gov

* Agency representatives that met with the RCM Workgroup, or provided input during the development of the Permit Guide

** No longer in the San Diego Section

Appendix C

Regulatory Exemptions Applicable to Maintenance Activities

- C-1 USACE Applicable Regulatory Exemptions
- C-2 RWQCB Applicable Regulatory Exemptions
- C-3 CCC Applicable Regulatory Exemptions

C-1

USACE Applicable Regulatory Exemptions

Program Guidance Letter on Clean Water Act Section 404(f)(1)(B) Exemption for Maintenance and Emergency Reconstruction of Currently Serviceable Structures

Regulatory Guidance Letter No. 07-02 on Exemptions for Construction or Maintenance of Irrigation Ditches and Maintenance of Drainage Ditches under Section 404 of the Clean Water Act



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

SUBJECT: Region 9 Program Guidance on the Clean Water Act Section 404(f)(1)(B)
Exemption for Maintenance and Emergency Reconstruction of Currently
Serviceable Structures

FROM: *Alexis Strauss 8 Dec. 98*
Alexis Strauss
Acting Director
Water Division

TO: Wetlands and Sediment Management Office

Attached for your attention is Region 9's program guidance on the Clean Water Act section 404(f)(1)(B) exemption, 33 U.S.C § 1344(f)(1)(B). This exemption concerns the discharges of dredged or fill material for the purpose of maintenance, including emergency reconstruction, of currently serviceable structures. The guidance was jointly developed by Region 9 Water Division and the U.S. Army Corps of Engineers, South Pacific Division ("SPD"), in response to questions that have been raised within Region 9 and the SPD about the interpretation and implementation of section 404(f)(1)(B). The SPD is concurrently issuing a Program Guidance Letter to its San Francisco, Sacramento and Los Angeles Districts transmitting this same guidance.

This document is intended as a regional guide to program personnel; it does not change or create any substantive requirements or obligations. Regional decisions in any particular section 404 case will be made by applying the laws and regulations and exercising reasonable discretion on the basis of facts specific to the case.

Attachment

cc: Regional Counsel's Office/Water
Office of General Counsel/Water
Office of Enforcement and Compliance Assurance/Water
Office of Water/OWOW
USACE/SPD



United States
Environmental Protection Agency
Region IX



US Army Corps
of Engineers
South Pacific Division

SUBJECT: Guidance on Clean Water Act Section 404(f)(1)(B) Exemption for Maintenance and Emergency Reconstruction of Currently Serviceable Structures

1. **PURPOSE:** The purpose of this document is to provide guidance on the interpretation and application of the Clean Water Act ("CWA") section 404(f)(1)(B) exemption for maintenance and emergency reconstruction of currently serviceable structures.

2. **STATUTORY AND REGULATORY REFERENCES:**

a. Section 404(f)(1)(B) of the CWA exempts from the section 404 permit requirement the discharge of dredged or fill material into waters of the United States "for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures." 33 U.S.C. § 1344(f)(1)(B). The United States Environmental Protection Agency ("EPA") and the United States Army Corps of Engineers ("USACE") have promulgated identical regulations implementing this exemption at 40 C.F.R. § 232.3(c)(2)(EPA regulations) and 33 C.F.R. § 323.4(a)(2) (USACE regulations). These regulations further provide: "Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption."

b. A discharge that otherwise qualifies for the section 404(f)(1)(B) exemption requires section 404 permit authorization from the USACE in two (2) situations. The first situation arises when the discharge triggers effluent standards or prohibitions for toxic pollutants under section 307 of the CWA. CWA § 404(f)(1); 40 C.F.R. § 232.3(a); 33 C.F.R. § 323.4(b). The second situation arises when the discharge is "incidental to any activity having as its purpose bringing an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced." CWA § 404(f)(2); 40 C.F.R. § 232.3(b); 33 C.F.R. § 323.4(c). Section 404(f)(2) is generally referred to as the recapture provision.

3. **BASIC STEPS OF INQUIRY:** Determining the applicability of the serviceable structure maintenance exemption at section 404(f)(1)(B) involves the following basic inquiries:

a. Does the proposed activity involve any point source discharge of dredged or fill material into any waters of the United States? If no, this ends the section 404 inquiry. If yes, the discharge requires a section 404 permit unless one of the section 404(f) exemptions applies. This maintenance exemption applies only if the discharge satisfies all applicable elements of section 404(f)(1) and avoids recapture under section 404(f)(2).

b. Is the proposed discharge for the purpose of maintenance or emergency reconstruction of a currently serviceable structure? As discussed below, this involves looking at such matters as:

- 1) The structure in question and its original fill design.
- 2) The current serviceability of the structure.
- 3) The purpose and effect of the proposed maintenance work, with the main focus on whether the proposed discharge changes the size, scope or character of the structure's original fill design.

If the proposed discharge is not for maintenance or emergency reconstruction, then it requires a section 404 permit. If yes, the proposed discharge is exempt from regulation under section 404 unless it triggers either a release of toxic pollutants or the recapture provisions as discussed in 3.c or 3.d below.

c. Does the proposed discharge contain any toxic pollutants that are governed by effluent standards or prohibitions under section 307 of the CWA? If yes, the discharge requires a section 404 permit.

d. Does the proposed discharge trigger the section 404(f)(2) recapture provision? If yes, the discharge requires a section 404 permit. "Recapture" occurs only if the proposed discharge is "incidental to" or "part of" an activity that:

- 1) converts an area of waters of the United States to a new use, and
- 2) either impairs the flow or circulation of the waters, or reduces the reach of the waters.

To trigger recapture, the discharge in question need only be "incidental to" or "part of" an activity that is intended to or will foreseeably bring about the requisite change in use and impairment or reduction of flow, circulation, or reach. In other words, the discharge need not be the sole cause of that result. Thus, in applying section 404(f)(2), the regulator should consider the discharge in context, not in isolation. Furthermore, where the change in use converts an area of waters of the United States to uplands, such conversion triggers both d.1 and d.2 above, and the discharge is recaptured under section 404(f)(2). 40 C.F.R. § 232.3(b); 33 C.F.R. § 323.4(c).

4. ***GUIDANCE ON THE APPLICATION OF SECTION 404(f)(1)(B)***: When applying the section 404(f)(1)(B) exemption to a proposed discharge, the regulator should bear in mind the established principle that exemptions from the CWA section 404 permit requirement are to be construed narrowly and consider the following guidelines:

a. ***Structure and Original Fill Design***: The section 404(f)(1)(B) exemption applies to discharges for the purpose of maintaining, including emergency reconstruction of, the original fill design of certain types of currently serviceable structures.

1) **Prior CWA Authorization**. To qualify for this exemption, the structure and its original fill design must be federally authorized under section 404 of the CWA, such as by the grand fathering process or by the issuance of a section 404 permit by the USACE.

2) **Types of Structures**. This exemption covers structures that are specifically listed in section 404(f)(1)(B) (“dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures”), and those that are similar in kind to the listed structures. The similar-in-kind structures are those that are designed and built for relatively permanent use and for the purpose of erosion control, exclusion or diversion of water, or transportation over and across waters of the United States. They generally include such designed and constructed facilities as: asphalt or concrete bank protection; the structural lining of flood-control channels; concrete low-water crossings; bridge piers and bents; railroad grades; and road embankments.

3) **Original Fill Design**. To be eligible for consideration under this exemption, the structure in question must have an “original fill design” that is authorized under section 404 of the CWA. A structure’s “fill design” means the portion of the structure that is designed and constructed in waters of the United States to be an integral part of the overall structure. A structure’s “original” fill design means the original, as-built configuration of the structure’s fill design, plus any improvement made prior to the CWA or specifically permitted under section 404 of the CWA. Therefore, for instance, this exemption does not apply to the reconstruction of an eroding natural stream bank that undermines a road built atop the bank because no “original” fill design is involved here. Nor does the exemption apply to side-casting debris or slide material into waters of the United States from a road that is built on a fill embankment (the embankment being in waters of the United States), since the side-casting is not for the maintenance of the structure’s “fill design.”

4) **Serviceability**. This exemption only applies to maintenance or emergency reconstruction of “currently serviceable” structures. For the purpose of applying this exemption, “serviceable” is to mean that the structure is still used for its intended purpose, or was in use for its intended purpose immediately before it was damaged. If a structure has been abandoned, and/or is no longer serving the purpose for which it was originally constructed just prior to the emergency, it would not be considered serviceable.

5) This exemption is for maintaining structures only. It should not be applied to non-structural fills such as wetland fills or stockpiled earthen or gravel material. Nor should it be applied to discharges associated with the removal of sediment, debris or other materials that may affect the functioning of a structure but are not part of the structure itself.

b. *Maintenance*: The section 404(f)(1)(B) exemption only applies to discharges that are for the purpose of maintaining an existing structure and that do not change the "character, scope and size" of the structure's permitted original fill design. 40 C.F.R. § 232.3(c)(2); 33 C.F.R. § 323.4(a)(2).

1) In determining whether the discharge is for the purpose of maintaining an existing serviceable structure, a common sense understanding of "maintenance" should be applied, which precludes changing the structure's existing uses to new uses.

2) Size and Scope. In determining whether a proposed discharge will change the "size" and "scope" of a structure's permitted original fill design, considerations should be given to both the two-dimensional aspect (such as the footprint) and the three-dimensional aspect (such as the overall volume, spatial arrangement and configuration) of the fill design. For example, the exemption does not cover a levee reconstruction that keeps the levee in its original footprint but changes its height.

3) Character. A proposed maintenance discharge that incorporates new engineering techniques, safety standards or health requirements may qualify for this exemption as long as such incorporation does not result in any changes to the character, scope or size of the structure's permitted original fill design. In determining whether a proposed discharge will change the "character" of the structure's permitted original fill design, considerations should be given, where appropriate, to such factors as: whether different fill materials will be used; whether there will be a change or addition of use; and whether the local environment will be altered. For example, the following alterations are generally considered to change the character of a structure's original fill design: grouting previously ungrouted rip-rap; changing the size of rip-rap from ½ ton rocks to 2-ton rocks or from earthen to concrete materials; replacing rip-rap with geotextile fabric; and replacing bridge piles with solid bents. On the other hand, the emergency replacement of an uncompacted earthen levee section with a compacted levee of the same size and scope, or replacing timber piles with concrete piles of the same size and scope, generally would not be considered to change the character of a structure's original fill design.

c. *Emergency Reconstruction*: Emergency reconstruction covers reconstruction necessitated by the sudden loss of a currently serviceable structure's use as a result of discrete events, such as storms, floods, or fire. For emergency reconstruction of damaged structures, the regulations require that the work commence "within a reasonable period of time after damage occurs." Reconstruction should commence before the environment surrounding the structure has undergone noticeable changes, and should, as a general rule of thumb, commence within two (2) years from the emergency event unless there are reasonable causes for delay and clear demonstration that the discharger has diligently pursued reconstruction after the emergency event.

d. *Auxiliary or accessory discharges*: The section 404(f)(1)(B) exemption does not cover auxiliary or accessory discharges, such as those involving the building of temporary access roads or dewatering structures, or the temporary stockpiling of construction materials. Where appropriate, Nationwide Permit (NWP) 33 (Temporary Construction, Access and Dewatering) can be used to authorize discharges associated with these activities.

e. *Documentation*: Dischargers have burden to defend their reliance on a section 404(f) exemption, but are not required to obtain prior concurrence from the regulator. They are, however, encouraged to consult with the regulator before commencing work. As determining the applicability of the section 404(f)(1)(B) exemption to a proposed discharge entails a highly factual inquiry, it is incumbent on the discharger to provide the regulator with the documentation and information necessary to establish the facts on a case-by-case basis. When verifying a claim of exemption under section 404(f)(1)(B), the regulator should generally secure from those claiming the exemption, where appropriate and applicable, such documentation and information as: the dated plans, drawings and/or photographs of the original, as-built structure; any original or subsequent section 404 permit authorization for the structure; documentation of the structure's current use; plans and drawings for the proposed work; and, for emergency reconstruction, documentation of efforts made to commence work within a reasonable time and reasons for delay. If the regulator has a concern over the applicability of the exemption, he or she should consult through the appropriate channels with EPA.

5. A discharge exempt from the section 404 permit requirement under section 404(f)(1)(B) may come under the purview of other federal laws and regulations (such as the Rivers and Harbors Act of 1899 and the Endangered Species Act of 1973), as well as state and local laws and regulations. It is incumbent on the discharger to obtain all necessary authorizations required by law before commencing work.

6. This guidance is for internal agency guidance only. Nothing in this guidance is intended nor may be construed to create or affect any rights or obligations, confer any benefits, or constitute the basis for a cause of action of any kind whatsoever in any member of the public.

Alexis Strauss 7 Dec. 98

Alexis Strauss
Acting Director
Water Division
EPA Region IX

Peter T. Madsen

Peter T. Madsen
Colonel (P), U.S. Army
Commanding
South Pacific Division

DEC 04 1998



**US Army Corps
of Engineers®**

REGULATORY GUIDANCE LETTER

No. 07-02

Date: July 4, 2007

SUBJECT: Exemptions for Construction or Maintenance of Irrigation Ditches and Maintenance of Drainage Ditches Under Section 404 of Clean Water Act

1. Purpose and Applicability.

The purpose of this Regulatory Guidance Letter (“RGL” or “guidance”) is to provide a reasonable and predictable national approach for conducting exemption determinations for the construction and maintenance of irrigation ditches and the maintenance of drainage ditches consistent with Section 404(f) of the Clean Water Act (CWA) (also known as the Federal Water Pollution Control Act or FWPCA) Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 100-4, Pub. L. 104-66, 33 U.S.C. § 1251, et seq., and with associated regulations (33 C.F.R. 320-330, 40 C.F.R. Part 232). This guidance is intended to clarify when 404(f) exempts from permitting requirements discharges of dredged or fill material into waters of the U.S. associated with the construction and maintenance of irrigation ditches and maintenance of drainage ditches. This RGL was developed and is endorsed by the U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA). EPA has the ultimate authority for interpreting the scope of exemptions under CWA Section 404(f).

This document supercedes RGL 87-07, which addresses the Section 404(f)(1)(C) Statutory Exemption for Drainage Ditch Maintenance. Other documents, such as the 1989 MOA addressing 404(f) coordination, are unaffected. As indicated above, this RGL addresses statutory exemptions for both irrigation and drainage ditches. In this effort to provide greater clarity, the following terms are defined for purposes of Subsection 404(f): irrigation ditch, drainage ditch, construction, and maintenance. This document also provides a framework for determining the applicability of the exemptions and the recapture provision. (See Figure 1). While providing greater clarity, both the framework and the definitions are consistent with the agencies’ current practice in interpreting the Section 404(f) exemption.

2. Background.

a. Under Section 404(f)(1)(C) of the CWA (see also 33 CFR 323.4(a)(3) and 40 CFR 232.3(c)(3)), discharges of dredged or fill material associated with construction or maintenance of irrigation ditches, or the maintenance (but not construction) of drainage ditches, are not prohibited by or otherwise subject to regulation under Section 404 of the CWA (i.e., these activities are exempt from the need to obtain a Section 404 permit from the Department of the

Army (DA)). Discharges of dredged or fill material associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant to and functionally related to irrigation ditches are included in the exemption for irrigation ditches.

b. Section 404(f)(2) of the CWA states that “[a]ny discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced, shall be required to have a permit under this section.” This is commonly referred to as the “recapture provision.” See Section c, below.

c. Under 33 CFR 323.4(c) and 40 CFR 232.3(b), exemptions under 33 CFR 323.4(a)(1-6) and 40 CFR 232.3(c)(1-6) do not apply if the discharge into a water of the U.S. “is part of an activity whose purpose is to convert an area of the waters of the U.S. into a use to which it was not previously subject, where the flow or circulation of waters of the U.S. may be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernable alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration.”

d. Under 33 CFR 323.4(a)(1)(iii)(C)(I)(i), “[c]onstruction and maintenance of upland (dryland) facilities such as ditching and tiling, incidental to the planting, cultivating, protecting, or harvesting of crops, involve no discharge of dredged or fill material into waters of the U.S., and as such never require a section 404 permit.”

The CWA Subsection 404(f)(1)(A) exemption for “minor drainage” covers “(t)he discharge of dredged or fill material incidental to connecting upland drainage facilities to waters of the U.S., adequate to effect the removal of excess soil moisture from upland crops.” (See 33 CFR 323.4(a)(1)(iii)(C) (I)(i))

e. The construction and maintenance of irrigation ditches and maintenance of drainage ditches may require the construction and/or maintenance of a farm road. In those circumstances, the Subsection 404(f)(1)(E) exemption for discharges of dredged or fill material associated with the construction or maintenance of farm roads applies where such related farm roads are constructed and maintained in accordance with best management practices (BMPs), 33 CFR 323.4(a)(6) and 40 CFR 232.3(c)(6), to assure that flow and circulation patterns and chemical and biological characteristics of waters of the U.S. are not impaired, that the reach of the waters of the U.S. is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized. All of the limitations and conditions mandated by the current Section 404(f) regulations relating to farm roads apply.

3. Guidance for Ditches.

General Guidance: Before carrying out ditch maintenance or construction activities, the following issues should be analyzed:

a. Is there a discharge of dredged or fill material into a water of the U.S.? To make that determination, the statute, regulations, and guidance provided by the Corps and EPA regarding what areas constitute “waters of the United States” subject to CWA jurisdiction must be consulted and followed. Corps and EPA guidance on the extent of CWA geographic jurisdiction define certain categories of “upland ditches” and “upland swales” that generally are not subject to CWA jurisdiction. Discharges of dredged or fill material into those defined categories of upland ditches and upland swales are not subject to either CWA permitting requirements or the subsection 404(f) exemptions.

b. Identify the type of ditch and activity, and whether the activity is eligible for the exemptions at Subsection 404(f)(1). An analysis of the CWA statute and existing EPA and Corps regulations indicates that there are differences between irrigation ditches and drainage ditches for purposes of applying the Subsection 404(f)(1)(C) exemption. The Subsection 404(f)(1)(C) exemption applies to the *construction* and *maintenance* of irrigation ditches, but it applies only to the *maintenance* of drainage ditches.

For purposes of this RGL, wetlands include all wetlands that meet the definition in 33 CFR 328.3. Guidance for applying the regulation is contained in the 1987 Wetland Delineation Manual, and the regional supplements and supplemental guidance, as appropriate, except where the wetland plants were established as a result of the irrigation process. Wetlands established solely due to the presence of irrigation water, irrigated fields, or irrigation ditches do not qualify as wetlands for purposes of applying the 404(f) exemption for construction and maintenance of irrigation ditches and for maintenance of drainage ditches.¹ Where sufficient information is not available to determine the hydrological contribution of irrigation waters to a particular wetlands (i.e., whether the wetland existed at the location prior to the presence of irrigation activities), such wetlands are not removed from consideration as wetlands or waters of the U.S.

For purposes of this RGL, the following definitions apply:

Definition of “Irrigation Ditch:” For purposes of this RGL, an irrigation ditch is a man-made feature and/or an upland swale that either conveys water to an ultimate irrigation use or place of use, or that moves and/or conveys irrigation water (e.g., “run-off” from irrigation) away from irrigated lands. Irrigation ditches may include the distribution system or parts thereof, consisting of manmade canals, laterals, ditches, siphons, and/or pipes, or pump systems. If a ditch carries only irrigation water, irrigation return flows, and overland flow (precipitation and/or snowmelt) that moves from an irrigated field either to or away from an area subject to irrigated agriculture (e.g., an irrigated field), that ditch would be considered an irrigation ditch, not a drainage ditch.

Where a natural or man-altered water body is used as part of an irrigation ditch system, such as where the water body is used to transport irrigation water between manmade ditches, that segment generally is not considered an irrigation ditch for purposes of this exemption, except

¹As stated in the preamble to the Corps’ Final Rule of November 13, 1986: “. . .we generally do not consider the following waters to be ‘Waters of the United States’ . . . (b) Artificially irrigated areas which would revert to upland if the irrigation ceased.” 51 Federal Register 41217, November 13, 1986. Thus, waters, including wetlands, created as a result of irrigation would not be considered waters of the US even when augmented on occasion by precipitation.

where the Section 404(f)(1) exemption has been determined to apply based on a case-by-case evaluation. Following a case-by-case evaluation, such a natural or man-altered water body may be considered an irrigation ditch eligible for this exemption if it has characteristics suggesting a limited functional role in the broader aquatic ecosystem, such as infrequent or low volume flow, minimal habitat value, or small channel size.

Definition of “Drainage Ditch:” For purposes of this RGL, a drainage ditch is a ditch that conveys water (other than irrigation related flows) from one place to another. Where a ditch would have the effect of more than minor drainage² of wetlands (other than wetlands established due to the presence of irrigation water), the ditch would be considered a drainage ditch, not an irrigation ditch, even if used for irrigation. However, a ditch that diverts water from an open body of water (e.g., stream, lake, or reservoir) for irrigation purposes is an irrigation ditch, even if a substantial portion of the flow or volume is diverted.

A ditch determined to be either an irrigation ditch or a drainage ditch would then need to be evaluated on a case-by-case basis to determine if the recapture provision of Section 404(f)(2) applies (see below).

Definition of “Construction:” For purposes of this RGL, construction includes new work or work that results in an extension or expansion of an existing structure. Ditch construction generally includes, but is not limited to, activities such as:

- Ditch relocation.
- Ditch conversion into pipe.
- Lining, which means placing impervious material such as concrete, clay, or geotextile within the flow perimeter of an open canal, lateral, or ditch with the intent of reducing seepage losses and improving conveyance efficiency. All new lining of ditches, where the ditch had not previously been lined, is considered construction.
- Placement of new control structures.

Definition of “Maintenance:” For purposes of this RGL, maintenance includes a repair to an existing structure or feature to keep the ditch in its existing state or proper condition, or to preserve it from failure or decline.³ Maintenance generally includes, but is not limited to, activities such as:

- Excavation of accumulated sediments back to original contours.
- Re-shaping of the side-slopes.

²See 33 CFR 323.4(a)(1)(iii)(C)(1) and (C)(2).

³Maintenance means the physical preservation of the original, as-built configuration of the ditch and appurtenant structures, to restore the original function and the approximate capacity of the ditch. In many cases, accurate historical records are not available to determine the exact “as-built” specifications of the original ditch. In these cases, districts should work closely with the project proponent to establish an appropriate maintenance depth to restore the ditch’s original function and approximate capacity, while meeting the spirit of the exemption and ensuring adequate protection of aquatic resources. Districts should allow maintenance of ditches to be performed to the level of current engineering standards where more graduated side-slopes result in greater stability, so long as those modifications of the ditch will not result in the drainage, degradation, or destruction of additional natural wetlands or other waters of the U.S., as referenced above. Removal of material and re-contouring of the ditch should be in accordance with the historical design and function of that ditch (i.e., the ditch must not be substantially deepened so as to drain additional areas).

- Bank stabilization to prevent erosion where reasonably necessary using best management practices. For maintenance of drainage ditches as defined in this guidance, materials used for stabilization should be compatible with existing bank materials.
- Armoring, lining and/or piping. These activities qualify as maintenance only where a previously armored, lined, or piped section is being repaired and all work occurs within the footprint of the previous work.
- Replacement of existing control structures, where the original function is not changed and original approximate capacity is not increased.

Maintenance is generally viewed as involving activities that keep something in its existing state or proper condition or preserve it from failure or decline. If a drainage ditch has not been serving a drainage function for an extended period of time, drainage ditch re-establishment would be considered construction, not maintenance, and would thus be ineligible for the exemption. However, a ditch that has not been regularly maintained should not automatically be considered ineligible for the ditch maintenance exemption. Some ditches require little or no periodic maintenance to remain functional. Lack of periodic maintenance in these situations does not preclude the ditch from being maintained under the exemption.

c. The third step is to determine if the Recapture Provision applies:

Part 1: Is the discharge part of an activity whose purpose is to convert an area of the waters of the U.S. into a use to which it was not previously subject?

The regulations guiding implementation of CWA Section 404(f) specify that a change in use occurs when there is a “conversion of a section 404 wetland to a non-wetland” and in addition “a permit will be required for the conversion of a cypress swamp to some other use or the conversion of a wetland from silvicultural to agricultural use when there is a discharge of dredged or fill material into waters of the United States in conjunction with construction of dikes, drainage ditches or other works or structures used to effect such conversion.” 33 C.F.R. 323.4(c).

Part 1 of the test is met if there would be a change of use. For example, any time an irrigation ditch would cut through (or across) a natural or man-altered water body, including wetlands, this would qualify as a change in use and Part 1 of the Section 404(f)(2) test is met.

Part 2: If Part 1 of the test is met, may the activity also impair the flow or circulation of waters of the U.S. or reduce the reach of such waters?

The regulations guiding implementation of the CWA Section 404(f) specify that “(w)here the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration.” “A discharge which elevates the bottom of waters of the United States without converting it to dry land does not thereby reduce the reach of, but may alter the flow or circulation of, waters of the United States.” 33 C.F.R. 323.4(c).

The determination as to whether construction or maintenance of an irrigation ditch, or maintenance of a drainage ditch, would result in a significant discernible alteration in flow or circulation, or a reduction in reach, of waters of the U.S. should be made on a case-by-case basis using the factors such as the following: (1) whether the proposed construction or maintenance of the ditch would harmfully sever or fragment the wetland or water body; (2) whether the proposed construction or maintenance of the ditch would significantly and discernibly alter flow or circulation or reduce reach through sidecasting into the wetland or waterbody; (3) whether the proposed construction or maintenance of the ditch would harm the wetland or water body by substantially increasing or decreasing water levels; (4) the relative size of the ditch compared to the wetland or water body; and (5) whether the proposed construction or maintenance employs techniques and best management practices designed to minimize impacts and ensure that there is not significant discernible alteration of flow or circulation or reduction of reach.

Because the Section 404(f)(1) exemption for maintenance of irrigation or drainage ditches applies only to maintenance activities that would maintain existing capacity and functionality (not to construction activities), it is unlikely that the recapture provision in Section 404(f)(2) would apply to ditch maintenance activities as defined above. However, if a question arises as to whether ditch maintenance activities would trigger the Section 404(f)(2) recapture provision (e.g., if the maintenance is “incidental” to a larger activity that triggers the provision – see footnote 4 below), this should be evaluated on a case-by-case basis using the factors such as those listed above.

This recapture provision is a two-part test. If the answers to both parts are “yes,” a (DA) permit is required for the activity. If one part of the test is not satisfied and that activity qualifies for an exemption under 404(f)(1), it is not “recaptured” under 404(f)(2).⁴

In situations where the potential eligibility of a proposed discharge of dredged or fill material for an exemption under Section 404(f)(1)(C) has been raised to the district, and where the district cannot make a determination due to a lack of pertinent factual information, it is incumbent on those seeking exemption to provide the documentation necessary to establish the facts on a case-by-case basis.

If the proposed activity is not exempt under Section 404(f)(1), the work may be authorized under one or more Nationwide General Permits (NWP), or under a Regional General Permit (RGP), or pursuant to a Standard Individual Permit. The NWPs can be found at: <http://www.usace.army.mil/cw/cecwo/reg/> and the RGPs can be found on the local Corps District regulatory web pages. Additional guidance on the NWPs/RGPs may be obtained from the local Corps District office.

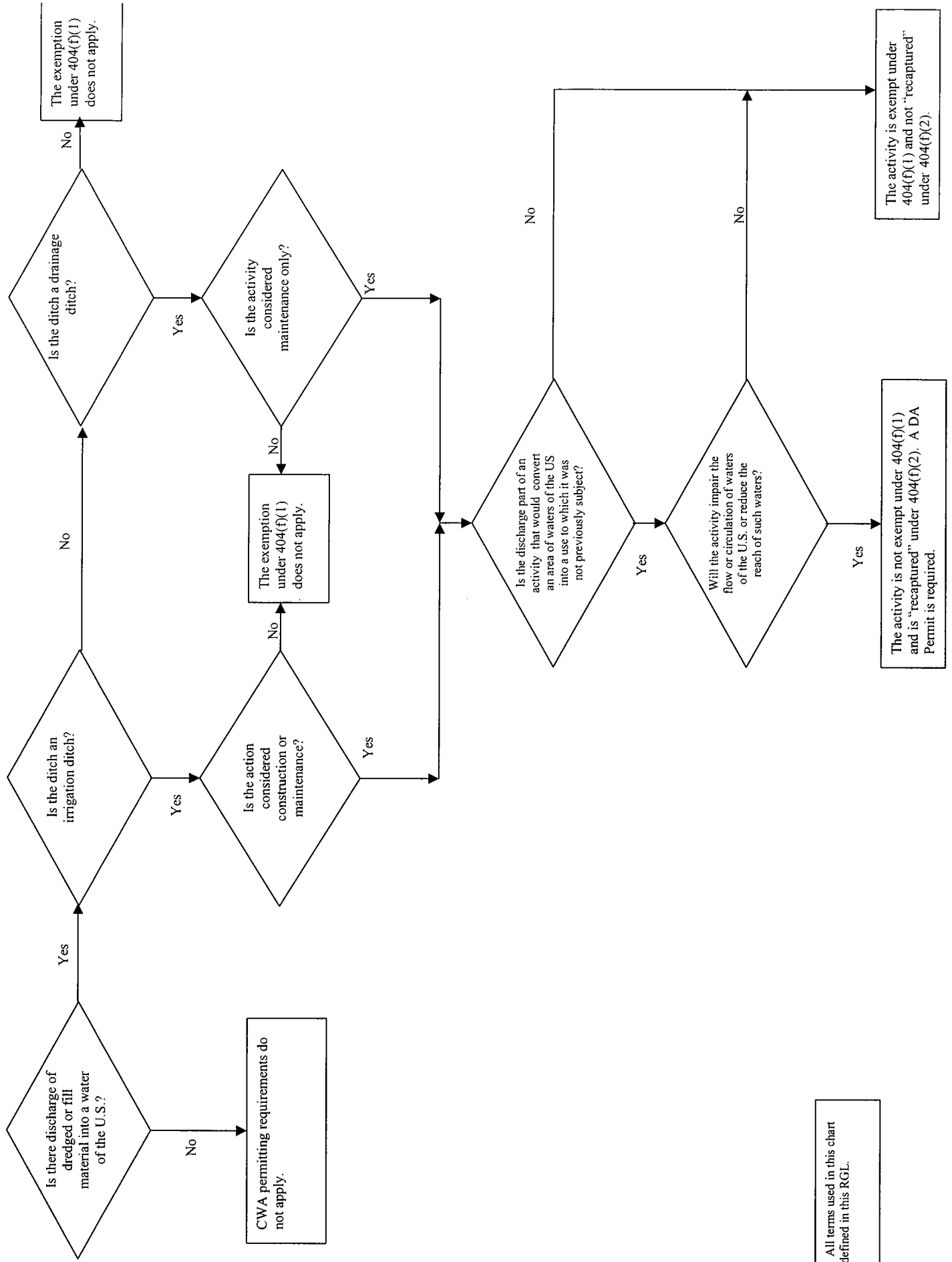
⁴The discharge of dredged or fill material itself does not need to be the sole cause of the destruction of the waters of the United States (e.g., wetlands) or other change in use or the sole cause of the reduction in or impairment of, reach flow, or circulation of such waters. The discharge need only be “incidental to” or “part of” an activity that is intended to or will foreseeably bring about that result.

4. **Duration.** This guidance rescinds and supersedes RGL 87-7. This guidance remains in effect unless revised or rescinded. Additional guidance may be issued in the near future to further define irrigation ditch, drainage ditch, construction, and maintenance.



DON T. RILEY
Major General, US Army
Director of Civil Works

FIGURE 1: FLOWCHART FOR PROCESSING EXEMPTIONS UNDER 404(f)(1) AND 404(f)(2)



Notes: All terms used in this chart are as defined in this RGL.

C-2

RWQCB
Applicable Regulatory Exemptions

Waiver of Waste Discharge Requirements

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

WAIVER OF WASTE DISCHARGE REQUIREMENTS
(WAIVER POLICY)

November 1, 2002

Many types of waste discharges do not cause or have the potential to cause significant impacts to the quality of the waters of the state. Although these discharges are subject to regulation pursuant to the California Water Code, regulation via waste discharge requirements is not an efficient use of resources. Under authority of the California Water Code the Regional Board has conditionally waived regulation of a number of specific types of waste discharges. These waivers are collectively known as the Regional Board's "Waiver Policy". On September 11, 2002 the Regional Board adopted a resolution reissuing their Waiver Policy. The re-issued Waiver Policy is a part of the Regional Board's Basin Plan, becomes effective January 1, 2003, and is reproduced as Attachment 1 to this document. The Waiver Policy indicates the types of discharges for which waste discharge requirements have been waived, the conditions that apply to each waiver and the waiver category (Category 1 or Category 2) to which each discharge has been assigned.

Discharges in have been determined to pose a greater potential threat to water quality than those in Category 2. Category 1 discharges require enrollment to be covered by the Waiver Policy. The purpose of the enrollment is to provide the Regional Board with data on the Category 1 discharges and facilitate determination of compliance with waiver conditions. Wherever possible, existing programs by the Regional Board or other public agencies are used to fulfill the enrollment requirements. The table provided below summarizes the requirements for enrollment for each type of Category 1 discharge. The number shown at the left of the listing for each type of discharge refers to the corresponding entry in Table 4-4 of the Waiver Policy.

There is no application or enrollment process for Category 2 discharges. These discharges are covered by the Waiver Policy without the need for any action on the part of the discharger.

Enrollment Requirements for Category 1 Waivers			
No.	Type of Waste Discharge	Enrollment Requirement	Regional Board Unit Contact
1	Conventional septic tank/subsurface disposal systems for residential units.	Approval of the system design by the county environmental health agency having jurisdiction where the system is/will be constructed. Approval will usually be in the form of a Parcel Map or Tentative Map recordation or other documentation of discretionary approval of a proposed land use utilizing conventional septic tank/subsurface disposal systems for residential units.	Watershed Unit (North or South as appropriate for facility location)
2	Conventional septic tank/subsurface disposal systems for commercial/industrial establishments.	Approval of the system design by the county environmental health agency having jurisdiction where the system is/will be constructed. Approval will usually be by issuance of a Use Permit or other documentation of discretionary approval of a proposed land use utilizing conventional septic tank/subsurface disposal systems for commercial/industrial establishments.	Watershed Unit (North or South as appropriate for facility location)

Enrollment Requirements for Category 1 Waivers			
No.	Type of Waste Discharge	Enrollment Requirement	Regional Board Unit Contact
3	Alternative individual sewerage systems.	Approval of the system design by the county environmental health agency having jurisdiction where the system is/will be constructed. Approval will usually be in the form of a Parcel Map or Tentative Map recordation or issuance of a Use Permit or other documentation of discretionary approval of a proposed land use utilizing alternative individual sewerage systems.	Watershed Unit (North or South as appropriate for facility location)
4	Conventional septic tank/subsurface disposal systems for campgrounds.	Approval of the system design by the county environmental health agency having jurisdiction where the system is/will be constructed. Approval will usually be by issuance of a Use Permit or other documentation of discretionary approval of a proposed land use utilizing conventional septic tank/subsurface disposal systems for commercial/industrial establishments.	Watershed Unit (North or South as appropriate for facility location)
7	Animal feeding operations for the following species in the numbers indicated: Slaughter and feeder cattle (300 to 1000 animals) Swine (750 to 2500 animals) Horses (150 to 500 animals) Sheep or lambs (3000 to 10,000 animals) Turkeys (16,500 to 55,000 animals) Laying hens or broilers (9000 to 30,000 animals) Ducks (1500 to 5000 animals) Mixed species (cumulative total of 300 to 1000 animal units, as defined in 40 CFR 122, Appendix B).	Completion of the enrollment form contained in Attachment 2 (Waiver of Waste Discharge Requirements Enrollment Form) and submission to the Regional Board.	Industrial Compliance Unit
11	Sand and gravel mining operations.	Either: <ul style="list-style-type: none"> • Receipt of a Federal Clean Water Act Section 401 Water Quality Certification issued by the Regional Board or the Regional Board's Executive Officer; or • Written acknowledgment, signed by the Regional Board's Executive Officer, of coverage under an U.S. Army Corps of Engineers Nationwide Permit that has been certified by the State Water Resources Control Board. 	Watershed Unit (North or South as appropriate for facility location)
13	Dredging project wastes.	Either: <ul style="list-style-type: none"> • Receipt of a Federal Clean Water Act Section 401 Water Quality Certification issued by the Regional Board or the Regional Board's Executive Officer; or • Written acknowledgment, signed by the Regional Board's Executive Officer, of coverage under an U.S. Army Corps of Engineers Nationwide Permit that has been certified by the State Water Resources Control Board. 	Watershed Unit (North or South as appropriate for facility location)
15	Manure composting and soil amendment operations.	Completion of the enrollment form contained in Attachment 2 (Waiver of Waste Discharge Requirements Enrollment Form) and submission to the Regional Board.	Watershed Unit (North or South as appropriate for facility location)
16	Solid waste disposal facilities accepting only inert wastes.	Completion of the enrollment form contained in Attachment 2 (Waiver of Waste Discharge Requirements Enrollment Form) and submission to the Regional Board.	Land Discharge Unit

Enrollment Requirements for Category 1 Waivers

No.	Type of Waste Discharge	Enrollment Requirement	Regional Board Unit Contact
17	Stream channel alterations.	Either: <ul style="list-style-type: none"> • Receipt of a Federal Clean Water Act Section 401 Water Quality Certification issued by the Regional Board or the Regional Board's Executive Officer; or • Written acknowledgment, signed by the Regional Board's Executive Officer, of coverage under an U.S. Army Corps of Engineers Nationwide Permit that has been certified by the State Water Resources Control Board. 	Watershed Unit (North or South as appropriate for facility location)
19	Nursery irrigation return water.	Submission of the form "Application for License to Sell Nursery Stock" (64-029) to the California Department of Food and Agriculture.	Watershed Unit (North or South as appropriate for facility location)
20	Short-term use of reclaimed wastewater.	Submission of a written request for a waiver containing the information specified in Condition No. 2 in Appendix D of the Waiver Policy.	Publicly Owned Treatment Works Unit
23	Temporary discharge of specified contaminated soils.	Completion of the enrollment form contained in Attachment 3 (Temporary Waste Pile Waiver Certification) and submission to the Regional Board.	Land Discharge Unit
26	Permanent reclaimed water projects.	Submission of a Report of Waste Discharge containing the information specified in Conditions Nos. 1 and 4 in Appendix D of the Waiver Policy.	Publicly Owned Treatment Works Unit

ATTACHMENT 1

REGIONAL BOARD WAIVER POLICY

ADOPTED SEPTEMBER 11, 2002

EFFECTIVE JANUARY 1, 2003

WASTE DISCHARGE REQUIREMENT WAIVER POLICY

The Regional Board may waive issuance of waste discharge requirements for a specific discharge or types of discharge pursuant to California Water Code Section 13269 if such waiver is determined not to be against the public interest.

The waiver of adoption of waste discharge requirements is not applicable to discharges subject to NPDES permit regulation. The federal Clean Water Act does not provide for a waiver of the need to obtain an NPDES permit for point source discharges of pollutants to surface waters.

Amendments to California Water Code Section 13269, effective January 1, 2003 provided that waivers may not exceed five years duration and must be conditional. Under these amendments the regional boards were required to:

- Renew waivers every five years;
- Review the terms, conditions and effectiveness of each type of waiver included in their waiver policies at a public hearing;
- Determine if general or individual waste discharge requirements should be issued for ongoing discharges where waivers have been terminated; and,
- Require compliance with waiver conditions.

The waiver of waste discharge requirements is conditional and may be terminated at any time by the Regional Board for any specific discharge or any specific type of discharge.

The Regional Board has determined that a waiver of adoption of waste discharge requirements for a specific type of discharge would not be against the public interest under one or more of the following circumstances:

- The type of discharge is effectively regulated by other public agencies; or
- The type of discharge does not adversely affect the quality of the beneficial uses of the waters of the state; or
- The type of discharge is not readily amenable to regulation through adoption of waste discharge requirements but warrants Regional Board oversight to insure compliance with mandated conditions.

On September 11, 2002, the Regional Board conditionally waived adoption of waste discharge requirements for certain specific types of discharges described in Table 4-4. This waiver took effect on January 1, 2003 and expires on January 1, 2008, except for discharges for which Table 4-4 specifies an earlier expiration date.

The following general conditions apply to all discharges described in Table 4-4:

- The discharge shall not create a nuisance as defined in the California Water Code; and
- The discharge shall not cause a violation of any applicable water quality standard; and
- The discharge of any substance in concentrations toxic to animal or plant life is prohibited.

In addition, the discharges must satisfy the specific conditions described in Table 4-4.

The discharges in Table 4-4 have been assigned to either Category 1 or Category 2, for purpose of Regional Board oversight for determination of compliance with waiver conditions. Discharges covered by Category 1 waivers pose a greater potential threat to water quality than those in Category 2.

For Category 1 waivers, waste discharge requirements for a specific discharge shall be considered waived only after enrollment in accord with procedures established by the Regional Board. For most of the discharges in Category 1, programs administered by the Regional Board or other public agencies will provide the information necessary to satisfy the enrollment requirements. No additional enrollment procedures will be necessary for these discharges.

An enrollment process has been established for the remaining discharges. Dischargers may contact the Regional Board office to determine if enrollment is necessary for a specific discharge. The Regional Board will determine compliance with Category 1 waiver conditions using a program that includes on-site inspections and/or review of the records of other public agencies that regulate these discharges.

For Category 2 waivers, enrollment is not necessary. The Regional Board will assess compliance with Category 2 waiver conditions by means of surveys or other indirect methods.

Revised Table 4-4 (Revised 2/5/03)

Attachment A to Resolution No. R09-2003-0060

TYPE OF WASTE DISCHARGE	SPECIFIC CONDITION(S)	WAIVER CATEGORY	REFERENCES, REMARKS, ETC.
1. Conventional septic tank/subsurface disposal systems for residential units.	Subject to the conditions set forth in the <i>Basin Plan, Chapter 4, (Implementation)</i> section entitled <i>Guidelines for New Community and Individual Sewerage Facilities</i> , and where systems are not constructed within areas designated as Zone A as defined by the California Department of Health Services' <i>Drinking Water Source Assessment and Protection Program</i> . This waiver applies until six months after the State Water Resources Control Board adopts statewide criteria for on-site disposal systems pursuant to AB 885.	1	<i>Basin Plan, Chapter 4 (Implementation)</i> section entitled <i>Guidelines for New Community and Individual Sewerage Facilities, Drinking Water Source Assessment and Protection Program</i> , California Department of Health Services (DHS). AB 885 requires that the State Water Resources Control Board develop statewide criteria for on-site disposal systems by January 1, 2004.
2. Conventional septic tank/subsurface disposal systems for commercial/industrial establishments.	Subject to the conditions set forth in the <i>Basin Plan, Chapter 4, (Implementation)</i> section entitled <i>Guidelines for New Community and Individual Sewerage Facilities</i> , and where systems are not constructed within areas designated as Zone A as defined by the California Department of Health Services' <i>Drinking Water Source Assessment and Protection Program</i> . This waiver applies until six months after the State Water Resources Control Board adopts statewide criteria for on-site disposal systems pursuant to AB 885.	1	<i>Basin Plan, Chapter 4 (Implementation)</i> section entitled <i>Guidelines for New Community and Individual Sewerage Facilities, Drinking Water Source Assessment and Protection Program</i> , California Department of Health Services (DHS). AB 885 requires that the State Water Resources Control Board develop statewide criteria for on-site disposal systems by January 1, 2004.
3. Alternative individual sewerage systems.	Subject to the conditions set forth in the <i>Basin Plan, Chapter 4, (Implementation)</i> section entitled <i>Guidelines for New Community and Individual Sewerage Facilities</i> , and where systems are not constructed within areas designated as Zone A as defined by the California Department of Health Services' <i>Drinking Water Source Assessment and Protection Program</i> . This waiver applies until six months after the State Water Resources Control Board adopts statewide criteria for on-site disposal systems pursuant to AB 885.	1	<i>Basin Plan, Chapter 4 (Implementation)</i> section entitled <i>Guidelines for New Community and Individual Sewerage Facilities, Drinking Water Source Assessment and Protection Program</i> , California Department of Health Services (DHS). AB 885 requires that the State Water Resources Control Board develop statewide criteria for on-site disposal systems by January 1, 2004.

Revised Table 4-4 (Revised 2/5/03)

Attachment A to Resolution No. R09-2003-0060

TYPE OF WASTE DISCHARGE	SPECIFIC CONDITION(S)	WAIVER CATEGORY	REFERENCES, REMARKS, ETC.
4. Conventional septic tank/subsurface disposal systems for campgrounds.	Where no facilities are provided which would enable recreational vehicles to connect with the campground sewerage system, and where systems are not constructed within areas designated as Zone A as defined by the California Department of Health Services' <i>Drinking Water Source Assessment and Protection Program</i> .	1	<i>Basin Plan, Chapter 4 (Implementation)</i> section entitled <i>Guidelines for New Community and Individual Sewerage Facilities, Drinking Water Source Assessment and Protection Program</i> , California Department of Health Services (DHS).
5. Construction and test pumping of water wells.	Where the well water pumped is uncontaminated; and where the well was not constructed for and is not to be used in ground water cleanup operations.	2	
6. Air conditioner condensate.		2	
7. Animal feeding operations for the following species in the numbers indicated: 300 to 999 veal calves; 300 to 999 cattle other than mature dairy cows or veal calves (including, but not limited to heifers, steers, bulls and cow/calf pairs); 750 to 2,499 swine each weighing 55 pounds or more; 3,000 to 9,999 swine each weighing less than 55 pounds;	Where the facility is operated and maintained in conformance with the regulations cited in Sections 22562 through 22565, Division 2, Title 27 of the California Code of Regulations, and where pollutants are not discharged (1) to waters of the United States through a man-made ditch, flushing system or other similar man-made device; or, (2) directly into waters of the United States which originate outside of and pass over, across or through the facility or otherwise come into direct contact with the animals confined in the operation. Where the facility has not been designated as a Confined Animal Feeding Operation pursuant to United States Environmental Protection Agency Administered Permit Programs: NPDES, 40 CFR 122.23 as revised December 15, 2002.	1	United States Environmental Protection Agency Administered Permit Programs: NPDES, 40 CFR 122.23 as revised December 15, 2002, and United States Environmental Protection Agency <i>Guide Manual on NPDES Regulations for Concentrated Animal Feeding Operations</i> .

Revised Table 4-4 (Revised 2/5/03)

Attachment A to Resolution No. R09-2003-0060

TYPE OF WASTE DISCHARGE	SPECIFIC CONDITION(S)	WAIVER CATEGORY	REFERENCES, REMARKS, ETC.
<p>150 to 499 horses; 3,000 to 9,999 sheep or lambs; 16,500 to 54,999 turkeys; 9,000 to 29,999 laying hens or broilers (if a liquid manure handling system is used); 37,500 to 124,999 chickens (other than laying hens, if the operation does not use a liquid manure handling system); 25,000 to 81,999 laying hens_(if the operation does not use a liquid manure handling system); 10,000 to 29,999 ducks (if the operation does not use a liquid manure handling system); 1,500 to 4,999 ducks (if the operation uses a liquid manure handling system).</p>			

Revised Table 4-4 (Revised 2/5/03)

Attachment A to Resolution No. R09-2003-0060

TYPE OF WASTE DISCHARGE	SPECIFIC CONDITION(S)	WAIVER CATEGORY	REFERENCES, REMARKS, ETC.
<p>8. Animal feeding operations for the following species in the numbers indicated: less than 300 veal calves; less than 300 cattle other than mature dairy cows or veal calves (including, but not limited to heifers, steers, bulls and cow/calf pairs); less than 750 swine each weighing 55 pounds or more; less than 3,000 swine each weighing less than 55 pounds; less than 150 horses; less than 3,000 sheep or lambs; less than 16,500 turkeys; less than 9,000 laying hens or broilers (if a liquid manure handling system is used); less than 37,500 chickens (other than laying hens, if the operation does not use a liquid manure handling system);</p>	<p>Where the facility is operated and maintained in conformance with the regulations cited in Sections 22562 through 22565, Division 2, Title 27 of the California Code of Regulations, and where pollutants are not discharged (1) to waters of the United States through a man-made ditch, flushing system or other similar man-made device; or, (2) directly into waters of the United States which originate outside of and pass over, across or through the facility or otherwise come into direct contact with the animals confined in the operation.</p> <p>Where the facility has not been designated as a Confined Animal Feeding Operation pursuant to United States Environmental Protection Agency Administered Permit Programs: NPDES, 40 CFR 122.23 as revised December 15, 2002.</p>	<p align="center">2</p>	<p>United States Environmental Protection Agency Administered Permit Programs: NPDES, 40 CFR 122.23 as revised December 15, 2002, and United States Environmental Protection Agency <i>Guide Manual on NPDES Regulations for Concentrated Animal Feeding Operations</i>.</p>

Revised Table 4-4 (Revised 2/5/03)

Attachment A to Resolution No. R09-2003-0060

TYPE OF WASTE DISCHARGE	SPECIFIC CONDITION(S)	WAIVER CATEGORY	REFERENCES, REMARKS, ETC.
less than 25,000 laying hens (if the operation does not use a liquid manure handling system); less than 10,000 ducks (if the operation does not use a liquid manure handling system); less than 1,500 ducks (if the operation uses a liquid manure handling system); any number of goats; any number of buffalo.			
9. Plant crop residues.	Where such residues are plowed into fields (as opposed to being disposed of en masse, e.g. in a pit).	2	For the purposes of this document, "plant crop residues" shall be defined as waste plant crops and nonmarketable portions of plants.
10. Storm water runoff.	Where no NPDES permit is required, and where appropriate best management practices, such as those recommended by US EPA's Risk Reduction Engineering Laboratory, are implemented to minimize the discharge of contaminants in runoff infiltrating to ground water aquifers.	2	United States Environmental Protection Agency <i>Project Summary, Potential Groundwater Contamination from Intentional and Nonintentional Stormwater Infiltration.</i>
11. Sand and gravel mining operations.	Where operations are not conducted in flowing streams; and where water quality certification pursuant to Federal Clean Water Act Section 401 has been issued.	1	This waiver does not apply to wash water or other discharges from sand and gravel processing operations.
12. Intermittent swimming pool discharges.	Where pool filter backwash is not discharged.	2	

Revised Table 4-4 (Revised 2/5/03)

Attachment A to Resolution No. R09-2003-0060

13. Dredging project wastes.	Where the dredging project does not involve more than 5000 yd ³ of material and where water quality certification pursuant to Federal Clean Water Act Section 401 has been issued.	1	
14. Short-term construction dewatering operations.	Where there is no discharge to surface waters.	2	
15. Manure composting and soil amendment operations.	Where State Water Resources Control Board <i>Minimal Guidelines for Protection of Water Quality from Animal Wastes</i> are followed.	1	Adopted by the State Water Resources Control Board on March 1, 1973.
16. Solid waste disposal facilities accepting only inert wastes.	Where State Water Resources Control Board regulations, requirements and guidelines for disposal of such wastes are satisfied; and where Fish and Game Code Section 5650 is not violated.	1	The applicable document as of the date of adoption of the Resolution is <i>Discharges of Waste to Land</i> (CCR Title 23, Division 3, Chapter 15).
17. Stream channel alterations.	Where water quality certification pursuant to Federal Clean Water Act Section 401 has been issued.	1	
18. Agricultural irrigation return water.	Where management measures and best management practices have been implemented as described in the Plan for California's Nonpoint Source Pollution Control Program.	2	For the purposes of this document, "agriculture" shall be defined as the production of fiber and/or food (including food for animal consumption, e.g., alfalfa).
19. Nursery irrigation return water.	Where there is no discharge to waters of the U.S., and where best management practices have been implemented as described in the Plan for California's Nonpoint Source Pollution Control Program.	1	For the purposes of this document, a "nursery" shall be defined as a facility engaged in growing plants (shrubs, trees, vines, etc.) for sale.
20. Short-term use of reclaimed wastewater.	See Appendix D.	1	

Revised Table 4-4 (Revised 2/5/03)

Attachment A to Resolution No. R09-2003-0060

TYPE OF WASTE DISCHARGE	SPECIFIC CONDITION(S)	WAIVER CATEGORY	REFERENCES, REMARKS, ETC.
21. On-site drilling mud discharge.	Where discharge is to a sump with a minimum freeboard of two feet; and Where sump is not to be used for ultimate disposal of drilling mud (unless discharger demonstrates that material is nontoxic and does not contain dissolved or soluble salts in quantities which could adversely affect basin groundwater quality); and Where sump site is restored to predrilling state within 60 days of completion or abandonment of well.	2	
22. Timber harvesting.	Where harvesting occurs on National Forest System lands managed by the United States Forest Service in accordance with the practices and procedures set forth in the document entitled <i>Water Quality Management for National Forest System Lands in California</i> .	2	Management Agency Agreement between State Water Resources Control Board and the United States Forest Service (United States Department of Agriculture).
23. Temporary discharge of specified contaminated soils.	See Appendix D.	1	
24. Green waste composting facilities.	See Appendix D.	2	
25. Incidental discharges within a response area during a spill response.	The discharge must meet the definition of " <i>incidental discharge</i> " as this, and related terms are defined in the <i>Memorandum of Understanding Between the Department of Fish and Game's Office of Oil Spill Prevention and Response and the State Water Resources Control Board Relating to Discharges Associated with Response Activities Conducted Pursuant to Ch. 7.4, Division 1 of the Government Code</i> .	2	
26. Permanent reclaimed water projects.	See Appendix D.	1	

APPENDIX D

CONDITION(S) FOR CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS OF ITEMS IN TABLE 4-4

CONDITIONS FOR ITEM 20. SHORT-TERM USE OF RECLAIMED WATER:

1. Short-term water reclamation projects are projects that last one year or less. Short-term projects can include temporary use of reclaimed water for dust control, soil compaction, green belt irrigation, or any other temporary reuse project authorized by the Executive Officer, for which no permanent physical reclaimed water facilities or structures are installed; and
2. The reclaimed water producer must submit a written request for a waiver to the Regional Board. This request must include written notification from the local health department or the State Department of Health Services that the proposed project complies with all local and State health requirements for reclaimed water use and Title 22, Division 4, Chapter 3, Reclamation Criteria, Articles 1 - 10. This written notification shall also specify any monitoring required to demonstrate compliance with Title 22, Division 4, Chapter 3, Articles 2, 3, 4, 5, and 5.1. A new written request for a waiver must be submitted to the Regional Board if the temporary project exceeds one year. New written requests must be received 60 days prior to expiration of the one year project. If no new request is received the short-term project must cease immediately.

CONDITIONS FOR ITEM 23. TEMPORARY DISCHARGE OF SPECIFIED CONTAMINATED SOILS:

a. General Conditions for All Temporary Waste Piles

- (1) **Required Notification of the Regional Board:** The discharger shall send the Regional Board a signed/completed certification report (Section A: Temporary Waste Pile Waiver Certification Form), **within 30 days** of the initial discharge of any waste piles established under this waiver. The discharger shall send the Regional Board a signed/completed certification report (Section B: Temporary Waste Pile Waiver Certification Form) **within 10 working days** of completing removal of all waste and restoring the site to its original condition.
- (2) This waiver specifically does not apply to hazardous waste, as defined in Section 66261.3, Division 4.5, Title 22 of the California Code of Regulations, or as amended.
- (3) **Prohibitions:** The discharge of waste shall not:
 - a. Cause the occurrence of coliform or pathogenic organisms in waters pumped from the basin;
 - b. Cause the occurrence of objectionable tastes and odors in water pumped from basin;
 - c. Cause waters pumped from the basin to foam;
 - d. Cause the presence of toxic materials in waters pumped from the basin;

- e. Cause the pH of waters pumped from the basin to fall below 6.0 or rise above 9.0;
 - f. Cause pollution, contamination or nuisance or adversely affect beneficial uses of ground or surface waters of the hydrologic subareas established in the Basin Plan.
 - g. Cause a violation of any discharge prohibitions in the Basin Plan for the San Diego Region.
- (4) **Site Conditions:** All parcels of land/property containing a temporary discharge of solid wastes, temporary waste piles as identified in the specific conditions of this waiver, shall meet the following minimum general site conditions:
- a. Runon/Runoff Protection: Surface drainage shall be diverted from the temporary waste piles. For all waste piles, the dischargers shall implement effective Best Management Practices (BMPs) to prevent surface water runon and runoff from contacting wastes and to prevent erosion and transport of wastes by surface runoff.
 - b. Groundwater Protection: All waste piles shall be placed at least five feet above the highest anticipated level of groundwater.
 - c. Surface Water Protection: All waste piles established under this waiver shall be located not less than 100 feet from any surface water identified in the Basin Plan.
 - d. Flood Plain Protection: All waste piles shall be protected against 100-year peak stream flows as defined by the County flood control agency.
- (5) **Inspection and Maintenance:** Wastes discharged to waste piles established under this waiver, together with any containment materials used at the temporary waste pile, and any underlying geologic materials contaminated by the discharge, shall be removed within the maximum time period allowed under the applicable Special Conditions. Subsequently the site shall be restored to its original state within 30 days following the removal of all treatment facilities, related equipment, etc. and shall be disposed of or stored in accordance with applicable regulations.
- (6) **Clean Closure Required:** Wastes discharged to waste piles established under this waiver, together with any containment materials used at the temporary waste pile, and any underlying geologic materials contaminated by the discharge, shall be removed within the maximum time period allowed under the applicable special conditions. Subsequently, the discharger shall remove all wastes, treatment facilities, related equipment, and dispose of those items in accordance with applicable regulations. The site shall be restored to its original state within maximum time period allowed under the applicable special conditions.
- (7) **Management of Return or Poned Water:** If return water or poned water contained within the treatment or storage area of the temporary waste pile will be disposed of at a location other than to a sanitary sewer system, then the discharger shall submit written notification to the Executive Officer prior to initiating the discharge and either: 1) obtain waste discharge requirements; 2) obtain a waiver of waste discharge requirements or 3) obtain a written determination from the Regional Board Executive Officer that the disposal of the return water or poned water is not subject to regulation by the Regional Board.

- (8) **Property Owner Acknowledgment:** By written correspondence to the Regional Board Executive Officer, the property owner shall approve the placement of the waste (temporary waste piles) at the site.
 - (9) **Public Notification Requirement:** The discharger shall post at least one clearly visible, sign (in english) listing the following minimum information: a.) project name, b.) name and address of discharger, c.) brief project description, and d.) 24-hour contact information – name, address, facsimile, and telephone number for the project. The discharger shall post additional signs as necessary (in languages other than english) to more effectively communicate the minimum contact information (listed above) to the local community. The sign(s) shall be maintained as required to keep them legible and remain in place while temporary waste piles remain on site.
 - (10) All sampling and analytical procedures, including documentation of waste characterization, shall be in accordance with the indicated methods described in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, SW-846, U.S. Environmental Protection Agency (current edition). Reported concentrations levels shall be mean average, with an 80% upper confidence interval, and the total range within each constituent.
 - (11) **Obligation to Comply:** This waiver from waste discharge requirements (WDRs) does not relieve dischargers of the obligation to comply with any other applicable local, state and federal requirements.
 - (12) **Relation of this Conditional Waiver to Other Authority of the RWQCB:** This action waiving the issuance of WDRs is conditional, may be terminated for any type of discharge at any time, does not permit an illegal discharge, and does not preclude the Regional Board from administering enforcement remedies pursuant to Section 13304 of the California Water Code. Where the staff of this Regional Board considers the adoption of WDRs for a specific discharge of a type identified herein to be in the public interest, staff will draft tentative waste discharge requirements for consideration by the Regional Board.
- b. *Special Conditions Applicable to Waste Piles for Treatment or Storage of Soils Contaminated with Petroleum Hydrocarbons*
- (1) Temporary waste piles established under this waiver shall be limited to a maximum time period of four months or 90 days.
 - (2) All solid wastes discharged into temporary waste piles established under the waiver shall be derived from only one source (e.g., unauthorized release site).
 - (3) **Cover:** All waste piles shall be overlain by plastic sheeting (not less than 10 mils thick) to adequately prevent rainwater infiltration, control fugitive dust, and other nuisances.
 - (4) **Liner:** All waste piles shall be underlain by either plastic sheeting (not less than 10 mils thick) or a liner of low permeability approved by the Regional Board Executive Officer.
 - (5) In addition to the general and specific conditions stated herein, waste piles shall conform to applicable provisions in the state's Local Oversight Program (LOP) for Orange, Riverside, or San Diego Counties.

- (6) **Site Closure:** Any waste pile established under these Special Conditions for Petroleum Contaminated Soils, together with any containment materials used for the temporary waste pile and underlying geologic materials contaminated by the discharge, shall be removed and the site shall be restored to its original state within **30 days**.

c. Special Conditions Applicable to Waste Piles for Treatment or Storage of Dredge Spoils Contaminated with Heavy Metals

- (1) All temporary waste piles established under this waiver shall be limited to a maximum time period of nine months or 210 days.
- (2) **Cover:** All waste piles shall be overlain by either a plastic sheeting to adequately prevent rainwater infiltration, control fugitive dust, and other nuisances. Alternative control methods shall be subject to approval by the Regional Board Executive Officer.
- (3) **Liner:** All waste piles shall be underlain by plastic sheeting (not less than 20 mils thick) or a liner of lower permeability approved by the Regional Board Executive Officer. The liner and containment facility shall be designed to contain all solid wastes and fluids, and shall be subject to approval by the Regional Board Executive Officer.
- (4) **Containment Structures:** Materials used in containment structures shall have the appropriate chemical and physical properties to ensure that such structures do not fail to contain waste because of: the stress of installation, pressure gradients, physical contact with the waste or leachate, or chemical reactions with soil and rock.
- (5) **Site Closure:** Any waste pile established under these Special Conditions for Dredge Spoils, together with any containment materials used for the temporary waste pile and underlying geologic materials contaminated by the discharge, shall be removed and the site shall be restored to its original state within **60 days**.

CONDITIONS FOR ITEM 24. COMPOSTING AND PROCESSING, MULCHING, OR GRINDING FACILITIES

A. APPLICABILITY

1. Types of Facilities

- a. *Facilities composting Green Waste, Agricultural Waste, Food Processing Waste or Paper Waste*
- b. *Facilities processing, mulching or grinding Green Waste, or Agricultural Waste*

2. Size of Facilities

- a. *Composting and Processing, Mulching, or Grinding Operations Less than Five Hundred (500) Cubic Yards*

The submittal of a report of waste discharge and the issuance of waste discharge requirements are waived for discharges from the following:

- (1) Green waste, food processing waste, agricultural waste, or paper waste composting operations that do not exceed five hundred (500) cubic yards at any given time;
- (2) Green waste or agricultural waste processing, mulching or grinding operations that do not exceed a total volume of five hundred (500) cubic yards at any given time.
- b. *Composting and Processing, Mulching, or Grinding Operations Greater than Five Hundred (500) Cubic Yards*

For dischargers who comply with the following *Reporting, Site, Operational, and General Conditions*, the issuance of waste discharge requirements are waived for discharges resulting from the following:

- (1) The storage and treatment by composting of greater than five hundred (500) cubic yards at any given time of green waste, food processing waste, agricultural waste, or paper waste, and any additives as approved by the RWQCB; or
- (2) The storage and treatment by processing, mulching, or grinding of greater than five hundred (500) cubic yards of green waste, or agricultural waste.

B. REPORTING CONDITIONS

1. *Report of Waste Discharge*

The discharger shall file a report of waste discharge that includes a technical report containing a requirement-by-requirement analysis based on acceptable engineering standards and best management practices, of how the process and physical designs of the facility will ensure compliance with the conditions listed herein. The discharger shall submit a fee pursuant to CCR Title 23, Section 2200 for a Threat to Water Quality and Complexity Rating 3-C, Chapter 15.

2. *General Industrial Storm Water Permit*

The discharger shall file either a Notice of Intent to comply with the requirements set forth in State Water Resources Control Board (SWRCB) NPDES General Permit No. CAS000001 for the discharge of storm water or submit documentation that the NPDES storm water permit requirements are not applicable to the discharger's facility.

3. *Changes in Operation*

The discharger shall notify the RWQCB of:

- a. any significant change in the nature and quantity of waste composted or processed, area of operation, or season of operation; or
- b. termination of operation.

C. SITE CONDITIONS

1. *Control and Management*

All areas upon which green waste, food processing waste, agricultural waste, or paper waste and any feedstock additives are discharged for composting or processing, mulching, grinding, storing and treating shall be designed, constructed and maintained to prevent the degradation of waters of the state. Such facility operations shall be equivalent to the water quality protection achieved through the implementation of the following measures:

a. *Precipitation*

All precipitation and surface drainage from outside the compost, process, treatment or storage areas including that collected from roofed areas, and runoff from tributary areas resulting from a 25-year, 24-hour storm shall be diverted away from the such areas.

b. *Runoff*

The discharger shall develop and implement a plan to reduce or eliminate the discharge of pollutants into surface waters including storm water. The plan shall describe measures taken to prevent contaminated process water and reduce or eliminate contaminated storm water from being discharged from the site.

c. *Water Quality Protection*

All compost, process and storage areas shall be sited where soil characteristics, distance from waste to ground water, and other factors will ensure no impairment of beneficial uses of surface waters or ground waters beneath or adjacent to the facility.

d. *Stream Flow*

The facilities shall be protected from inundation or washout by overflow from any stream channel during a 25-year peak stream flow.

e. *Surface Maintenance*

If the equipment operating near or on compost, process, storage, or treatment areas produces subsidence, cracking, or otherwise compromises any surface, the discharger shall repair any damaged areas immediately.

D. OPERATIONAL CONDITIONS

1. *Additives*

Dischargers who use additives as defined in this document shall report to the RWQCB's Executive Officer for his approval the type, and quantity of the additive. The use of additives shall comply with the *CONDITIONS* listed in this document.

2. *Discharge Specifications*

The discharge of green waste, food processing waste, agricultural waste, or paper waste for storage and treatment by composting or processing, grinding, or mulching shall not cause or threaten to cause a condition of contamination, pollution or nuisance.

3. *Maintenance*

Containment structures such as embankments, liners or surface impoundments shall be maintained in order to ensure proper performance whenever wastes are discharged.

4. *Wet Weather Preparations*

Prior to the rainy season, the discharger shall conduct a survey of the operation to ensure that the site has been graded and prepared to prevent erosion and to prevent ponding of waste water at any location not designed and operated to retain water.

5. Inspections

The discharger shall inspect compost, process, storage and treatment areas for emergence of leachate, ponding, or surface failures such as cracking or subsidence; such inspections shall be frequent enough to ensure compliance with the Conditions of this waiver. If visible leachate, ponding, cracking, or subsidence of surfaces is observed, the discharger shall immediately take necessary measures to maintain the performance standards described in *SITE CONDITIONS C*.

E. GENERAL CONDITIONS

1. Prohibitions

The inclusion of the following wastes for treatment by composting or processing under the conditions of this waiver are prohibited:

- a. municipal solid waste;
- b. sludges (including sewage sludge, water treatment sludge, and industrial sludge);
- c. septage;
- d. liquid wastes, unless specifically approved by the Regional Board;
- e. animal waste, except manure when used as an additive;
- f. oil and grease; and
- g. hazardous, designated, and any other wastes determined by the Regional Board to pose a potential threat to water quality.

2. Entry and Inspection

The discharger shall allow the RWQCB, or an authorized representative upon the presentation of credentials and other documents as may be required by law, to:

- a. Enter upon the discharger's premises where a conditionally waived facility or activity is located or conducted, or where records must be kept under the conditions of this waiver;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this waiver;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this waiver; and
- d. Sample or monitor at reasonable times, for the purposes of assuring compliance with this waiver or as otherwise authorized by the California Water Code, any substances or parameters at any location.

DEFINITION OF TERMS IN CONDITIONS FOR ITEM 24

GREEN WASTE: Material that consists of or contains waste from plants, including leaves, clippings, cuttings, trimmings of grass, weeds, shrubbery, bushes, or trees, residential or community garden wastes, and untreated wood wastes.

FOOD PROCESSING WASTE: Material that consists of or contains only pre-processed and post-processed waste derived from plants, or foods processed or produced at restaurants, hospitals and food distributors.

AGRICULTURAL WASTE: Material that consists of the plant waste coming directly from an agricultural commodity, and is the product of farms and ranches and by-products processed from these

products, as defined in Division 21, Part 2, Chapter 1 Section 58619 of the Food and Agriculture Code.

Agricultural waste includes agricultural, floricultural, silvicultural, vermicultural or viticultural products.

PAPER WASTE: Material that consists of nonhazardous paper and paper by-products.

ADDITIVE: Material that consists of waste or products which are approved by the RWQCB's Executive Officer

for mixture with feedstock or treated waste to adjust the moisture level, the carbon to nitrogen ratio, or the porosity of the wastes to create a condition favorable to the processing, or to improve the end-product.

Additives may include manures, fertilizers, and chemical amendments.

DISCHARGER: Any person who discharges waste which could affect the quality of waters of the state, and

includes any person who owns a waste management unit or who is responsible for the operation of a waste

management unit pursuant to Title 23, California Code of Regulations, Section 2601.

CONDITIONS FOR ITEM 26. PERMANENT RECLAIMED WATER PROJECTS:

1. The discharger shall submit a report of waste discharge pursuant to Section 13260 or 13522.5 of the California Water Code. This report shall contain sufficient technical information from which the Regional Board can determine if the proposed discharge complies with all applicable reclamation regulations; and
2. The proposed discharge of reclaimed water must be in compliance with the California Code of Regulations, Title 22, Division 4, Chapter 3, Articles 1 - 10; and
3. The proposed discharge of reclaimed water must be in compliance with the Water Quality Control Plan, San Diego Basin (9); and
4. The report of waste discharge must contain a letter from the local health department of the State Department of Health Services stating that the proposed project complies with all State and local Health requirements for the use of reclaimed water. This letter shall also specify any monitoring required to demonstrate compliance with Title 22, Division 4, Chapter 3, Reclamation Criteria, Articles 2, 3, 4, 5 and 5.1; and
5. Temporary waiver's of waste discharge requirements remain in effect for a project until the Regional Board is able to adopt permanent requirements. The Regional Board will adopt requirements, as appropriate, at the earliest possible opportunity, and in accordance with Regional Board priorities.

ATTACHMENT 2

WAIVER OF WASTE DISCHARGE REQUIREMENTS ENROLLMENT
FORM

ENROLLMENT FORM FOR WAIVER NOS.:

- 7 ANIMAL FEEDING OPERATIONS
- 15 MANURE COMPOSTING AND SOIL AMENDMENT
OPERATIONS
- 16 SOLID WASTE DISPOSAL FACILITIES ACCEPTING ONLY
INERT WASTES

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340
(858) 467-2952

WAIVER OF WASTE DISCHARGE REQUIREMENTS

ENROLLMENT FORM
(October 1, 2002)

CONTACT INFORMATION

OWNER/AGENT NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

TELEPHONE: (_____) _____

FACILITY INFORMATION

WAIVER NUMBER (SEE WAIVER POLICY): _____

TYPE OF DISCHARGE (SEE WAIVER POLICY): _____

FACILITY ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

CERTIFICATION

I certify that:

The above information is correct

I have read the Regional Board's Waiver Policy and am familiar with the conditions that apply to the discharge described above

To the best of my knowledge the discharge described above meets the criteria for a waiver of waste discharge requirements under the Regional Board's Waiver Policy

Print Name of Authorized Agent

Signature of Authorized Agent

Mail the completed form to the Regional Board's office at the address above.

ATTACHMENT 3

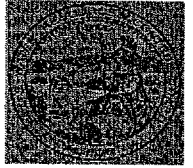
ENROLLMENT FORM FOR WAIVER NO. 23
TEMPORARY DISCHARGE OF SPECIFIED CONTAMINATED SOILS

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340
Attention: Land Discharge Unit

RWQCB Regulatory Program:

LDU DoD/SLIC UST/AGT/LOP County _____



I. Generator of Temporary Waste Pile

SECTION A: Temporary Waste Pile Waiver Certification

Generator Name:					
Mailing Address:					
City:	County:	State:	Zip:	Phone:	FAX:
Contact:			Title:		

II. Present Status of Temporary Waste Pile

Site Location:					
Property Owner Name:					
City:	County:	State:	Zip:	APN No.:	
RWQCB File No.:	LOP Case No.:	Quantity (Cu. Yds.):	Method of Containment:		

Waste Type	Contaminant/Constituent Concentrations							
Contaminant Type/Source: <input type="checkbox"/> Gasoline <input type="checkbox"/> Diesel <input type="checkbox"/> Other Petrol. Hydrocarbons <input type="checkbox"/> Impacted Dredge Spoils <input type="checkbox"/> Other Impacted Soils	Mean	Mean + 80% C.I.	Mean	Mean + 80% C.I.	Mean	Mean + 80% C.I.	Mean	Mean + 80% C.I.
	Mean	Mean + 80% C.I.	Mean	Mean + 80% C.I.	Mean	Mean + 80% C.I.	Mean	Mean + 80% C.I.
	Mean	Mean + 80% C.I.	Mean	Mean + 80% C.I.	Mean	Mean + 80% C.I.	Mean	Mean + 80% C.I.

III. Waste Pile Site Information

Site Conditions Met _____ <input type="checkbox"/> Ground Water Separation <input type="checkbox"/> Surface Water Separation <input type="checkbox"/> Flood Plain Protection <input type="checkbox"/> Cover of Waste Pile <input type="checkbox"/> Precipitation/Drainage Control	Discharger/Property Owner _____ Property Owner: _____ Property Address: _____ City: _____ County: _____ State: _____ Zip: _____ Contact: _____ Phone: _____ Date Waste Pile(s) Initiated: _____
--	--

Property Owner Acknowledgement

I hereby acknowledge receipt of the waste described in this notice, and acknowledge that I have reviewed any associated reports. By signing this form I acknowledge that the Generator of this waste has certified that all the conditions for the waiver from Waste Discharge Requirements (WDRs) for discharge of specified waste indicated in Section II (above) have been met.

Print Name: _____ Title: _____
 Signature: _____ Date: _____

IV. Generator Certification

I hereby certify that the information provided regarding soil characterization is a complete and accurate representation of the subject soil, and that the soil is not hazardous waste as defined by the California Code of Regulations, Title 22, and by the United States Environmental Protection Agency (Code of Federal Regulations, Title 40), and that all conditions for the waiver from WDRs for discharge of specified wastes indicated in Section II (above) have been met.

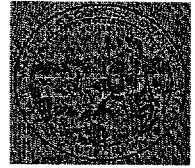
Print Name: _____ Title: _____
 Signature: _____ Date: _____

MAIL CERTIFICATION FORMS TO:

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Attention: Land Discharge Unit Supervisor



V. Final Waste Disposal Information

SECTION B: Temporary Waste Pile Waiver Certification

<p>Final Disposition of Waste</p> <p><input type="checkbox"/> Offsite/Landfill disposal</p> <p><input type="checkbox"/> On-site reuse/disposal</p> <p><input type="checkbox"/> Off-site reuse/disposal</p> <p><input type="checkbox"/> Other</p>	<p>Discharger/Property Owner</p> <p>Property Owner/Discharger:</p> <p>Mailing Address:</p> <p>City: _____ County: _____ State: _____ Zip: _____</p> <p>Contact Name: _____ Phone: _____</p> <p>Date(s) Waste Pile(s) Disposed: _____ Disposal Location(s): _____</p>
--	--

Final Disposal Certification

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

Print Name: _____

Title: _____

Signature: _____

Date: _____

<p>For Agency Use Only</p> <p>RWQCB Regulatory Program:</p> <p><input type="checkbox"/> LDU <input type="checkbox"/> DoD/SLIC <input type="checkbox"/> UST/AGT/LOP County _____</p>
--

C-3

CCC

Applicable Regulatory Exemptions

Code of Regulations Section 13252 Repair and Maintenance Activities that Require a Permit

California Coastal Act Section 30610 Developments Authorized without Permit

but not limited to swimming pools, or the construction or extension of any landscaping irrigation system.

(6) Any improvement to a single-family residence where the development permit issued for the original structure by the commission, regional commission, or local government indicated that any future improvements would require a development permit.

(c) In any particular case, even though an improvement falls into one of the classes set forth in subsection (b) above, the executive director of the commission may, where he or she finds the impact of the development on coastal resources or coastal access to be insignificant, waive the requirement of a permit; provided, however, that any such waiver shall not be effective until it is reported to the commission at its next regularly scheduled meeting. If any three (3) commissioners object to the waiver, the proposed improvement shall not be undertaken without a permit.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30610(a), Public Resources Code.

HISTORY

1. Amendment filed 6-10-77; effective thirtieth day thereafter (Register 77, No. 24).
2. Amendment of subsection (b)(4) filed 8-24-77; effective thirtieth day thereafter (Register 77, No. 35).
3. Amendment of subsection (a)(5) filed 5-29-79; effective thirtieth day thereafter (Register 79, No. 22).
4. Amendment filed 1-3-80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5-3-80.
5. Certificate of Compliance transmitted to OAH 4-29-80 and filed 5-8-80 (Register 80, No. 19).
6. Amendment of subsection (b)(1) filed 7-24-80; effective thirtieth day thereafter (Register 80, No. 30).
7. Amendment filed 1-28-81; effective thirtieth day thereafter (Register 81, No. 5).
8. Amendment of subsection (c) filed 8-14-81; effective thirtieth day thereafter (Register 81, No. 33).
9. Amendment of section heading and section filed 9-20-99; operative 10-20-99 (Register 99, No. 39).

Subchapter 7. Repair and Maintenance Activities That Require a Permit

§ 13252. Repair and Maintenance of Activities Requiring a Permit.

(a) For purposes of Public Resources Code Section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:

(1) Any method of repair or maintenance of a seawall revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline work that involves:

(A) Repair or maintenance involving substantial alteration of the foundation of the protective work including pilings and other surface or sub-surface structures;

(B) The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters, streams, wetlands, estuaries and lakes or on a shoreline protective work except for agricultural dikes within enclosed bays or estuaries;

(C) The replacement of 20 percent or more of the materials of an existing structure with materials of a different kind; or

(D) The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sand area, bluff, or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams.

(2) Any method of routine maintenance dredging that involves:

(A) The dredging of 100,000 cubic yards or more within a twelve (12) month period;

(B) The placement of dredged spoils of any quantity within an environmentally sensitive habitat area, on any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams; or

(C) The removal, sale, or disposal of dredged spoils of any quantity that would be suitable for beach nourishment in an area the commission has declared by resolution to have a critically short sand supply that must be maintained for protection of structures, coastal access or public recreational use.

(3) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

(A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;

(B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.

All repair and maintenance activities governed by the above provisions shall be subject to the permit regulations promulgated pursuant to the Coastal Act, including but not limited to the regulations governing administrative and emergency permits. The provisions of this section shall not be applicable to methods of repair and maintenance undertaken by the ports listed in Public Resources Code Section 30700 unless so provided elsewhere in these regulations. The provisions of this section shall not be applicable to those activities specifically described in the document entitled Repair, Maintenance and Utility Hookups, adopted by the Commission on September 5, 1978 unless a proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands, or public views to the ocean.

(b) Unless destroyed by natural disaster, the replacement of 50 percent or more of a single family residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not repair and maintenance under Section 30610(d) but instead constitutes a replacement structure requiring a coastal development permit.

(c) Notwithstanding the above provisions, the executive director of the commission shall have the discretion to exempt from this section ongoing routine repair and maintenance activities of local governments, state agencies, and public utilities (such as railroads) involving shoreline works protecting transportation road ways.

(d) Pursuant to this section, the commission may issue a permit for ongoing maintenance activities for a term in excess of the two year term provided by these regulations.

(e) In any particular case, even though a method of repair and maintenance is identified in subsection (a) above, the executive director may, where he or she finds the impact of the development on coastal resources or coastal access to be insignificant, waive the requirement of a permit; provided however, that any such waiver shall not be effective until it is reported to the commission at its next regularly scheduled meeting. If any three (3) commissioners object to the waiver, the proposed repair and maintenance shall not be undertaken without a permit.

NOTE: Authority cited: Section 30333, Public Resources Code. Reference: Section 30610(d), Public Resources Code.

HISTORY

1. New Subchapter 7 (Section 13252) filed 6-29-78 as an emergency; effective upon filing (Register 78, No. 26).
2. Amendment of subsection (a)(4) and new subsections (c) and (d) filed 11-21-78; effective thirtieth day thereafter (Register 78, No. 47).
3. Amendment filed 1-3-80 as an emergency; effective upon filing (Register 80, No. 1). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5-3-80.
4. Certificate of Compliance transmitted to OAH 4-29-80 and filed 5-8-80 (Register 80, No. 19).
5. Amendment filed 1-28-81; effective thirtieth day thereafter (Register 81, No. 5).
6. Amendment of subsections (c) and (d) filed 8-14-81; effective thirtieth day thereafter (Register 81, No. 33).

**PUBLIC RESOURCES CODE
DIVISION 20
CALIFORNIA COASTAL ACT
(Effective as of January 1, 2007)**

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commission has formally designated as part of the California Coastal Trail, shall be transferred or sold by the state to any private entity unless the state retains a permanent property interest in the land adequate to provide public access to or along the sea. In any transfer or sale of real property by a state agency to a private entity or person pursuant to this section, the instrument of conveyance created by the state shall require that the private entity or person or the entity or person's successors or assigns manage the property in such a way as to ensure that existing or potential public access is not diminished. The instrument of conveyance shall further require that any violation of this management requirement shall result in the reversion of the real property to the state.

(b) This section shall not apply to the transfer of state land to a non-profit organization that exists for the purposes of preserving lands for public use and enjoyment and meets the requirements of subdivision (b) of Section 831.5 of the Government Code.

(c) Notwithstanding the provisions of subdivision (a), state lands between the first public road and the sea, that are under the possession and control of the Department of Parks and Recreation or the State Coastal Conservancy, may be transferred or sold if the department or the conservancy makes one or more of the following findings at a noticed public hearing relating to the transfer or sale of the property:

(1) The state has retained or will retain, as a condition of the transfer or sale, permanent property interests on the land providing public access to or along the sea.

(2) Equivalent or greater public access to the same beach or shoreline area is provided for than would be feasible if the land were to remain in state ownership.

(3) The land to be transferred or sold is an environmentally sensitive area with natural resources that would be adversely impacted by public use, and the state will retain permanent property interests in the land that may be necessary to protect, or otherwise provide for the permanent protection of, those resources prior to or as a condition of the transfer or sale.

(4) The land to be transferred or sold has neither existing nor potential public accessway to the sea.

(d) Nothing in this section shall be construed to interfere with the management responsibilities of state resource agencies, including, but not limited to, the responsibilities to ensure public safety and implement the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code).

(e) As used in this section, "state land" means any real property in which the state or any state agency has an ownership interest including, but not limited to, a fee, title, easement, deed restriction, or other interest in land. It does not include land in which a city, county, city and county, or district has an ownership interest.

(f) Nothing in this section is intended to restrict a private property owner's right to sell or transfer private property.

(Added by Ch. 822, Stats. 1999.)

Section 30610 Developments authorized without permit

Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas:

(a) Improvements to existing single-family residences; provided, however, that the commission shall specify, by regulation, those classes of development which involve a risk of adverse environmental effect and shall require that a coastal development permit be obtained pursuant to this chapter.

(b) Improvements to any structure other than a single-family residence or a public works facility; provided, however, that the commission shall specify, by regulation, those types of improvements which (1) involve a risk of adverse environmental effect, (2) adversely affect public access, or (3) involve a change in use contrary to any policy of this division. Any improvement so specified by the commission shall require a coastal development permit.

(c) Maintenance dredging of existing navigation channels or moving dredged material from those channels to a disposal area outside the coastal zone, pursuant to a permit from the United States Army Corps of Engineers.

(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter.

(e) Any category of development, or any category of development within a specifically defined geographic area, that the commission, after public hearing, and by two-thirds vote of its appointed members, has described or identified and with respect to which the commission has found that there is no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast and, where the exclusion precedes certification of the applicable local coastal program, that the exclusion will not impair the ability of local government to prepare a local coastal program.

(f) The installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and any development approved pursuant to this division; provided, however, that the commission may, where necessary, require reasonable conditions to mitigate any adverse impacts on coastal resources, including scenic resources.

(g) (1) The replacement of any structure, other than a public works facility, destroyed by a disaster. The replacement structure shall conform to applicable existing zoning requirements, shall be for the same use as the destroyed structure, shall not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent, and shall be sited in the same location on the affected property as the destroyed structure.

(2) As used in this subdivision:

(A) "Disaster" means any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of its owner.

(B) "Bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(C) "Structure" includes landscaping and any erosion control structure or device which is similar to that which existed prior to the occurrence of the disaster.

(h) Any activity anywhere in the coastal zone that involves the conversion of any existing multiple-unit residential structure to a time-share project, estate, or use, as defined in Section 11212 of the Business and Professions Code. If any improvement to an existing structure is otherwise exempt from the permit requirements of this division, no coastal development permit shall be required for that improvement on the basis that it is to be made in connection with any conversion exempt pursuant to this subdivision. The division of a multiple-unit residential structure into condominiums, as defined in Section 783 of the Civil Code, shall not be considered a time-share project, estate, or use for purposes of this subdivision.

(i) (1) Any proposed development which the executive director finds to be a temporary event which does not have any significant adverse impact upon coastal resources within the meaning of guidelines adopted pursuant to this subdivision by the commission. The commission shall, after public hearing, adopt guidelines to implement this subdivision to assist local governments and persons planning temporary events in complying with this division by specifying the standards which the executive director shall use in determining whether a temporary event is excluded from permit requirements pursuant to this subdivision. The guidelines adopted pursuant to this subdivision shall be exempt from the review of the Office of Administrative Law and from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Exclusion or waiver from the coastal development permit requirements of this division pursuant to this subdivision does not diminish, waive, or otherwise prevent the commission from asserting and exercising its coastal development permit jurisdiction over any temporary event at any time if the commission determines that the exercise of its jurisdiction is necessary to implement the coastal resource protection policies of Chapter 3 (commencing with Section 30200).

(Amended by: Ch. 1075, Stats. 1978; Ch. 919, Stats. 1979; Ch. 43, Stats. 1982; Ch. 1470, Stats. 1982; Ch. 1088, Stats. 1992; Ch. 697, Stats. 2004.)

Section 30610.1 Single family residence construction; criteria

(a) Prior to certification of the applicable local coastal program, no coastal development permit shall be required for the construction of a single-family residence on any vacant lot meeting the criteria set forth in subdivision (c) and located in a specified area designated by the commission pursuant to subdivision (b).

(b) Within 60 days from the effective date of this section, the commission shall designate specific areas in the coastal zone where the construction of a single-family residence on a vacant lot meeting the criteria set forth in subdivision (c) shall not require a coastal development permit. Areas shall be designated for the exclusion provided for in this section if construction of single-family residences within the area to be designated has no potential, either individually or cumulatively, for significant adverse impacts on highly scenic resources of public importance, on environmentally sensitive areas, on prime agricultural land or on agricultural lands currently in production, or on public access to or along the coast.

In addition, if septic tanks will be required or used, an area identified as having septic tank problems by the appropriate regional water quality control board or the State Water Resources Control Board in an approved basin plan or by other formal action of such board may not be designated for exclusion pursuant to this section.

(c) Within areas designated pursuant to subdivision (b), no coastal development permit shall be required for the construction of a single-family residence on any vacant lot which meets all of the following criteria:

(1) It is not located between the first public road and the sea or immediately adjacent to the inland extent of any beach or of the mean high tide line where there is no beach.

(2) Is a legal lot as of the effective date of this section and conforms with the minimum lot size and lot use designations of the applicable general plan and zoning ordinances.

(3) Is not located within an area known to the affected local government, or designated by any other public agency, as a geologic hazard area or as a flood hazard area, or, if located within such an area, it has been determined by the affected local government to be a safe site for the construction of a single-family residence.

(4) Is no more than 250 feet from an existing improved road adequate for use throughout the year.

Appendix D
Example Spreadsheet for
Compiling Anticipated Physical
and Biological Impact
Information for all
Maintenance Sites

Appendix E
Example Channel Maintenance
Report Form

CHANNEL MAINTENANCE REPORT

Site/Facility # _____

Requestor _____ Contact Phone No. _____

Environmental Reviewer _____ Contact Phone No. _____

Date of Site Assessment _____

Description of Work (e.g., routine, re-occurring; also note general frequency maintenance at this site has been conducted)	
Street Name _____ Location: Thomas Brother's Guide Coord.: _____	Work Orientation from Street (N, S, E, W): Location Between Street _____ and Street _____
Maintenance Facility Type: <input type="checkbox"/> Stream <input type="checkbox"/> Roadside Ditch <input type="checkbox"/> Spillway <input type="checkbox"/> Detention Basin <input type="checkbox"/> Culvert <input type="checkbox"/> Other:	Additional Description:
Work within drainage/creek Length: _____ (How many feet were cleared of silt/sand)	Name of drainage/creek: Width: _____ Area (SQ FT): _____ Depth (FT): _____
Is the creek lined: <input type="checkbox"/> Yes <input type="checkbox"/> No Notes:	Lining Type: <input type="checkbox"/> Concrete lined, both sides, bottom <input type="checkbox"/> Earth line, both sides, bottom <input type="checkbox"/> Riprap sides, earth bottom <input type="checkbox"/> Concrete sides, earth bottom <input type="checkbox"/> Other type:
Silt/Sand Removal Length: _____ (How many feet were cleared of silt/sand)	Describe cause of silt/sand:
Debris Removal Length: _____ (How many feet were cleared of debris)	Describe debris and cause:
Vegetation Removal Length: _____ (How many feet were cleared of vegetation)	Types of Vegetation Removed: (Indicate bush, trees, plants, grasses, list diameter of trunk at 4' height)
Wetland Vegetation Removal Types & Area: <input type="checkbox"/> Arrundo SF <input type="checkbox"/> FWM SF <input type="checkbox"/> MFS SF <input type="checkbox"/> RW SF <input type="checkbox"/> DW SF <input type="checkbox"/> WUS SF	Upland Vegetation Removal Types & Area: <input type="checkbox"/> Uplands SF List other plants:
Ground Disturbing Activities Length: _____ (How many feet were disturbed due to activity)	Describe activities:
Access via previously disturbed area: <input type="checkbox"/> Yes <input type="checkbox"/> No	List access route, equipment used:
Work within nesting breeding season (Feb-August): <input type="checkbox"/> Yes <input type="checkbox"/> No	Biologist/Monitor/Archaeologist present: <input type="checkbox"/> Yes <input type="checkbox"/> No
ESA Potential: <input type="checkbox"/> Yes <input type="checkbox"/> No	AST LBV SKR CAGN Other:

*Attach photos and/or map as required.

Additional Maintenance Activity Description: _____

Describe surrounding land use/habitat and species within work area (assume 500-foot buffer area): _____

Identify temporary/permanent impacts to habitat by area (acres/square footage): _____

Reviewer Recommendations (Avoidance, Minimization, and Mitigation Measures): _____

Additional Comments (Describe any unusual conditions, situations or special requirements needed to do the work such as diversion of water, construction of staging area, discovery of hazardous materials or waste, replacement of bank material, presence of utilities, etc.): _____

- Instruction: This form must be filled out completely whenever any work is done at a storm water or flood control facility that is in your inventory. Attach additional sheets if needed to explain work. Maintain copies; information provided will be submitted along with permit applications. These forms also be used as pre-activity notification sheets as required by the agencies.

Attach 1st of 2 **before** pictures of work, include upstream and downstream views.

Note: if resources at site must be flagged or staked to limit impacts into sensitive areas, also include pictures depicting the measures that were installed.

Attach 2nd of 2 **before** pictures of work, include upstream and downstream views.

Note: if resources at site must be flagged or staked to limit impacts into sensitive areas, also include pictures depicting the measures that were installed.

Attach 1st of 2 **after** pictures of work, include upstream and downstream views.

Attach 2nd of 2 **after** pictures of work, include upstream and downstream views.

Notes Regarding Photos:

Appendix F

Agency Applications/Submittals and Instructions

- F-1 U.S. Army Corps of Engineers – Section 404 Permit
- F-2 Regional Water Quality Control Board – Section 401 Certification
- F-3 U.S. Fish and Wildlife Service – Biological Assessment
- F-4 California Department of Fish and Game – Streambed Alteration Agreement
- F-5 California Department of Fish and Game – Section 2081 Permit
- F-6 California Coastal Commission – Coastal Development Permit

Current agency applications and instructions are provided herein. Always check the agency's website to determine whether updates are in effect, or submittal requirements have changed (e.g., filing fees). It is the applicant's responsibility to use the latest forms and other information available on an agency's websites.

F-1
U.S. Army Corps of Engineers
Section 404 Permit

Application for Department of the Army Permit, ENG FORM 4345

<http://www.usace.army.mil/cw/cecwo/reg/eng4345a.pdf>

Instructions for Preparing a Department of the Army Permit Application

<http://www.spl.usace.army.mil/co/co5.html>

Nationwide Permit Pre-Construction Notification (PCN) Form

http://www.spl.usace.army.mil/regulatory/SPD-wide_NWP-PCN-checklist_web.doc

The public reporting burden for this collection of information is estimated to average 10 hours per response, although the majority of applications should require 5 hours or less. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Service Directorate of Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302; and to the Office of Management and Budget, Paperwork Reduction Project (0710-0003), Washington, DC 20503. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. Please DO NOT RETURN your form to either of those addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.

PRIVACY ACT STATEMENT

Authorities: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413. Principal Purpose: Information provided on this form will be used in evaluating the application for a permit. Routine Uses: This information may be shared with the Department of Justice and other federal, state, and local government agencies. Submission of requested information is voluntary, however, if information is not provided, the permit application cannot be processed nor can a permit be issued.

One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)

1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETED
--------------------	----------------------	------------------	-------------------------------

(ITEMS BELOW TO BE FILLED BY APPLICANT)

5. APPLICANT'S NAME	8. AUTHORIZED AGENT'S NAME AND TITLE <i>(an agent is not required)</i>
6. APPLICANT'S ADDRESS	9. AGENT'S ADDRESS
7. APPLICANT'S PHONE NUMBERS WITH AREA CODE a. Residence b. Business	10. AGENT'S PHONE NUMBERS WITH AREA CODE a. Residence b. Business

11. STATEMENT OF AUTHORIZATION

I hereby authorize _____ to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

APPLICANT'S SIGNATURE

DATE

NAME, LOCATION AND DESCRIPTION OF PROJECT OR ACTIVITY

12. PROJECT NAME OR TITLE *(see instructions)*

13. NAME OF WATERBODY, IF KNOWN *(if applicable)*

14. PROJECT STREET ADDRESS *(if applicable)*

15. LOCATION OF PROJECT

COUNTY

STATE

16. OTHER LOCATION DESCRIPTIONS, IF KNOWN *(see instructions)*

17. DIRECTIONS TO THE SITE

18. Nature of Activity (Description of project, include all features)

19. Project Purpose (Describe the reason or purpose of the project, see instructions)

USE BLOCKS 20-22 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED

20. Reason(s) for Discharge

21. Type(s) of Material Being Discharged and the Amount of Each Type in Cubic Yards

22. Surface Area in Acres of Wetlands or Other Waters Filled (see instructions)

23. Is Any Portion of the Work Already Complete? Yes _____ No _____ IF YES, DESCRIBE THE COMPLETED WORK

24. Addresses of Adjoining Property Owners, Lessees, etc., Whose Property Adjoins the Waterbody (if more than can be entered here, please attach a supplemental list).

25. List of Other Certifications or Approvals/Denials Received from other Federal, State, or Local Agencies for Work Described in This Application

AGENCY	TYPE APPROVAL*	IDENTIFICATION NUMBER	DATE APPLIED	DATE APPROVED	DATE DENIED

*Would include but is not restricted to zoning, building and flood plain permits

26. Application is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

SIGNATURE OF APPLICANT

DATE

SIGNATURE OF AGENT

DATE

The application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly authorized agent if the statement in block 11 has been filled out and signed.

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals, or covers up any trick scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

Instructions for Preparing a
Department of the Army Permit Application

Blocks 1 through 4. To be completed by Corps of Engineers.

Block 5. Applicant's Name. Enter the name of the responsible party or parties. If the responsible party is an agency, company, corporation, or other organization, indicate the responsible officer and title. If more than one party is associated with the application, please attach a sheet with the necessary information marked Block 5.

Block 6. Address of Applicant. Please provide the full address of the party or parties responsible for the application. If more space is needed, attach an extra sheet of paper marked Block 6.

Block 7. Applicant Telephone Number(s). Please provide the number where you can usually be reached during normal business hours.

Blocks 8 through 11. To be completed, if you choose to have an agent.

Block 8. Authorized Agent's Name and Title. Indicate name of individual or agency, designated by you, to represent you in this process. An agent can be an attorney, builder, contractor, engineer, or any other person or organization. Note: An agent is not required.

Blocks 9 and 10. Agent's Address and Telephone Number. Please provide the complete mailing address of the agent, along with the telephone number where he / she can be reached during normal business hours.

Block 11. Statement of Authorization. To be completed by applicant, if an agent is to be employed.

Block 12. Proposed Project Name or Title. Please provide name identifying the proposed project, *e.g.*, Landmark Plaza, Burned Hills Subdivision, or Edsall Commercial Center.

Block 13. Name of Waterbody. Please provide the name of any stream, lake, marsh, or other waterway to be directly impacted by the activity. If it is a minor (no name) stream, identify the waterbody the minor stream enters.

Block 14. Proposed Project Street Address. If the proposed project is located at a site having a street address (not a box number), please enter it here.

Block 15. Location of Proposed Project. Enter the county and state where the proposed project is located. If more space is required, please attach a sheet with the necessary information marked Block 15.

Block 16. Other Location Descriptions. If available, provide the Section, Township, and Range of the site and / or the latitude and longitude. You may also provide description of the proposed project location, such as lot numbers, tract numbers, or you may choose to locate the proposed project site from a known point (such as the right descending bank of Smith Creek, one mile downstream from the Highway 14 bridge). If a large river or stream, include the river mile of the proposed project site if known.

Block 17. Directions to the Site. Provide directions to the site from a known location or landmark. Include highway and street numbers as well as names. Also provide distances from known locations and any other information that would assist in locating the site.

Block 18. Nature of Activity. Describe the overall activity or project. Give appropriate dimensions of structures such as wingwalls, dikes (identify the materials to be used in construction, as well as the methods by which the work is to be done), or excavations (length, width, and height). Indicate whether discharge of dredged or fill material is involved. Also, identify any structure to be constructed on a fill, piles, or float-supported platforms.

The written descriptions and illustrations are an important part of the application. Please describe, in detail, what you wish to do. If more space is needed, attach an extra sheet of paper marked Block 18.

Block 19. Proposed Project Purpose. Describe the purpose and need for the proposed project. What will it be used for and why? Also include a brief description of any related activities to be developed as the result of the proposed project. Give the approximate dates you plan to both begin and complete all work.

Block 20. Reasons for Discharge. If the activity involves the discharge of dredged and/or fill material into a wetland or other waterbody, including the temporary placement of material, explain the specific purpose of the placement of the material (such as erosion control).

Block 21. Types of Material Being Discharged and the Amount of Each Type in Cubic Yards. Describe the material to be discharged and amount of each material to be discharged within Corps jurisdiction. Please be sure this description will agree with your illustrations. Discharge material includes: rock, sand, clay, concrete, etc.

Block 22. Surface Areas of Wetlands or Other Waters Filled. Describe the area to be filled at each location. Specifically identify the surface areas, or part thereof, to be filled. Also include the means by which the discharge is to be done (backhoe, dragline, etc.). If dredged material is to be discharged on an upland site, identify the site and the steps to be taken (if necessary) to prevent runoff from the dredged material back into a waterbody. If more space is needed, attach an extra sheet of paper marked Block 22.

Block 23. Is Any Portion of the Work Already Complete? Provide any background on any part of the proposed project already completed. Describe the area already developed, structures completed, any dredged or fill material already discharged, the type of material, volume in cubic yards, acres filled, if a wetland or other waterbody (in acres or square feet). If the work was done under an existing Corps permit, identify the authorization, if possible.

Block 24. Names and Addresses of Adjoining Property Owners, Lessees, etc., Whose Property Adjoins the Project Site. List complete names and full mailing addresses of the adjacent property owners (public and private) lessees, etc., whose property adjoins the waterbody or aquatic site where the work is being proposed so that they may be notified of the proposed activity (usually by public notice). If more space is needed, attach an extra sheet of paper marked Block 24.

Information regarding adjacent landowners is usually available through the office of the tax assessor in the county or counties where the project is to be developed.

Block 25. Information about Approvals or Denials by Other Agencies. You may need the approval of other federal, state, or local agencies for your project. Identify any applications you have submitted and the status, if any (approved or denied) of each application. You need not have obtained all other permits before applying for a Corps permit.

Block 26. Signature of Applicant or Agent. The application must be signed by the owner or other authorized party (agent). This signature shall be an affirmation that the party applying for the permit possesses the requisite property rights to undertake the activity applied for (including compliance with special conditions, mitigation, etc.).

DRAWINGS AND ILLUSTRATIONS

General Information.

Three types of illustrations are needed to properly depict the work to be undertaken. These illustrations or drawings are identified as a Vicinity Map, a Plan View or a Typical Cross-Section Map. Identify each illustration with a figure or attachment number.

Please submit one original, or good quality copy, of all drawings on 8½ x 11 inch plain white paper (tracing paper or film may be substituted). Use the fewest number of sheets necessary for your drawings or illustrations.

Each illustration should identify the project, the applicant, and the type of illustration (vicinity map, plan view, or cross-section). **While illustrations need not be professional (many small, private project illustrations are prepared by hand), they should be clear, accurate, and contain all necessary information.**

U.S. Army Corps of Engineers South Pacific Division



Nationwide Permit Pre-Construction Notification (PCN) Form

This form integrates requirements of the Nationwide Permit Program within SPD, including General and Regional Conditions. Please consult instructions prior to completing this form.

Box 1 Project Name		Applicant Name	
Applicant Title		Applicant Company, Agency, etc.	
Mailing Address		Applicant's internal tracking number (if any)	
Work Phone with area code	Home Phone with area code	Fax #	E-mail Address
Relationship of applicant to property: <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Purchaser <input type="checkbox"/> Lessee <input type="checkbox"/> Other:			
Application is hereby made for verification that subject regulated activities associated with subject project qualify for authorization under a Corps nationwide permit or permits as described herein. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief, such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. I hereby grant to the agency to which this application is made, the right to enter the above-described location to inspect the proposed, in-progress or completed work. I agree to start work <u>only</u> after all necessary permits have been received.			
Signature of applicant			Date (m/d/yyyy)

Box 2 Authorized Agent/Operator Name and Signature <i>(If an agent is acting for the applicant during the permit process)</i>			
Agent/Operator Title		Agent/Operator Company, Agency, etc.	
Mailing Address			
E-mail Address			
Work Phone with area code	Home Phone with area code	Fax #	Cell Phone #
I hereby authorize the above named authorized agent to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application. I understand that I am bound by the actions of my agent and I understand that if a federal or state permit is issued, I, or my agent, must sign the permit.			
Signature of applicant			Date (m/d/yyyy)
I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief, such information is true, complete, and accurate.			
Signature of authorized agent			Date (m/d/yyyy)

Box 3 Name of property owner(s), if other than applicant:	
Owner Title	Owner Company, Agency, etc.
Mailing Address	
Work Phone	Home Phone

Box 4 Name of contractor(s) (if known):	
Contractor Title	Contractor Company, Agency, etc.
Mailing Address	
Work Phone	Home Phone

Include multiple copies of Box 5 for separate sites.

Box 5 Site Number __ of __. Project location(s), including street address, city, county, state, zip code where proposed activity will occur:	
Waterbody (if known, otherwise enter "an unnamed tributary to"):	
Tributary to what known, downstream waterbody:	
Latitude & longitude (D/M/S, DD, or UTM):	Zoning Designation (no codes or abbreviations):
Assessors parcel number:	Section, Township, Range:
USGS Quad map name:	
Watershed and other location descriptions, if known:	
Directions to the project location:	
Nature of Activity (Description of project, include all features, see instructions):	
Project Purpose (Description the reason or purpose of the project, see instructions):	

Use Box 6 if dredged and/or fill material is to be discharged:

Box 6 Reason(s) for Discharge into waters of the United States:

Type(s) of material being discharged and the amount of each type in cubic yards:

Total surface area in acres of wetlands or other waters of the U.S. filled (see instructions):

Indicate in ACRES and LINEAR FEET (where appropriate) the proposed impacts to **waters of the United States**, and identify the impact(s) as permanent and/or temporary for each water body type listed below:

Water Body Type	Permanent		Temporary	
	Acres	Linear feet	Acres	Linear feet
Wetland				
Riparian streambed				
Unveg. streambed				
Lake				
Ocean				
Other				
Total:				

Potential indirect and/or cumulative impacts of proposed discharge (if any):

Required drawings (see instructions):

Vicinity map: Attached (or mail copy separately if applying electronically)

To-scale Plan view drawing(s): Attached (or mail copy separately if applying electronically)

To-scale elevation and/or Cross Section drawing(s): Attached (or mail copy separately if applying electronically)

Has a wetlands/waters of the U.S. delineation been completed?

Yes, Attached (or mail copy separately if applying electronically) No

If a delineation has been completed, has it been verified in writing by the Corps?

Yes, Date of approved jurisdictional determination (m/d/yyyy): _____ Corps file number: _____ No

Please attach¹ one or more color photographs of the existing conditions (aerials if possible).

¹or mail copy separately if applying electronically

Dredge Volume: Indicate in CUBIC YARDS the quantity of material to be dredged or used as fill:

Indicate type(s) of material proposed to be discharged in waters of the United States:

For proposed discharges of dredged material into waters of the U.S. (including beach nourishment), please attach² a proposed Sampling and Analysis Plan (SAP) prepared according to Inland Testing Manual (ITM) guidelines (including Tier I information, if available).

²or mail copy separately if applying electronically

Is any portion of the work already complete? YES NO

If yes, describe the work:

Box 7 Intended NWP permit number³:
Intended NWP permit number (2nd):
Intended NWP number (3rd):

³Enter the intended permit type(s). See NWP regulations for permit types and qualification information (http://www.usace.army.mil/inet/functions/cw/cecwo/reg/nationwide_permits.htm).

Box 8 Authority:

Is Section 10 of the Rivers and Harbors Act applicable?: YES NO

Is Section 404 of the Clean Water Act applicable?: YES NO

Box 9 Is the discharge of fill or dredged material for which Section 10/404 authorization is sought part of a larger plan of development?: YES NO

If discharge of fill or dredged material is part of development, name and proposed schedule for that larger development (start-up, duration, and completion dates):

Location of larger development (If discharge of fill or dredged material is part of a plan of development, a map of suitable quality and detail of the entire project site should be included):

Total area in acres of entire project area (including larger plan of development, where applicable):

Box 10 Threatened or Endangered Species

Please list any federally-listed (or proposed) threatened or endangered species or critical habitat within the project area (use scientific names (e.g., Genus species), if known):

- a.
- b.
- c.
- d.
- e.
- f.

Have surveys, using U.S. Fish and Wildlife Service/NOAA Fisheries protocols, been conducted?

Yes, Report attached (or mail copy separately if applying electronically) No

If a federally-listed species would be impacted, please provide a description and a biological evaluation.

Yes, Report attached (or mail copy separately if applying electronically) Not attached

Has the USFWS/NOAA Fisheries issued a Biological Opinion?

Yes, Attached (or mail copy separately if applying electronically) No

If yes, list date Opinion was issued (m/d/yyyy):

Has Section 7 consultation been initiated by another federal agency?

Yes, Initiation letter attached (or mail copy separately if applying electronically) No

Has Section 10 consultation been initiated for the proposed project?

Yes, Initiation letter attached (or mail copy separately if applying electronically) No

Box 11 Historic properties and cultural resources:

Please list any historic properties listed (or eligible to be listed) on the National Register of Historic Places:

- a.
- b.
- c.
- d.
- e.
- f.

Are any cultural resources of any type known to exist on-site?

Yes No

Has an archaeological records search been conducted?

Yes, Report attached (or mail copy separately if applying electronically) No

Has a archaeological pedestrian survey been conducted for the site?

Yes, Report attached (or mail copy separately if applying electronically) No

Has a Section 106 MOA been signed by another federal agency and the SHPO?

Yes, Attached (or mail copy separately if applying electronically) No

If yes, list date MOA was signed (m/d/yyyy):

Has Section 106 consultation been initiated by another federal agency?

Yes, Initiation letter attached (or mail copy separately if applying electronically) No

Box 12 Measures taken to avoid and minimize impacts to waters of the United States (if any):

Include multiple copies of Box 13 for separate sites.

Box 13 Proposed Compensatory Mitigation (site __ of __) related to fill/excavation and dredge activities. Indicate in ACRES and LINEAR FEET (where appropriate) the total quantity of waters of the United States proposed to be created, restored, enhanced and/or preserved for purposes of providing compensatory mitigation. Indicate water body type (wetland, riparian streambed, unvegetated streambed, lake, ocean, other) or non-jurisdictional (uplands⁵). Indicate mitigation type (on- or off-site by applicant, mitigation bank, in-lieu fee program):

Water Body Type	Created	Restored	Enhanced	Preserved	Mitigation type
Example: wetland	0.8 acre	0.2 acre	-	-	On-site by app
Example: riparian stream	-	-	3.0 acres/1300 lf	-	ILFP
Totals:					

⁵ For uplands, please indicate if designed as an upland buffer.

If no mitigation is proposed, provide detailed explanation of why no mitigation would be necessary:

Has a draft/conceptual mitigation plan been prepared in accordance with the Army Corps of Engineers District guidelines? Yes, Attached (or mail copy separately if applying electronically) No

Mitigation site latitude & longitude (D/M/S, DD, or UTM):

USGS Quad map name:

Assessors parcel number:

Section, Township, Range, USGS Quadrangle Map, Latitude/Longitude:

Other location descriptions, if known:

Directions to the mitigation location:

Box 14 Water Quality Certification (see instructions):

Applying for certification? Yes, Attached (or mail copy separately if applying electronically) No

Certification issued? Yes, Attached (or mail copy separately if applying electronically) No

Exempt? Yes No

If exempt, state why: Agency concurrence? Yes, Attached No

Box 15 Coastal Zone Management Act (see instructions):

Is the project located within the Coastal Zone? Yes No

If yes, applying for a coastal commission-approved Coastal Development Permit?

Yes, Attached (or mail copy separately if applying electronically) No

If no, applying for separate CZMA-consistency certification?

Yes, Attached (or mail copy separately if applying electronically) No

Permit/Consistency issued? Yes, Attached (or mail copy separately if applying electronically) No

Exempt? Yes No

If exempt, state why:

Box 16 List of other certifications or approvals/denials received from other federal, state, or local agencies for work described in this application:

Agency	Type Approval ⁴	Identification No.	Date Applied	Date Approved	Date Denied
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⁴ Would include but is not restricted to zoning, building, and flood plain permits

NWP General conditions (GC) checklist:

1. Navigation:

Project would be in compliance with GC? Yes No

2. Proper Maintenance:

Project would be in compliance with GC? Yes No

3. Erosion and Siltation Controls:

Project would be in compliance with GC? Yes No

4. Aquatic Life Movements:

Project would be in compliance with GC? Yes No

5. Equipment:

Project would be in compliance with GC? Yes No

6. Regional and Case-by-Case Conditions:

Complete the Regional Conditions checklist below.

Project would be in compliance with any Case-by-case conditions? Yes No

7. Wild and Scenic Rivers:

Project would be in compliance with GC? Yes No

8. Tribal Rights:

Project would be in compliance with GC? Yes No

9. Water Quality (401 Certification): see Box 14 above.

10. Coastal Zone Permit: see Box 15 above.

11. Endangered Species: see Box 11 above.

12. Historic Properties: see Box 12 above.

13. Notification (*Check mark and provide those that apply*)

NWP 7, 12, 14, 18, 21, 34, 38, 39, 40, 41, 42, and 43: Delineation of wetlands and other waters of the U.S.

NWP 7: Original Design Capacity & Configurations

NWP 14: Compensatory Mitigation Proposal & written statement describing how temporary losses will be minimized to the maximum extent possible

NWP 21: Office of Surface Mining or State-approved mitigation Plan

NWP 27: Documentation of Prior Condition of Site

NWP 29: Past use of NWP, statement of personal residence, parcel size description, land description

NWP 31 (for repeat use): 5 year Maintenance Plan, baseline channel information, delineation, and disposal site information

NWP 33: Restoration Plan

NWP 39, 43, and 44: Written Statement on Avoidance and Minimization Measures

NWP 39 and 42: Compensatory Mitigation Plan/Justifications of no plan

NWP 40: Compensatory Mitigation Proposal

- NWP 43: Maintenance Plan (for new construction) and compensatory mitigation proposal
- NWP 44: Description of affected waters, minimization measures and reclamation plan
- NWPs 12, 14, 29, 39, 40, 42, 43, and 44: FEMA map, FEMA construction requirements and demonstration of FEMA compliance

14. Compliance Certification:

Applicant is aware of this post-construction requirement? Yes No

15. Use of Multiple Nationwide Permits:

Applicant is aware that if total proposed acreage of impact exceeds acreage limit of NWP with highest specified acreage, no NWP can be issued? Yes No

16. Water Supply Intakes:

Project would be in compliance with GC? Yes No

17. Shellfish Beds:

Shellfish beds present? Yes No

Project would be in compliance with GC? Yes No

18. Suitable Material:

Project would be in compliance with GC? Yes No

19. Mitigation:

Project would be in compliance with GC? Yes No

20. Spawning Areas :

Spawning areas present? Yes No

Project would be in compliance with GC? Yes No

21. Management of Water Flows:

Project would be in compliance with GC? Yes No

22. Adverse Effects From Impoundments:

Project would be in compliance with GC? Yes No

23. Waterfowl Breeding Areas:

Waterfowl breeding areas present? Yes No

Project would be in compliance with GC? Yes No

24. Removal of Temporary Fills:

Project would be in compliance with GC? Yes No

25. Designated Critical Waters (*check those that apply*)

Includes:

- 1) NOAA designated marine sanctuaries,
- 2) National Wild and Scenic Rivers,
- 3) Critical habitat for Federally listed species,
- 4) Coral reefs,
- 5) State natural heritage sites,
- 6) Officially designated waters

Applicant is aware of the restrictions a) and b) below? Yes No

a) NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 : No NWP can be issued (except in certain cases described in full text of GC#25).

b) NWP 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38:
Notification required.

26. Fills within 100-Year Floodplains:

Project would be within 100-year floodplains? Yes No

If yes, project would be in compliance with restrictions a) and b) below? Yes No

a) Discharges Below Headwaters (*below point of 5 cfs*) resulting in permanent above-grade fills:

NWP 29, 39, 40, 42, 43, and 44: No NWP can be issued.

NWP 12 and 14: Notification required.

b) Discharges in Headwaters (*above point of 5 cfs*) resulting in permanent above-grade fills:

Flood Fringe

NWP 12, 14, 29, 39, 40, 42, 43, and 44: Notification required.

Floodway

NWP 29, 39, 40, 42, 43, and 44: No NWP can be issued.

NWP 12 and 14: Notification required.

27. Construction Period

Applicant is aware of requirements under this GC? Yes No

NWP-specific requirements checklist:

1. Nationwide 03 (case iii):

Evidence of damage (due to storm, flood, etc.) such as recent topographic surveys or photographs attached? Yes No

2. Nationwide 07:

NPDES permit or other proof of CWA Section 402 compliance attached? Yes No

3. Nationwides 13, 14, 18, 29, 39, 40, 42, 43, 44:

Activity/crossing must be part of a single and complete project.

Project would be in compliance with this requirement? Yes No

4. Nationwide 31:

As-built or approved engineering drawings for each structure attached? Yes No

5. Nationwide 40:

Documentation of an NRCS exemption, a NRCS-certified wetland delineation, and a NRCS-approved compensatory mitigation plan attached? Yes No

NWP Regional Conditions (RC) checklist:

I. Los Angeles District (SPL) in Arizona and California:

1. Is the project located within a coastal watershed from the southern reach of the Santa Monica Mountains in Los Angeles County to the San Luis Obispo County/Monterey County boundary? Yes No

If yes, then would the project meet the requirement that all road crossings must employ a bridge crossing design that ensures passage and/or spawning of steelhead is not hindered in any way (see full RC text)? Yes No

2. Is the project located within the State of Arizona or the Mojave and Sonoran (Colorado) desert regions of California in the Los Angeles District (generally north and east of the San Gabriel, San Bernardino, San Jacinto, and Santa Rosa mountain ranges, and south of Little Lake, Inyo County)? Yes No

If yes, no NWPs, except 1, 2, 3, 4, 5, 6, 9, 10, 11, 20, 22, 27, 30, 31, 32, 35, 37, and 38 (or other nationwide or regional general permits that specifically authorize maintenance of previously authorized structures or fill), can be used to authorize the discharge of dredged or fill material into a jurisdictional special aquatic site as defined by 40 CFR 230.40-45.

If yes, is applicant aware of restriction above? Yes No

3. Does NWP or Regional General Permit require prior notification (a PCN) be given to the District Engineer? Yes No

If yes, are the required color photographs or color photocopies of the project area taken from representative points documented on a site map included? Yes No

4. Is project located in a special aquatic site as defined by 40 CFR 230.40-45 or in a perennial watercourse or waterbody in the State of Arizona or in the Mojave or Sonoran (Colorado) desert regions of California? Yes No

If yes, notification pursuant to general condition #13 is required.

5. Is project located in an areas designated as Essential Fish Habitat? Yes No

If yes, notification pursuant to general condition #13 is required.

6. Is project located within a watershed in the Santa Monica Mountains in Los Angeles and Ventura counties bounded by Calleguas Creek on the west, by Highway 101 on the north and east, and by Sunset Boulevard and Pacific Ocean on the south? Yes No

If yes, notification pursuant to general condition #13 is required.

7. Would project impact jurisdictional vernal pools? Yes No

If yes, then an individual permit is required.

8. Is project within the Murrieta Creek and Temecula Creek watersheds in Riverside County and does it require new permanent fills in perennial and intermittent watercourses? Yes No

If yes, then projects which would otherwise be authorized under NWPs 39, 42, or 43, will require an individual permit.

Is project located in an ephemeral watercourse and is the impact greater than 0.1 acre?

Yes No

If yes, then projects which would otherwise be authorized under NWPs 39, 42, or 43, will require an individual permit.

9. Is project in San Luis Obispo Creek or Santa Rosa Creek in San Luis Obispo County for bank stabilization projects; or and in Gaviota Creek, Mission Creek or Carpinteria Creek in Santa Barbara County for bank stabilization projects and grade control structures?

Yes No

If yes, then an individual permit is required.

II. Sacramento District (SPK) in California, Colorado, Nevada, and Utah:

SPK Regional conditions to be applied across the entire Sacramento District including California, Colorado, Nevada, and Utah:

A. Is the project in a fen? Yes No

Nationwide Permits 14, 29, 33, 39, 40, 41, 42, 43, and 44 are withdrawn from use in histosols, including fens. For the use of all other nationwide permits in fens, project proponents are required to notify the Corps using the notification or PCN procedures of the nationwide permit program (General Condition 13). This will be a "Corps only" notification.

B. Will mitigation be completed before or concurrent with construction of the project?

Yes No

For all activities using any existing and proposed nationwide permits, mitigation that is required by special condition must be completed before or concurrent with project construction. Where project mitigation involves the use of a mitigation bank or in-lieu fee, payment must be made to the bank or fee-in-lieu program before commencing construction of the permitted activity.

C. Is a statement attached explaining how avoidance and minimization of impacts were achieved? Yes No

For all nationwide permits requiring notification, except 27, the applicant must provide a written statement to the district engineer explaining how avoidance and minimization of losses of waters of the United States were achieved on the project site.

D. Is the project in Lake Tahoe? Yes No

All existing and proposed nationwide permits are suspended in the Lake Tahoe Basin in favor of using Regional General Permit 16.

SPK Regional conditions to be applied only in **California**: None

SPK Regional conditions to be applied in **Nevada**: None

SPK Regional conditions to be applied in **Utah**:

A. For use of any nationwide permit with the following attributes, notification of the Corps of Engineers' Utah Regulatory Office, using the "Notification" procedures of the Nationwide Permit Program (General Condition 13), is required, except where certain nationwide permits are restricted and can not be used as indicated in each category. This will be a "Corps only" notification:

1. Does the activity affect waters of the U.S. below the elevation 4217 feet msl adjacent to the Great Salt Lake and below 4500 feet msl adjacent to Utah Lake?

Yes No

2. Does the activity involve bank stabilization in a perennial stream?

Yes No

Bank stabilization activities that would affect more than 100 feet of stream length as measured from the upstream portion of the affected bank to the downstream section, narrow the cross-section of the stream, substantially reduce the riparian vegetation, or increase velocities.

3. Does the activity affect springs.? Yes No

A spring is an aquatic feature caused by ground water being discharged to the surface, creating wetland and/or stream characteristics. Nationwide Permits 14, 16, 18, 29, 33, 36, 39, 40, 42, 43, and 44 can not be used in spring areas.

SPK Regional conditions to be applied only in **Colorado**:

A. SPK Regional Conditions Applicable to Specific **Nationwide Permits Within Colorado**:

1. Does the action involve the use of Nationwide Permit No. 13 Bank Stabilization?

Yes No

In Colorado, bank stabilization activities necessary for erosion prevention in streams that average less than 20 feet in width (measured between the ordinary high water marks) are limited to the placement of no more than 1/4 cubic yard of material per running foot below the plane of the ordinary high water mark. Activities greater than 1/4 cubic yard may be authorized if the permittee notifies the District Engineer in accordance with General Condition No. 13 (Notification) and the Corps determines the adverse environmental effects are minimal.

2. Does the activity involve the use of Nationwide Permit No. 27 Stream and Wetland Restoration Activities? Yes No

(1) For activities which include a fishery enhancement component, notification will include a letter from the Colorado Division of Wildlife concurring that the project will benefit the fishery; and (2) for projects in streams classified as "Gold Metal Waters", Nationwide Permit No. 27 may not be used. For such projects, the applicant can apply for the existing Colorado Regional General Permit No. CO-00-16900 (Stream Habitat Improvement Structures) or a standard individual permit.

B. SPK Regional Conditions Applicable to All Nationwide Permits Within Colorado.

1. Does the activity involve the use of temporary fills? Yes No

Removal of Temporary Fills. General Condition No. 24 (Removal of Temporary Fills) is amended by adding the following: When temporary fills are placed in wetlands in Colorado, a horizontal marker (i.e. fabric, certified weed-free straw, etc.) must be used to delineate the existing ground elevation of wetlands that will be temporarily filled during construction.

2. Does the activity involve fills in Important Spawning Areas? Yes No

Important Spawning Areas. General Condition No. 20 (Spawning Areas) is amended by adding the following: In Colorado, activities which; (1) would destroy important spawning areas; (2) would be conducted in these waters during spawning seasons for trout and Kokanee salmon (spawning season for rainbow and cutthroat trout is March 15 through July 15, and for brown and brook trout and Kokanee salmon is September 15 through March 15); or (3) would have greater than minimal release of sediments during these spawning seasons are not authorized by any nationwide permit. Bio-engineering techniques, such as native riparian shrub plantings are required for all bank protection activities that exceed 50 linear feet in important spawning areas. Important spawning areas are identified in the attached list (enclosure 1) of critical resource waters in Colorado.

C. SPK Regional Conditions for Revocations Specific to Certain Geographic Areas within Colorado:

1. Does any activity occur in a fen? Yes No

Fens: In Colorado, nationwide permits No. 1, 2, 4, 6-11, 13-19, 21-25, 28-31, 33-36, and 39-44 are revoked for activities in these regionally important aquatic resources. Fens are defined as wetlands which are characterized by water logged spongy ground and contain (in all or part) soils classified as histosols* or mineral soils with a histic epipedon*. To determine whether this provision applies, the entire wetland must be examined for the presence of histosols or histic epipedons.

*Histosols have 40 centimeters (16 inches) or more of the upper 80 centimeters (32 inches) an organic soil material (or less over bedrock). Organic soil material has an organic carbon content (by weight) of 12 to 18 percent, or more, depending on the clay content of the soil. Histic epipedons have a 20 to 60 centimeter-thick (8-24 inches) organic soil horizon that is at or near the surface of a mineral soil. Histosols and histic epipedons are widely recognized as organic soils formed by slow accumulation of plant debris in

waterlogged situations where it cannot decompose. (More information on histosols can be obtained from the U.S. Department of Agriculture, Natural Resources Conservation Service publications on Keys to Soil Taxonomy and Field Indicators of Hydric Soils in the United States.

2. Does any activity occur within 100 feet of a spring? Yes No

Springs: Within the State of Colorado, all nationwide permits are revoked within 100 feet of the water source of natural springs. A spring source is defined as any location where ground water emanates from a point in the ground. For purposes of this regional condition, springs do not include seeps or other discharges that do not have a defined channel.

D. Practices Applicable to All **Nationwide Permits Within Colorado (SPK).**

The following provides additional information regarding minimization of impacts and compliance with existing general Conditions:

1. Permittees are reminded of the existing General Condition No. 18 which prohibits the use of unsuitable material. Organic debris, building waste, asphalt, car bodies, and junk materials are not suitable material. Also, General Condition No. 3 requires appropriate erosion and sediment controls (i.e. all fills must be properly stabilized to prevent erosion and siltation into waters and wetlands). Streambed material or other small aggregate material placed alone for bank stabilization will not meet General Condition No. 3.

2. Permittees are encouraged to mitigate project impacts prior to or concurrent with project construction. This issue continues to be a concern and the Corps prefers at this time to request that nationwide permit notification submittals explicitly address prior to or concurrent mitigation or the reasons why mitigation cannot occur prior to or concurrent with project construction.

3. Does any activity occur within a critical resource water of Colorado? Yes No

In accordance with General Condition No. 25 (Designated Critical Resource Waters) waters within the State of Colorado listed in Enclosure 1 (Critical Resource Waters in Colorado) are designated as critical resource waters.

Enclosure 1

CRITICAL RESOURCE WATERS IN COLORADO

In accordance with General Condition No. 25 (Designated Critical Resource Waters) the following waters within the State of Colorado are designated as critical resource waters:

a. **Outstanding Natural Resource Waters:**

Cache la Poudre Basin: All tributaries to the cache La Poudre River system, including all lakes and reservoirs, which are within Rock Mountain National Park;

Laramie River: All tributaries to the Laramie River system, including all lakes and reservoirs which are in the Rawah Wilderness Area;

North Fork Gunnison River: All tributaries to North Fork Gunnison River system, including lakes, reservoirs and wetlands within the West Elk and Raggeds Wilderness Area;

North Platte River: All tributaries to the North Platte River and Encampment Rivers, including all lakes and reservoirs, which are in the Mount Zirkle Wilderness Area;

San Miguel River: All tributaries, lakes, reservoirs, and wetlands within the boundaries of the Lizard Head and Mt. Sneffels Wilderness Area;

Roaring Fork River: All tributaries to the Roaring Fork River system, including lakes, reservoirs and wetlands within the Maroon Bells/Snowmass Wilderness Area;

Umcompahgre River: All tributaries to the Uncompahgre River system, including lakes, reservoirs, and wetlands within the Mt. Sneffels and Big Blue Wilderness Areas;

Upper Arkansas River Basin: All streams, wetlands, lakes, and reservoirs within the Mount Massive and Collegiate Peaks Wilderness Areas;

Upper Colorado River: Mainstem of the Colorado River system including tributaries, lakes, reservoirs, and wetlands within Rocky Mountain National Park;

Upper Gunnison River Basin: All tributaries, lakes, reservoirs, and wetlands in the La Garita Wilderness Area. All tributaries to the Gunnison River system, including lakes, reservoirs, and wetlands within West Elk, Collegiate Peaks, Maroon Bells, Raggeds, Fossil Ridge, Oh-Be-Joyful and Big Blue Wilderness Areas;

White River: Trapper's Lake and tributaries to Trapper's Lake;

Yampa River: All tributaries to the Yampa River, including lakes, reservoirs and wetlands within Zirkle Wilderness Area.

b. **Important Spawning areas:** In Colorado , important spawning areas are defined as "Gold Metal Waters" as identified by the State of Colorado. Gold Metal Waters are defined in the Colorado Fishing Season Information brochure, on the Colorado Division of Wildlife website www.dnr.state.co.us, or can be obtained at any Corps office in Colorado.

III. Albuquerque District (SPA) in Colorado, New Mexico, and Texas:

SPA Regional conditions to be applied only in Colorado

1. Is the project for bank stabilization activities necessary for erosion prevention in streams that average less than 20 feet in width (measured between the ordinary high water

marks) limited to the placement of no more than ¼ cubic yards of material per running foot below the plane of the ordinary high water mark?

Yes No

If yes, notification pursuant to general condition # 13 is required.

2. Is the project located in streams classified as "Gold Metal Waters"?

Yes No

If yes, nationwide permit number 27 may not be used. Applicant must apply for a Standard Individual permit.

3. Is project for Stream and Wetland Restoration activities which include a fishery enhancement component

Yes No

If yes, letter from the Colorado Division of Wildlife concurring that the project will benefit the fishery.

4. Is the project using or removing temporary fills in wetlands?

Yes No

If yes, a horizontal marker (i.e., fabric, certified weed-free straw, etc.) must be used to delineate the existing ground elevation of wetlands that will be temporarily used during construction.

5. Is project located in an Important Spawning Area and is the work being done during spawning season (March 15 – July 15; and September 15 – July 15)?

Yes No

If yes, not authorized by any nationwide permit.

If no, bio-engineering techniques, such as native riparian shrub plantings are required for all bank protection activities that exceed 50 linear feet in important spawning areas. See Critical Resource Waters in Colorado.

6. Is project located in a wetland, and are fens present?

Yes No

If yes, Nationwide Permit Numbers 1, 2, 4, 6-11, 13-19, 21-25, 28-31, 33-36, and 39-44 are revoked.

7. Is project located within 100 feet of the water source of a natural spring?

Yes No

If yes, all nationwide permits are revoked.

8. Does NWP or Regional General Permit require prior notification (a PCN) be given to the District Engineer?

Yes No

If yes, are the required color photographs or color photocopies of the project area taken from representative points documented on a site map included?

Yes No

9. Is project located in a special aquatic site as defined by 40 CFR 230.40-45 or in a perennial watercourse or waterbody in the State of Colorado?

Yes No

If yes, notification pursuant to general condition #13 is required.

10. Is project located in a areas designated as Essential Fish Habitat?

Yes No

If yes, notification pursuant to general condition #13 is required.

SPA Regional conditions to be applied only in **New Mexico**

1. Is the project for utility line discharges crossing in waterways wider than 200 feet?

Yes No

If yes, notification pursuant to general condition # 13 is required.

2. Is the project for bank stabilization activities necessary for erosion prevention in streams that average less than 20 feet in width (measured between the ordinary high water marks) limited to the placement of no more than ¼ cubic yards of material per running foot below the plane of the ordinary high water mark?

Yes No

If yes, notification pursuant to general condition # 13 is required.

3. Is the project for linear transportation crossings in perennial waterways?

Yes No

If yes, culverts shall be designed to provide for fish passage. Culverts shall be designed and installed so that waterflow shall be at least 0.8 feet deep, the maximum hydraulic drop in the culvert shall not exceed 0.8 ft, and the maximum velocity shall not exceed 4.0 fps for culverts less than 100 feet long, 3.0 fps for culverts 100-200 feet long, and 2.0 fps for culverts longer than 200 feet.

4. Is project for stream and wetland restoration or enhancement activities that incorporate the use of rip-rap, channelization, or levees?

Yes No

If yes, notification pursuant to general condition #13 is required.

5. Is the project for residential, commercial, and institutional development?

Yes No

If yes, not authorized for channelization or relocation of any intermittent or perennial water course regardless of size or rate of flow.

6. Is project for mining activities?

Yes No

If yes, nationwide permit is revoked.

7. Is the project activity involve fills in perennial waters or wetlands larger than ½ acre?

Yes No

If yes, applicant must apply for a Standard Individual Permit.

8. Is project located within 100 feet of the water source of a natural spring?

Yes No

If yes, all nationwide permits are revoked.

9. Does the project require temporary water diversion or totally dewatering more than 100 linear feet of stream channel?

Yes No

If yes, applicant must apply for a Standard Individual Permit.
If no, notification pursuant to general condition # 13 is required.

10. Is the project located in a special aquatic site, including wetlands, whose principal activity is not water dependent?

Yes No

If yes, notification pursuant to general condition #13 is required?

11. Is the project requiring external notification sent to the appropriate city, county, or tribal agencies for their comments? Yes No

If yes, for activities authorized by NWP No. 4, 13, 27, and 30 the District Engineer (DE) will notify the New Mexico Department of Game and Fish and other appropriate agencies.

12. Is project using any poured concrete, heavy equipment, fuel, or petrochemicals within 100 feet of any water of the U.S. including wetlands?

Yes No

If yes, notification pursuant to general condition #13 is required.

13. Is project located in an important spawning area and is the work to be done during spawning season (March 15 – July 15; and September 15 – July 15)?

Yes No

If yes, not authorized by any nationwide
If no, notification pursuant to general condition #13 is required.

14. Will project result in changes to local stream gradient, streambed elevation, direction, velocity of streamflow, or cause significant changes in channel size, shape and streambank habitat (unless the project specifically designed to restore previously degraded and unstable streams)?

Yes No

If yes, notification pursuant to general condition # 13 is required.

15. Is project located in an area designated as a Critical Resource Water?

Yes No

If yes, notification pursuant to general condition #13 is required.

SPA Regional conditions to be applied only in Texas

1. Is project located in an area designated as a Critical Resource Water?

Yes No

If yes, notification pursuant to general condition #13 is required.

IV. San Francisco District (SPN):

No SPN Regional Condition checklist is currently available. Please refer to original text of SPN regional conditions.

End of form

Instructions:

1) Box 5:

- a. **Nature of Activity:** Describe the overall activity or project. Give appropriate dimensions of structures such as wingwalls, dikes (identify the materials to be used in construction, as well as the methods by which the work is to be done), or excavations (length, width, and height). Indicate whether discharge of dredged or fill material is involved. Also, identify any structure to be constructed on a fill, piles, or float-supported platforms. The written descriptions and illustrations are an important part of the application. Please describe, in detail, what you wish to

do. If more space is needed, attach a separate sheet marked "Box 5 Nature of Activity."

- b. **Proposed Project Purpose:** Describe the purpose and need for the proposed project. What will it be used for and why? Also include a brief description of any related activities to be developed as the result of the proposed project.

2) Box 6:

- a. Corps jurisdiction consists of waters of the U.S. Waters of the U.S. are defined under 33 CFR part 329 as "navigable waters of the United States" and/or under 33 CFR part 328.3(a) as "waters of the United States." Under Section 404 of the Clean water Act, either the ordinary high water mark (non-tidal) or the high tide line (tidal), as well as any adjacent wetlands, demarcate waters of the U.S. Under Section 10 of the Rivers and Harbors Act, either the mean high water mark (tidal) or the ordinary high water mark (non-tidal), as well as any adjacent wetlands, demarcate waters of the U.S. Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (1987 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology). The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.
- b. **Required drawings:** Submit one legible copy of all drawings (8 1/2 x 11-inch or 11 x 17-inch) with a 1-inch margin around the entire sheet. The title box shall contain the title of proposed activity, name of water body, county, city, date, and sheet number.
- i. Vicinity map: Cover an area large enough so the project can be easily located, include arrow marking the project area, Identifiable land marks, name or number of roads, north arrow, and scale.
 - ii. Plan view: Include existing bank lines, ordinary high water mark line(s), average water depth around the activity, dimensions of the proposed project, dimensions of any structures immediately adjacent to the proposed activity, north arrow, scale.
 - iii. Elevation and/or cross-section views: water elevation as shown on plan view drawing, dimensions of the proposed project, dimensions of any structures immediately adjacent to the proposed activity, scale
- 3) **Box 14:** You may need State water quality certification from the appropriate state or tribal agency (e.g., Regional Water Quality Control Board for non-tribal California lands). You need not have obtained water quality certification before applying for a Corps nationwide permit verification.
- 4) **Box 15:** You may need a federal coastal consistency certification under the Coastal Zone Management Act from the appropriate state agency (e.g., California Coastal Commission for California Coastal Commission). You need not have obtained federal coastal consistency certification before applying for a Corps nationwide permit verification.

F-2
Regional Water Quality
Control Board
Section 401 Certification

Application for Clean Water Act Section 401 Water Quality Certification

<http://www.waterboards.ca.gov/sandiego/programs/401cert/2005%20401%20Application.pdf>

Attachment 1 – Minimum Requirements for a Draft Mitigation Plan

<http://www.waterboards.ca.gov/sandiego/programs/401cert/Attachment%201.pdf>

Regulatory Requirements for a Complete Application

<http://www.waterboards.ca.gov/sandiego/programs/401cert/Complete%20401%20application%20requirements.pdf>

401 Application Cover Letter

<http://www.waterboards.ca.gov/sandiego/programs/401cert/Water%20Quality%20Certification%20Application%20Cover%20Letter.pdf>



California Regional Water Quality Control Board

San Diego Region



Alan C. Lloyd, Ph.D.
Secretary for
Environmental
Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4340
(858) 467-2952 • Fax (858) 571-6972
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

APPLICATION FOR CLEAN WATER ACT §401 WATER QUALITY CERTIFICATION

All applicants **must** provide a complete and detailed response to all sections of the application or the application will be deemed incomplete. Responses by reference shall indicate the specific document(s) and page number(s) (include copies of the entire document). Indicate by Not Applicable (NA) all sections that do not apply, along with an explanation of why the project is exempt from the section.

APPLICANT/AGENT INFORMATION

APPLICANT'S NAME	AUTHORIZED AGENT'S NAME AND TITLE
------------------	-----------------------------------

APPLICANT'S ADDRESS	AGENT'S ADDRESS
---------------------	-----------------

APPLICANT'S PHONE, FAX, EMAIL	AGENT'S PHONE, FAX, EMAIL
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STATEMENT OF AUTHORIZATION	
I hereby authorize _____ to act in my behalf as my agent in the processing of this application, and to furnish upon request, supplemental information in support of this permit application.	
_____ Applicant's Signature (This must be signed by the applicant, <u>not</u> the authorized agent)	_____ Date

OWNERSHIP

Does the applicant own the project site? Yes _____ No _____

If the project site is not owned by the applicant, provide the name, address, and phone number for the property owner as well as evidence that the applicant has the necessary approvals to construct the project at this location.

Does the applicant plan on selling all or a portion of the site after receiving the necessary approvals and prior to starting construction? Yes _____ No _____

If yes, provide the name, address, and phone number of the future land owner, if available.

PROJECT/ACTIVITY INFORMATION

PROJECT NAME OR TITLE

AFFECTED WATER BODY(IES) (Provide a clear written description and clearly indicate affected water body(ies) on maps of appropriate scale.)

Are any of the waterbody(ies) considered isolated per SWANCC? Yes _____ No _____

LOCATION OF PROJECT (Attach map(s) showing project location.)

Street address _____

Latitude _____ Longitude _____

Assessors Parcel Number(s) _____

County _____ City _____

DIRECTIONS TO PROJECT SITE

PROJECT PURPOSE (Describe the reason or purpose for the overall project.)

DESCRIPTION OF ACTIVITY (Provide a full, technically accurate description of the entire activity and associated environmental impacts. Include proposed start and completion dates and dates for major phases of the project. If reference is made to documents submitted with this application, provide the specific document title and page numbers.)

AVOIDANCE AND MINIMIZATION OF IMPACTS (Describe efforts to avoid and minimize direct impacts to waters of the U.S.)

PROTECTION OF WATER QUALITY – CONSTRUCTION Describe efforts to avoid and minimize impacts to water quality during project construction. Include a discussion of erosion and sediment control measures, project scheduling, flow diversions, staging and material storage yards

PROTECTION OF WATER QUALITY – POST-CONSTRUCTION Describe efforts to avoid and minimize impacts to water quality following project construction.

- Include a description of each proposed land use (e.g., residential, street, commercial) identify the expected pollutants, specific post-construction BMPs, their effectiveness with regards to the expected pollutants, maintenance requirements, and party(ies) responsible for maintenance*.
- Also include a detailed description of how the project will address post-construction changes in flow rates, velocities, and shear stresses.
- Include a figure showing the location and type of all post-construction BMPs.

* The applicant must submit proof with this application that the parties designated as responsible for BMP maintenance have accepted the maintenance responsibility and are aware of the maintenance requirements.

PROTECTION OF WATER QUALITY - IMPAIRED WATER BODY(IES).

Are any of the water body(ies) within the project area, including impacted and preserved water body(ies), list as impaired on the Clean Water Act Section 303(d) list? Yes _____ No _____

Are any of the water body(ies) within the project area a tributary to a Clean Water Act Section 303(d) water body(ies)? Yes _____ No _____

Are any of the water body(ies) within the project area the subject of an adopted Total Maximum Daily Load (TMDL)? Yes _____ No _____

If yes, provide a detailed description of the actions that will be taken to ensure that the project does not contribute additional pollutants to the water body(ies). Include a discussion of the pollutants causing the impairment, potential sources of pollutants, and construction and post-construction BMPs.

FILL INFORMATION (indicate in ACRES and LINEAR FEET the proposed waters to be impacted, and identify the impacts(s) as permanent and/or temporary for each water body type listed below.) For purposes of this application, fill is defined as "rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and any materials used to create any structure or infrastructure in waters of the U.S."

Water Body Type*	Permanent Impact		Temporary Impact	
	Acres	Linear Feet	Acres	Linear Feet
ACOE vegetated waters				
ACOE unvegetated waters				
Lake/Reservoir				
Ocean/Estuary/Bay				
Isolated waters (per SWANCC)				
CDFG jurisdiction only				

* Provide a detailed description of the vegetated and unvegetated water body(ies) in an attachment. Include the plant community, type of water body (e.g., ephemeral, intermittent, perennial), designated beneficial uses, and a discussion of functions. Attach a copy of the completed wetland delineation to this application.

DREDGING Provide a description of the dredging activity and specific location, cubic yards of material to be dredged, disposal location and necessary approvals, dewatering methods, stockpile location, best management practices, and reason for dredging.

OTHER LICENSES/PERMITS/AGREEMENTS

OTHER APPROVALS List all applicable federal, state, and local permits, licenses, and agreements that will be required for any construction, operation, maintenance, or other actions associated with the project. Include permits from CDFG, ACOE (include permit number), RWQCB, California Coastal Commission, flood control agency, local planning agencies, etc. include date of application and status (e.g., pending, approved) of each. Attach copies of all draft or final documents and copies of CDFG and ACOE applications.

Agency	Contact (Include phone number, email)	License/Permit/Agreement	Date Applied	Status

COMPENSATORY MITIGATION

Is compensatory mitigation proposed? Yes _____ No _____

For all mitigation areas, provide a draft mitigation plan that includes, but is not limited to, the information contained in Attachment 1.

Indicate in ACRES and LINEAR FEET (where appropriate) the total quantity of **waters of the United States** proposed to be Created, Restored, Enhanced, or Preserved for purposes of providing Compensatory Mitigation.

Water Body Type/Plant Community Type	Created	Restored	Enhanced	Preserved

Note: Creation is defined as creating waters of the U.S. where none have previously existed; restoration is restoring waters of the U.S. where they have previously existed but have since been eliminated; enhancement is improving

existing waters of the U.S. (e.g., removing exotic species and replanting with natives); and preservation is protecting an area in perpetuity and place by a conservation easement, deed restriction, or other legal instrument.

Is the mitigation site owned by the applicant? Yes _____ No _____

(if no, provide the name, address, and phone number of the land owner and evidence (e.g., agreements, contracts, etc.) that the applicant has the necessary approvals to implement mitigation at this location. If the land is to be purchased, provide the expected date that the purchase will be complete.)

MITIGATION BANK/IN-LIEU FEE PROGRAM (If proposed)

Mitigation Bank/In-Lieu Fee Name: _____

Name of Mitigation Bank/In-Lieu Fee Operator: _____

Office Address of Operator/Phone Number: _____

Mitigation Bank/In-Lieu Fee Location (Latitude/Longitude, County, and City): _____

Mitigation Bank/In-Lieu Fee Water Body Type(s): _____

Mitigation Area (acres or linear feet) and cost (dollar): _____

APPLICATION FEE

FILING FEE A fee deposit of \$500.00 is required to be submitted with this application. Additional fees, based on the extent of impacts, may be due. A fee schedule and calculator can be found at:

<http://www.swrcb.ca.gov/rwgcb9/programs/401cert.html>

Is check payable to the "State Water Resources Control Board" attached? Yes _____ No _____

Check No. _____ Amount _____

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Document Type/Title _____

Lead Agency and Contact Information (name, address, phone number) _____

State Clearing House Number _____

Has the document been certified/approved or has a Notice of Exemption been filed? Yes _____ No _____
(If yes, include a copy of the certification. If no, provide the expected approval date.)

Is this project considered an "emergency" pursuant to CEQA? Yes _____ No _____

Include a copy of the draft or final CEQA document with this application.

Note: The Regional Board is required to comply with CEQA before issuing a certification. Section 401 certification will **not** be granted without a certified CEQA document.

ADDITIONAL INFORMATION

Has any portion of the work been initiated? Yes _____ No _____

If yes, describe the initiated work and explain why it was initiated prior to obtaining a permit; indicate whether any enforcement action has been taken against the project.

PAST/FUTURE IMPACTS (Briefly list/describe any projects carried out in the last 5 years or planned for implementation in the next 5 years that are in any way related to the proposed activity or may impact the same receiving body of water. Include actual or estimated adverse impacts.)

SIGNATURE

I hereby certify under penalty of perjury that the information provided in this application and in any attachments are true and accurate to the best of my knowledge. I further certify that I possess the necessary authority to undertake the work described in this application.

Applicant's Signature

Date

(This **must** be signed by the applicant, not the authorized agent)

Attach the appropriate fee and any additional documents and submit this application to:

California Regional Water Quality Control Board, San Diego
Attn: 401 Water Quality Certification
9174 Sky Park Court, Suite 100
San Diego, CA 92123

F-3
U.S. Fish and Wildlife Service
Biological Assessment

Annotated Outline for a Biological Assessment under Section 7 of the ESA
<http://www.fws.gov/endangered/pdfs/Consultations/highways/Attachment-4.pdf>

[PROJECT NAME HERE]
[DISTRICT AND FOREST OR PARK NAME OR AGENCY NAME]

LOCATION:

[County Name] County, California
[Township, Range, and Section]
USGS [7 ½ minute quad name(s)] Quadrangle

Contact Person: [Your name here]

Phone Number: [including area code]

Introduction

The purpose of this biological assessment is to review the proposed [project name] in sufficient detail to determine to what extent the proposed action may affect any of the threatened, endangered, proposed, or sensitive species listed below. This biological assessment is prepared in accordance with legal requirements set forth under Section 7 of the Endangered Species Act (16 U.S.C. 1536 (c)), and follows the standards established in [your agency's NEPA guidance and ESA guidance].

The species considered in this document are:

Threatened, Endangered, Proposed Threatened or Proposed Endangered Species

common name (*Scientific name*) **T**
common name (*Scientific name*) **E**
common name (*Scientific name*) **PT**
common name (*Scientific name*) **PE**

Candidate Species, Sensitive Species and Species of Concern

common name (*Scientific name*)

List them all!!!

[Don't forget that Interior agencies often have additional responsibilities to help prevent these species from becoming listed. Check your agency's guidelines.]

Biological Assessment for [Project Name]

Critical Habitat

The action addressed within this biological assessment falls within Critical Habitat for [identify]. Final ruling on Critical Habitat for the [common name (*Scientific name*)] was established by USFWS [date].

Consultation to Date

[Summarize and include meetings and correspondence that were important to the decision-making process.]

Current Management Direction

[Discuss and reference relevant Resource and Land Management Plans, and Action Plans, and the goals of the plans. Discuss and reference your agency's ESA policy.]

Description of the Proposed Action

[Describe (1) **WHAT** the project or action is; (2) **WHERE** the project is (refer to attached maps); (3) describe **WHEN** the action is going to take place, time line/implementation schedules; (4) specify **WHO** is going to do the action and under what authority, include name and address of the applicant; (5) include those measures that relate to **HOW** the action will be accomplished--*e.g.*, bulldozer, pile driver, feller-buncher, chain saw, steam roller; (6) include Conservation measures such as avoidance measures, seasonal restrictions, compensation, restoration/creation (on-site and in-kind, off-site and in-kind, on-site and out-of-kind, off-site and out-of-kind)]

Here are some examples of things to describe:

Type of project

Project location

Project footprint

Avoidance areas

Start and end times

Construction access

Staging/laydown areas

Construction equipment and techniques

Habitat status on site

Habitat between work areas and endangered species locations

Permanent vs. temporary impacts

If temporary, how long

Restoration areas

Biological Assessment for [Project Name]

Conservation measures

Compensation and set-asides

Mitigation: what kind and who is responsible?

Dust, erosion, and sedimentation controls

Whether the project is growth-inducing

Whether the project is part of a larger project or plan

Surrounding land-use

Hydrology and drainage patterns

[Other potential information needed: type of equipment used, who is doing to work, what is happening up and down drainage.]

Action Area

[Describe all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action. Use the effects analysis below as the reasoning for your delineation of this area.]

Species Accounts and Status of the Species in the Action Area

[Include aspects of biology that relate to the impact of the action, such as sensitivity to noise, inundation, fire, etc.--e.g., if the species is sensitive to loud sounds or vibration, and your project involves loud tools or equipment, reference that aspect of their biology.]

[Describe habitat use--e.g., breeding, feeding, and sheltering. Describe habitat condition and habitat designations such as: critical habitat (provide unit name or number), essential habitat, important habitat, recovery area, recovery unit (provide unit name or number). Also discuss habitat use patterns, including seasonal use and migration (if relevant), and identify habitat needs.]

[Identify and quantify the listed-species habitat remaining in the action area. GIS layers are useful here, as are land ownership patterns--especially local land trusts and open space designations.]

[Identify any recovery plan implementation that is occurring in the action area, especially priority one action items from recovery plans.]

[Include survey information. For all monitoring and survey reports, please clearly identify how it was done, when, where, and by whom. If survey protocols were followed, reference the name and date of the protocol. If survey protocols were modified, provide an explanation of how the surveying occurred and the reasoning for modifying the protocol.]

Biological Assessment for [Project Name]

[Keep it relevant. Please don't discuss biology that is totally unrelated to project impacts--e.g., discussion of pelage color, teat number, and number of digits for and aft when the project is a seasonal wetland establishment.]

[Utilize the best scientific and commercial information available. Use and cite recent publications/journal articles/agency data and technical reports. Include local information, relative to the action area, views of recognized experts, results from recent studies, life history, population dynamics, trends and distribution. Reference field notes, unpublished data, research in progress, etc. Include local population information.]

Things to consider:

Existing threats to species

Fragmentation

Urban growth area

Drainage patterns

Information on local sightings and populations

Population trends

Home range and dispersal

Sensitivity of endangered species to: dust, noise, heat, desiccation, etc.

Trap stress/mortality

Predators

Effects

[Elaborate on each effect. Carefully and fully quantify all effects. Effect determinations must be consistent with types of actions in the project description, the biology in the species accounts, and the habitat status and existing environment.]

[Remember: Direct and indirect effects under ESA are not the same as direct and indirect effects under NEPA. Be careful not to mix them up. Under ESA, direct effects are those that are caused by the proposed action and occur at the time of the action, and indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur.]

Here are some examples of effects you must address:

Loss of habitat--direct and indirect

Mortality

Harassment

Disrupted reproduction and/or loss of reproduction

Loss of forage and/or foraging potential

Loss of shelter/cover

Loss of access through adjacent habitat/loss of corridors

Noise/light during construction

Noise/light after construction

Biological Assessment for [Project Name]

Fragmentation of habitat

Urbanization induced or facilitated by the action

Increased predation, including predation by pets and feral animals

Impacted water quality (increased runoff, sedimentation, altered hydrology)

[Address all effects, including direct, indirect, interrelated and interdependent effects. Understanding and avoiding the common flaws in developing an effect determination will save you considerable time. These common flaws are: The “Displacement” Approach (*i.e.*, the species will move out of the way; there are plenty of places for them to go); the “Not Known to Occur Here” Approach (*i.e.*, looking at survey results, or lack of results, instead of the Recovery Plan for the species); the “We’ll Tell You Later” Approach (*i.e.*, if we find any, then we’ll let you know and that is when we will consult); the “Leap of Faith” Approach (*i.e.*, the agency wants the Fish and Wildlife Service to accept a determination based on trust, rather than the best scientific and commercially available information.). Sticking to flawed determinations will cost everyone time, money, and aggravation.]

[Interrelated actions are those that are part of a larger action and depend on the larger action for their justification—*i.e.* this action would not occur “but for” a larger action. Describe the larger action and its effects.]

Interdependent actions are those that have no significant independent utility apart from the action that is under consideration—*i.e.* other actions would not occur “but for” this action. Describe the interdependent actions and their effects.]

[Reference other consultations in the action area, if known, and include Fish and Wildlife Service file number.]

[Describe the level to which Critical Habitat will be affected by the project. Include a description as to how Primary Constituent Elements of any listed Critical Habitat could be affected by the project.]

Cumulative Effects (state and private actions)

Cumulative effects include the effects of future State, Tribal, local or private actions that are reasonably certain to occur in the action area considered in this biological assessment. Future Federal actions that are unrelated to the proposed action are not considered in this section because they will be subject to separate consultation pursuant to section 7 of the Act.

[Present all known and relative effects to population, *e.g.*, fish stocking, fishing, hunting, other recreation, illegal collecting, private wells, some developments, grazing, local trust programs, etc. Include impacts to the listed and proposed species in the area that you know are occurring and that are unrelated to your action—*e.g.*, road kills from off-road vehicle use, poaching, trespass, etc.]

Biological Assessment for [Project Name]

[Cumulative effects under ESA are ***not*** the same as the definition under NEPA. Be careful not to mix them up.]

Analysis of alternate actions

[This analysis is required for actions that involve preparation of an EIS. For all other actions, a summary of alternatives discussed in other environmental documents is useful.]

Conclusion and Determination

[This is where you put your overall effect determination after you have analyzed direct, indirect, cumulative, and interrelated and interdependent effects.]

The Service looks for one of the following statements:

Not likely to adversely affect, or

Likely to adversely affect, or

Likely to benefit

[If you make a "No effect" determination, you might have to defend it. Keep the document for your administrative record.]

[Once you have made your determination, summarize the high points that led you to it-- *e.g.*, The action is not likely to adversely affect the . . . based on the following rationale: . . .]

Literature Cited

List of Contacts/Contributors/Preparers

Maps

[Please include an area map as well as a vicinity map. The vicinity map should be at a 1:24,000 scale with the USGS quad name included.]

F-4
California Department
of Fish and Game

Streambed Alteration Agreement

Notification of Lake or Streambed Alteration, FG2023
(includes Attachment D Routine Maintenance)

<http://www.dfg.ca.gov/1600/NotificationPackage.pdf>

Notification Process and Instructions

<http://www.dfg.ca.gov/1600/FG2023%20INSTR.pdf>

FOR DEPARTMENT USE ONLY				
Date Received	Amount Received	Amount Due	Date Complete	Notification No.
	\$	\$		



STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME
NOTIFICATION OF LAKE OR STREAMBED ALTERATION



Complete EACH field, unless otherwise indicated, following the enclosed instructions and submit ALL required enclosures. Attach additional pages, if necessary.

1. APPLICANT PROPOSING PROJECT

Name			
Business/Agency			
Street Address			
City, State, Zip			
Telephone		Fax	
Email			

2. CONTACT PERSON *(Complete only if different from applicant)*

Name			
Street Address			
City, State, Zip			
Telephone		Fax	
Email			

3. PROPERTY OWNER *(Complete only if different from applicant)*

Name			
Street Address			
City, State, Zip			
Telephone		Fax	
Email			

4. PROJECT NAME AND AGREEMENT TERM

A. Project Name				
B. Agreement Term Requested		<input type="checkbox"/> Regular (5 years or less) <input type="checkbox"/> Long-term (greater than 5 years)		
C. Project Term		D. Seasonal Work Period		E. Number of Work Days
Beginning (year)	Ending (year)	Start Date (month/day)	End Date (month/day)	

NOTIFICATION OF LAKE OR STREAMBED ALTERATION

5. AGREEMENT TYPE

Check the applicable box. If box B, C, D, or E is checked, complete the specified attachment.

A.	<input type="checkbox"/> Standard (Most construction projects, excluding the categories listed below)	
B.	<input type="checkbox"/> Gravel/Sand/Rock Extraction (Attachment A)	Mine I.D. Number: _____
C.	<input type="checkbox"/> Timber Harvesting (Attachment B)	THP Number: _____
D.	<input type="checkbox"/> Water Diversion/Extraction/Impoundment (Attachment C)	SWRCB Number: _____
E.	<input type="checkbox"/> Routine Maintenance (Attachment D)	
F.	<input type="checkbox"/> DFG Fisheries Restoration Grant Program (FRGP)	FRGP Contract Number: _____
G.	<input type="checkbox"/> Master	
H.	<input type="checkbox"/> Master Timber Harvesting	

6. FEES

Please see the current fee schedule to determine the appropriate notification fee. Itemize each project's estimated cost and corresponding fee. *Note: The Department may not process this notification until the correct fee has been received.*

	A. Project	B. Project Cost	C. Project Fee
1			
2			
3			
4			
5			
		D. Base Fee (if applicable)	
		E. TOTAL FEE ENCLOSED	

7. PRIOR NOTIFICATION OR ORDER

A. Has a notification previously been submitted to, or a Lake or Streambed Alteration Agreement previously been issued by, the Department for the project described in this notification?

Yes (Provide the information below) No

Applicant: _____ Notification Number: _____ Date: _____

B. Is this notification being submitted in response to an order, notice, or other directive ("order") by a court or administrative agency (including the Department)?

No Yes (Enclose a copy of the order, notice, or other directive. If the directive is not in writing, identify the person who directed the applicant to submit this notification and the agency he or she represents, and describe the circumstances relating to the order.)

Continued on additional page(s)

NOTIFICATION OF LAKE OR STREAMBED ALTERATION

8. PROJECT LOCATION

A. Address or description of project location. (Include a map that marks the location of the project with a reference to the nearest city or town, and provide driving directions from a major road or highway)					
<input type="checkbox"/> Continued on additional page(s)					
B. River, stream, or lake affected by the project.					
C. What water body is the river, stream, or lake tributary to?					
D. Is the river or stream segment affected by the project listed in the state or federal Wild and Scenic Rivers Acts?			<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
E. County					
F. USGS 7.5 Minute Quad Map Name		G. Township	H. Range	I. Section	J. ¼ Section
<input type="checkbox"/> Continued on additional page(s)					
K. Meridian (check one)		<input type="checkbox"/> Humboldt <input type="checkbox"/> Mt. Diablo <input type="checkbox"/> San Bernardino			
L. Assessor's Parcel Number(s)					
<input type="checkbox"/> Continued on additional page(s)					
M. Coordinates (If available, provide at least latitude/longitude or UTM coordinates and check appropriate boxes)					
Latitude/Longitude	Latitude:		Longitude:		
	<input type="checkbox"/> Degrees/Minutes/Seconds		<input type="checkbox"/> Decimal Degrees		<input type="checkbox"/> Decimal Minutes
UTM	Easting:	Northing:		<input type="checkbox"/> Zone 10 <input type="checkbox"/> Zone 11	
Datum used for Latitude/Longitude or UTM		<input type="checkbox"/> NAD 27		<input type="checkbox"/> NAD 83 or WGS 84	

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9. PROJECT CATEGORY AND WORK TYPE (Check each box that applies)

PROJECT CATEGORY	NEW CONSTRUCTION	REPLACE EXISTING STRUCTURE	REPAIR/MAINTAIN EXISTING STRUCTURE
Bank stabilization – bioengineering/recontouring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bank stabilization – rip-rap/retaining wall/gabion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Boat dock/pier	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Boat ramp	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bridge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Channel clearing/vegetation management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Culvert	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Debris basin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dam	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Diversion structure – weir or pump intake	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Filling of wetland, river, stream, or lake	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Geotechnical survey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Habitat enhancement – revegetation/mitigation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Levee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Low water crossing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Road/trail	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sediment removal – pond, stream, or marina	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Storm drain outfall structure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Temporary stream crossing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Utility crossing : Horizontal Directional Drilling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jack/bore	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Open trench	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

NOTIFICATION OF LAKE OR STREAMBED ALTERATION

10. PROJECT DESCRIPTION

A. Describe the project in detail. Photographs of the project location and immediate surrounding area should be included.

- Include any structures (e.g., rip-rap, culverts, or channel clearing) that will be placed, built, or completed in or near the stream, river, or lake.
- Specify the type and volume of materials that will be used.
- If water will be diverted or drafted, specify the purpose or use.

Enclose diagrams, drawings, plans, and/or maps that provide all of the following: site specific construction details; the dimensions of each structure and/or extent of each activity in the bed, channel, bank or floodplain; an overview of the entire project area (i.e., "bird's-eye view") showing the location of each structure and/or activity, significant area features, and where the equipment/machinery will enter and exit the project area.

Continued on additional page(s)

B. Specify the equipment and machinery that will be used to complete the project.

Continued on additional page(s)

C. Will water be present during the proposed work period (specified in box 4.D) in the stream, river, or lake (specified in box 8.B).

Yes No (Skip to box 11)

D. Will the proposed project require work in the wetted portion of the channel?

Yes (Enclose a plan to divert water around work site)
 No

NOTIFICATION OF LAKE OR STREAMBED ALTERATION

11. PROJECT IMPACTS

A. Describe impacts to the bed, channel, and bank of the river, stream, or lake, and the associated riparian habitat. Specify the dimensions of the modifications in length (linear feet) and area (square feet or acres) and the type and volume of material (cubic yards) that will be moved, displaced, or otherwise disturbed, if applicable.

Continued on additional page(s)

B. Will the project affect any vegetation? Yes (Complete the tables below) No

Vegetation Type	Temporary Impact	Permanent Impact
	Linear feet: _____ Total area: _____	Linear feet: _____ Total area: _____
	Linear feet: _____ Total area: _____	Linear feet: _____ Total area: _____

Tree Species	Number of Trees to be Removed	Trunk Diameter (range)

Continued on additional page(s)

C. 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?

Yes (List each species and/or describe the habitat below) No Unknown

Continued on additional page(s)

D. Identify the source(s) of information that supports a "yes" or "no" answer above in Box 11.C.

Continued on additional page(s)

E. Has a biological study been completed for the project site?

Yes (Enclose the biological study) No

Note: A biological assessment or study may be required to evaluate potential project impacts on biological resources.

F. Has a hydrological study been completed for the project or project site?

Yes (Enclose the hydrological study) No

Note: A hydrological study or other information on site hydraulics (e.g., flows, channel characteristics, and/or flood recurrence intervals) may be required to evaluate potential project impacts on hydrology.

NOTIFICATION OF LAKE OR STREAMBED ALTERATION

12. MEASURES TO PROTECT FISH, WILDLIFE, AND PLANT RESOURCES

A. Describe the techniques that will be used to prevent sediment from entering watercourses during and after construction.

Continued on additional page(s)

B. Describe project avoidance and/or minimization measures to protect fish, wildlife, and plant resources.

Continued on additional page(s)

C. Describe any project mitigation and/or compensation measures to protect fish, wildlife, and plant resources.

Continued on additional page(s)

13. PERMITS

List any local, state, and federal permits required for the project and check the corresponding box(es). Enclose a copy of each permit that has been issued.

A. _____ Applied Issued

B. _____ Applied Issued

C. _____ Applied Issued

D. Unknown whether local, state, or federal permit is needed for the project. (Check each box that applies)

Continued on additional page(s)

NOTIFICATION OF LAKE OR STREAMBED ALTERATION

14. ENVIRONMENTAL REVIEW

A. Has a draft or final document been prepared for the project pursuant to the California Environmental Quality Act (CEQA), National Environmental Protection Act (NEPA), California Endangered Species Act (CESA) and/or federal Endangered Species Act (ESA)?	
<input type="checkbox"/> Yes (Check the box for each CEQA, NEPA, CESA, and ESA document that has been prepared and enclose a copy of each) <input type="checkbox"/> No (Check the box for each CEQA, NEPA, CESA, and ESA document listed below that will be or is being prepared)	
<input type="checkbox"/> Notice of Exemption <input type="checkbox"/> Initial Study <input type="checkbox"/> Negative Declaration <input type="checkbox"/> THP/ NTMP	<input type="checkbox"/> Mitigated Negative Declaration <input type="checkbox"/> Environmental Impact Report <input type="checkbox"/> Notice of Determination (Enclose) <input type="checkbox"/> Mitigation, Monitoring, Reporting Plan
<input type="checkbox"/> NEPA document (type): _____ <input type="checkbox"/> CESA document (type): _____ <input type="checkbox"/> ESA document (type): _____	
B. State Clearinghouse Number (if applicable)	
C. Has a CEQA lead agency been determined? <input type="checkbox"/> Yes (Complete boxes D, E, and F) <input type="checkbox"/> No (Skip to box 14.G)	
D. CEQA Lead Agency	
E. Contact Person	F. Telephone Number
G. If the project described in this notification is part of a larger project or plan, briefly describe that larger project or plan.	
<input type="checkbox"/> Continued on additional page(s)	
H. Has an environmental filing fee (Fish and Game Code section 711.4) been paid?	
<input type="checkbox"/> Yes (Enclose proof of payment) <input type="checkbox"/> No (Briefly explain below the reason a filing fee has not been paid)	
<p><i>Note: If a filing fee is required, the Department may not finalize a Lake or Streambed Alteration Agreement until the filing fee is paid.</i></p>	

15. SITE INSPECTION

Check one box only.
<input type="checkbox"/> In the event the Department determines that a site inspection is necessary, I hereby authorize a Department representative to enter the property where the project described in this notification will take place at any reasonable time, and hereby certify that I am authorized to grant the Department such entry.
<input type="checkbox"/> I request the Department to first contact (insert name) _____ at (insert telephone number) _____ to schedule a date and time to enter the property where the project described in this notification will take place. I understand that this may delay the Department's determination as to whether a Lake or Streambed Alteration Agreement is required and/or the Department's issuance of a draft agreement pursuant to this notification.

NOTIFICATION OF LAKE OR STREAMBED ALTERATION

16. DIGITAL FORMAT

Is any of the information included as part of the notification available in digital format (i.e., CD, DVD, etc.)?

Yes (Please enclose the information via digital media with the completed notification form)

No

17. SIGNATURE

I hereby certify that to the best of my knowledge the information in this notification is true and correct and that I am authorized to sign this notification as, or on behalf of, the applicant. I understand that if any information in this notification is found to be untrue or incorrect, the Department may suspend processing this notification or suspend or revoke any draft or final Lake or Streambed Alteration Agreement issued pursuant to this notification. I understand also that if any information in this notification is found to be untrue or incorrect and the project described in this notification has already begun, I and/or the applicant may be subject to civil or criminal prosecution. I understand that this notification applies only to the project(s) described herein and that I and/or the applicant may be subject to civil or criminal prosecution for undertaking any project not described herein unless the Department has been separately notified of that project in accordance with Fish and Game Code section 1602 or 1611.

Signature of Applicant or Applicant's Authorized Representative

Date

Print Name

NOTIFICATION OF LAKE OR STREAMBED ALTERATION

Applicant Name: _____

Project Name: _____

Mine I.D. Number: _____

ATTACHMENT A

Gravel/Sand/Rock Extraction Questionnaire

Check each box that applies and submit this form and the information requested on one or more separate pages with the notification form (FG2023).

I. OPERATION TYPE

A. Identify the type of gravel/sand/rock extraction operation ("operation") being proposed:

- Commercial gravel/sand/rock Privately owned, non-commercial gravel/sand/rock
- Public agency gravel/sand/rock Decorative landscape materials
- Other:

II. PROJECT INFORMATION

A. This notification is for:

- A new operation.
- Expansion or continuation of an existing operation at the same location for which a previous Lake or Streambed Alteration Agreement HAS been issued by the Department of Fish and Game.
- Expansion or continuation of an existing operation at a location for which a previous Lake or Streambed Alteration Agreement HAS NOT been issued by the Department of Fish and Game.
- Re-authorization of an operation at a site dormant for one or more years.

B. Identify the volume of material the applicant has or proposes to obtain a legal entitlement to extract on an annual basis: _____

C. What volume of material will the applicant remove from the river, stream, or lake this year?

D. On a separate page, describe the following:

1. How will the extracted material be removed?
2. Where will the extracted material be processed and stored?
3. Where will temporary stockpiles be located?
4. What survey methodology was used to calculate extraction volumes?

NOTIFICATION OF LAKE OR STREAMBED ALTERATION
ATTACHMENT A

- E. What volume of material was removed each year in the previous five years? _____
- F. To your knowledge, are there any other active instream operations within ten miles of the applicant's operation?
 Yes (*List the operations on a separate page.*) No
- G. Is the proposed operation located upstream or downstream of a dam, lake, reservoir, or other water impoundment?
 Yes (*Identify on a separate page the water impoundment and the distance between the impoundment and the location of the operation.*)
 No
- H. Does the operation include construction of temporary stream crossings?
 Yes (*Identify on a separate page the number of crossings and the type of each crossing that will be used and attach a map showing the location of each crossing. If culverts are proposed, identify the proposed culvert dimensions.*)
 No
- I. Provide a pre-extraction plan that includes as much as possible of the following information (*describe on separate page(s)*):
1. Measures to protect the bed and banks of the low flow channel
 2. Measures to protect riparian and wetland vegetation
 3. Measures to protect water quality
 4. Measures to protect fish and wildlife resources
- J. Has an emergency response plan been prepared?
 Yes (*Provide a copy of the plan*) No
- K. Has a county use permit been issued for the operation?
 Yes (*Provide a copy of the permit*) No
- L. Has a reclamation plan been prepared for this operation? Yes (*Provide a copy of the plan*)
 No

NOTIFICATION OF LAKE OR STREAMBED ALTERATION

ATTACHMENT B

Additional Information for Projects Included in Timber Harvesting Plans

If the project described in the Notification of Lake or Streambed Alteration form (Form FG 2023) is part of a Timber Harvesting Plan (THP), the applicant must also submit the following information on one or more separate pages with the notification form.

I. PROJECT NAME AND THP NUMBER

II. PROJECT LOCATION

- A. *Encroachment Map.* A single map or diagram clearly delineating all of the following:
1. Lake and stream encroachments identified by number or other appropriate label
 2. Roads identified by a number or other appropriate label
 3. Watercourse classifications (i.e., Class I, II, or III)
 4. Access from a named public road
 5. North arrow and map scale

III. PROJECT DESCRIPTION

- A. *Multiple Encroachments.* If multiple lake or stream encroachments are proposed, include a table describes the following for each encroachment:
1. Encroachment type (e.g., permanent culvert, temporary bridge, rock revetment)
 2. Watercourse classification
 3. Structure (i.e., culvert, bridge, rock revetment) size
 4. Map reference number
- B. *Conditions at Encroachment(s).* Describe any torrent, debris, or landslide conditions at each encroachment.
- C. *Work Period(s).* If temporary crossings are proposed, specify dates and conditions requiring temporary crossing removal.
- D. *Culverts.* If a culvert crossing is proposed, provide calculations or other data used to size culverts.
- E. *Bridges.* If a bridge is proposed, include the following:
1. Indicate if the abutments or road approaches will encroach into the floodplain or stream channel
 2. Provide the calculations or data used to determine bridge height and flow capacity
 3. Describe the type of abutments and scour protections with dimensions
 4. Provide any engineering reports, plans, or other related documentation

NOTIFICATION OF LAKE OR STREAMBED ALTERATION
ATTACHMENT B

- F. *Water Diversion or Drafting.* If water will be present, and will be drafted or diverted around the work site, specify the following.
1. Volume, rate, and timing of water to be diverted or drafted
 2. Method of diversion or drafting
 3. Copy of applicable State Water Resources Control Board water right application, permit, or license

If any of the following conditions apply, contact the appropriate Department regional office to obtain a "Water Diversion Questionnaire" (Attachment C) and enclose a completed copy of the questionnaire with the notification:

1. Water will be used for purposes other than, or in addition to, road maintenance or dust control
2. Water drafting or diversion will continue after the THP expires
3. Water storage reservoirs, ponds, or other water storage facilities will be used after the THP expires as part of a subsequent land development or use phase

NOTIFICATION OF LAKE OR STREAMBED ALTERATION

Applicant Name: _____

Project Name: _____

ATTACHMENT C

Water Diversion Questionnaire

I. DIVERSION OR OBSTRUCTION

Please provide the additional information below *if* the project is directly related to any diversion, obstruction, extraction, or impoundment of the natural flow of a river, stream, or lake. If you have a current or expired Lake or Streambed Alteration Agreement (LSAA) for some activity related to your project, provide the LSAA number in your project description below.

- A. Attach plans of any diversion or water storage structure or facility that will be constructed or if no structures or facilities will be constructed, photographs of the project site, including any existing facilities or structures.
- B. Please complete the water use table below. For diversion rate, use gallons per day (gpd) if rate is less than 0.025 cubic foot per second (cfs) (approximately 16,000 gallons per day).

SEASON OF DIVERSION		PURPOSE OF USE	DIVERSION RATE (cfs or gpm)	AMOUNT USED (acre feet)	
BEGINNING DATE (Mo. & Day)	ENDING DATE (Mo. & Day)			FROM STORAGE	BY DIVERSION

- C. Attach a topographic map that is labeled to show the following:
 - 1. Source of the water
 - 2. Points of diversion
 - 3. Areas of use
 - 4. Storage areas
- D. Specify the maximum instantaneous rate of withdrawal (using proposed equipment) in cubic feet per second (cfs) or gallons per minute (gpm): _____.

NOTIFICATION OF LAKE OR STREAMBED ALTERATION
ATTACHMENT C

E. Check each box below that applies to the project water rights and attach supporting documents.

- Riparian. *Attach the most recent statement of riparian rights filed with the State Water Resources Control Board (SWRCB).*
- Diversion for immediate use
- Diversion to storage (for less than 30 days)

- Appropriative
 - Pre-1914
 - Post-1914. *Attach a copy of the applicant's water right application, permit, or license filed with or issued by the SWRCB.*
 - Diversion for immediate use. *Attach a copy of the applicant's water right application, permit, or license filed with or issued by the SWRCB.*
 - Diversion to storage. *Attach a copy of the applicant's water right application, permit, or license filed with or issued by the SWRCB.*
 - Small domestic or livestock stockpond use. *Attach a copy of the applicant's registration of water use form filed with the SWRCB. (See Water Code section 1228 et seq.)*
- Purchased or contracted water. *Attach a copy of the applicant's contract or letter from the applicant's water provider.*
- Other. *Describe below or attach separate page.*

F. Approximate lowest level of flow in the river, stream, or lake at the point of diversion during the proposed season of diversion in gpm or cfs: _____.

G. Other information. After the Department reviews the project description, and based on the project's location and potential impacts to fish and wildlife resources, the Department will determine if additional information is needed to complete the notification. Such information could include more site-specific information to ensure that the terms and conditions in the Lake or Streambed Alteration Agreement issued to the applicant will be adequate to protect the fish and wildlife resources the diversion or obstruction could adversely affect. Site-specific information could include specific studies based on the season of diversion, the location of the diversion relative to other diversions in the watershed, the method of diversion, and the quantity of water to be diverted, such as the following:

1. *Water Availability Analysis* to determine if the water can be diverted without causing substantial adverse effects on downstream fish and wildlife resources. Water availability analyses are based on a comparison of flows without any diversions (unimpaired flows) and flows available when all known diversions are "subtracted" (impaired flows). The protocol for water availability analyses is available on request.
2. *Instream Flow Study* to determine the minimum bypass flows needed and maximum rates of withdrawal possible to provide adequate depths and velocities to protect habitat for all life stages of aquatic resources. The study plan, which must be prepared by a qualified fisheries biologist and approved by the Department, will determine the effects of the proposed diversion on flow depth and velocity.
3. *Water Quality Study* to assess the effects of the proposed water diversion or impoundment on water temperature and water quality at and downstream from the point of diversion.

II. PERMANENT OR TEMPORARY RESERVOIR

Please provide the information below *if* the project includes the construction of a reservoir, whether permanent or temporary, and/or the filling of a reservoir by diverting or obstructing the flow of a river, stream, or lake.

- A. Proposed use of the stored water: _____.
- B. Construction plans for the reservoir and dam. (*Attach plans*)
- C. A complete description of the reservoir and dam, including the methods and materials that will be used to construct the reservoir and dam and the following dimensions certified by a licensed professional: the width, length, depth, and total surface area of the reservoir pool; the volume of water in acre-feet that will be stored in the reservoir; and the height and length of the dam.
- D. The amount of riparian land that will be inundated (i.e., upstream from the dam): _____.
- E. Where vehicles will enter and exit the project site during construction and for maintenance purposes after construction. (*Attach map*)
- F. The maximum distance of the disturbance that will occur upstream and downstream during construction: _____.
- G. The methods that will be employed to ensure that the flow is maintained below the dam at all times when water is being diverted into the reservoir. _____

_____.
- H. Specify the time period when the area below the dam becomes dry, if at all. _____.

I. The methods that will be employed to ensure that adult and juvenile fish will be able to pass over or around the dam. _____

J. If a fish ladder is necessary to enable adult and juvenile fish to pass over or around the dam, provide construction plans and an operation plan for the fish ladder. *(Enclose, if applicable)*

K. The methods that will be employed to monitor and maintain water quality (including temperature) within the reservoir. _____

III. TEMPORARY RESERVOIR

Please provide the information below *if* the project includes the construction of a temporary reservoir only within the stream zone.

- A. Date of dam installation: _____.
- B. Date of dam removal: _____.
- C. Amount of time it will take to construct the dam: _____.
- D. Amount of time it will take to remove the dam: _____.
- E. Methods to ensure that the reservoir pool will be drained in a manner that does not strand or otherwise harm fish: _____

NOTIFICATION OF LAKE OR STREAMBED ALTERATION

Applicant Name: _____

Project Title: _____

ATTACHMENT D

Routine Maintenance

If the applicant is notifying the Department to obtain an agreement for routine maintenance activities, Section I must be completed and the information and documents described in Sections II and III must be submitted with the notification.

I. REGULARLY RE-OCCURRING MAINTENANCE ACTIVITIES

These are generally activities designed to maintain channel capacity. Check each box that applies:

- Sediment removal:
 - In and around bridges, culverts, storm drain outlets, and/or water diversion inlets
 - Stream channel bottom
 - Pond or lake
 - Marina basin
 - Other: _____
- Clearing trash and debris
- Removing fallen trees
- Removing dead (not dormant) trees and shrubs
- Vegetation:
 - Limbing and/or trimming of branches and tree limbs
 - Vegetation removal under high power lines
 - Mowing levee slopes and stream banks
 - Mowing within stream and floodway channels
 - Removing emergent (e.g., bulrush and cattails) or other near water vegetation with:
 - hand tools
 - mechanical vegetation cutters and shredders
 - heavy equipment (soil disturbance)
 - chemicals

- Removing vegetation from the **upper half** of the bank with:
 - hand tools
 - mechanical vegetation cutters or shredders
 - heavy equipment (soil disturbance)
 - chemicals

- Removing vegetation from the **lower half** of bank with:
 - hand tools
 - mechanical vegetation cutters or shredders
 - heavy equipment (soil disturbance)
 - chemicals

- Removing vegetation within the channel with:
 - hand tools
 - mechanical vegetation cutters and shredders
 - heavy equipment (soil disturbance)
 - chemicals

- Removing invasive, non-native plants with:
 - hand tools
 - mechanical vegetation cutters and shredders
 - heavy equipment (soil disturbance)
 - chemicals

- Other: _____

- Debris and brush pile burning

- Burning levees

- Minor erosion repair:
 - Repair at existing erosion control sites
 - New erosion repair

- Revegetation with local, native plant species

NOTIFICATION OF LAKE OR STREAMBED ALTERATION
ATTACHMENT D

Chemical application:

Herbicides

Rodenticides

Insecticides

Minor bridge work:

Reinforcing pilings

Reinforcing aprons

Bridge painting (access and falsework)

Materials to be used for reinforcement: _____

Other: _____

Other: _____

Other: _____

II. MAP OR MAPBOOK

Maps must be of sufficient detail to assist in locating maintenance sites and should include the following:

- A. The applicant's jurisdictional boundaries
- B. All watercourses within the jurisdictional boundaries where maintenance will occur
- C. A key to identify each watercourse and the maintenance activities and location (e.g., bridges, water control diversions, and large scale maintenance) of those activities that are likely to occur

III. SPECIAL STATUS SPECIES LOCATIONS

A drawing, diagram, or map that shows the applicant's jurisdictional boundaries and the locations within that area where special status species are known to exist.

LAKE OR STREAMBED ALTERATION FEE SCHEDULE

The Department may refuse to process a notification or a request for an extension or amendment until the department receives the proper fee or fees.

STANDARD AGREEMENT

Any agreement other than an agreement for gravel, rock, or sand extraction, an agreement for timber harvesting, an agreement for routine maintenance, a master agreement, or a master agreement for timber operations.

Fee:

If the term of the agreement is 5 years or less.

For each project the agreement covers:

\$200 if the project costs less than \$5,000.
\$250 if the project costs from \$5,000 to less than \$10,000.
\$500 if the project costs from \$10,000 to less than \$25,000.
\$750 if the project costs from \$25,000 to less than \$100,000.
\$1,100 if the project costs from \$100,000 to less than \$200,000.
\$1,500 if the project costs from \$200,000 to less than \$350,000.
\$2,250 if the project costs from \$350,000 to less than \$500,000.
\$4,000 if the project costs \$500,000 or more.

Project cost means the cost to complete each project for which notification is required.

As a general rule, a notification for a standard agreement should identify only one project. If an entity chooses to identify more than one project in a single notification, the department may require the entity to separately notify the department for one or more of the projects included in the original notification based on their type or location.

If the notification includes more than one project, the fee shall be calculated by adding the separate fees for each project. For example, if a notification identifies three projects, one of which will cost less than \$5,000 to complete, one of which will cost \$7,500 to complete, and one of which will cost \$17,500 to complete, the fee for the first project would be \$200, the fee for the second project would be \$250, and the fee for the third project would be \$500. Hence, the total fee the entity would need to submit with the notification that identifies those three projects would be \$950.

An entity may not obtain a standard agreement for any project identified in the notification that qualifies for an agreement for gravel, rock, or sand extraction, an agreement for timber harvesting, an agreement for routine maintenance, a master agreement, or a master agreement for timber operations unless the department agrees otherwise.

Fee submittal: If the entity requests an agreement with a term of 5 years or less, the fee specified in the category for agreements with a term of 5 years or less must be submitted with the notification.

If the entity requests an agreement with a term longer than 5 years (Standard Long-term Agreement) the fee specified must be submitted with the notification.

STANDARD LONG-TERM AGREEMENT

Any agreement other than an agreement for gravel, rock, or sand extraction, an agreement for timber harvesting, an agreement for routine maintenance, a master agreement, or a master agreement for timber operations.

Fee:

If the term of the agreement is longer than 5 years.

\$2,400 base fee, plus

For each project the agreement covers:

\$200 if the project costs less than \$5,000.

\$250 if the project costs from \$5,000 to less than \$10,000.

\$500 if the project costs from \$10,000 to less than \$25,000.

\$750 if the project costs from \$25,000 to less than \$100,000.

\$1,100 if the project costs from \$100,000 to less than \$200,000.

\$1,500 if the project costs from \$200,000 to less than \$350,000.

\$2,250 if the project costs from \$350,000 to less than \$500,000.

\$4,000 if the project costs \$500,000 or more.

Project cost means the cost to complete each project for which notification is required.

As a general rule, a notification for a standard agreement should identify only one project. If an entity chooses to identify more than one project in a single notification, the department may require the entity to separately notify the department for one or more of the projects included in the original notification based on their type or location.

If the notification includes more than one project, the fee shall be calculated by adding the separate fees for each project. For example, if a notification identifies three projects, one of which will cost less than \$5,000 to complete, one of which will cost \$7,500 to complete, and one of which will cost \$17,500 to complete, the fee for the first project would be \$200, the fee for the second project would be \$250, and the fee for the third project would be \$500. Hence, the total fee the entity would need to submit with the notification that identifies those three projects would be \$950.

An entity may not obtain a standard agreement for any project identified in the notification that qualifies for an agreement for gravel, rock, or sand extraction, an agreement for timber harvesting, an agreement for routine maintenance, a master agreement, or a master agreement for timber operations unless the department agrees otherwise.

Fee submittal: If the entity requests an agreement with a term of 5 years or less, the fee specified in the category for agreements with a term of 5 years or less must be submitted with the notification.

If the entity requests an agreement with a term longer than 5 years, the fee specified must be submitted with the notification.

SAND, ROCK AND GRAVEL EXTRACTION AGREEMENT

Any agreement for commercial or non-commercial mining or extraction of gravel, sand, rock, or other aggregate material.

Fee:

If the term of the agreement is 5 years or less:

\$500 if the annual extraction volume is less than 500 cubic yards.

\$1,000 if the annual extraction volume is 500 to less than 1,000 cubic yards.

\$2,500 if the annual extraction volume is 1,000 to less than 5,000 cubic yards.

\$5,000 if the annual extraction volume is 5,000 or more cubic yards.

Fee:

If the term of the agreement is longer than 5 years:

\$10,000 base fee, plus

\$1,000 annual fee

Fee submittal: If the entity requests an agreement with a term of 5 years or less, the fee specified in paragraph (1) must be submitted with the notification.

If the entity requests an agreement with a term longer than 5 years, the base fee specified in paragraph (2) must be submitted with the notification.

TIMBER HARVESTING OPERATION AGREEMENT

An agreement of five years or less that covers one or more projects that are included in a timber harvesting plan approved by the California Department of Forestry and Fire Protection.

Fee:

\$1,200 base fee, plus

\$100 for each project the agreement covers, and

Fee submittal: The fee specified must be submitted with the notification.

MASTER TIMBER HARVESTING OPERATION AGREEMENT

An agreement with a term of greater than five years that covers timber operations on timberland that are not exclusively projects to extract gravel, sand, or rock; not exclusively projects that are included in a timber harvesting plan approved by the California Department of Forestry and Fire Protection; or not exclusively routine maintenance projects that the entity will need to complete separately at different time periods during the term of the agreement; and describes a procedure the entity must follow for construction, maintenance, or other projects the agreement covers.

Fee:

\$7,500 base fee, plus

\$100 for each project the agreement covers, and

\$1,000 annual fee

Fee submittal: The base fee specified at a minimum must be submitted with the notification. The balance of all fees due must be paid prior to the issuance of the agreement.

Note: If an entity chooses to identify more than one project in a single notification, the total fee may exceed \$5,000 regardless of the term of the agreement.

ROUTINE MAINTENANCE AGREEMENT

An agreement that covers only multiple routine maintenance projects that the entity will complete at different time periods during the term of the agreement; and describes a procedure the entity must follow for any maintenance projects the agreement covers.

Fee:

If the term of the agreement is 5 years or less:

\$1,200 base fee, plus
\$100 for each maintenance project completed per calendar year.

Fee:

If the term of the agreement is longer than 5 years:

\$2,400 base fee, plus
\$100 for each maintenance project completed per calendar year.

Fee submittal: If the entity requests an agreement with a term of 5 years or longer then 5 years, the base fee at a minimum must be submitted with the notification. The balance of all fees due must be paid prior to the issuance of the agreement.

MASTER AGREEMENT

An agreement with a term of greater than five years that covers multiple projects that are not exclusively projects to extract gravel, sand, or rock; not exclusively projects that are included in a timber harvesting plan approved by the California Department of Forestry and Fire Protection; or not exclusively routine maintenance projects that the entity will need to complete separately at different time periods during the term of the agreement; and describes a procedure the entity must follow for construction, maintenance, or other projects the agreement covers.

Fee:

\$30,000 base fee, plus:
\$250 for each project the agreement covers, and
\$2,500 annual fee

Fee submittal: The base fee specified in paragraph (1) at a minimum must be submitted with the notification. The balance of all fees due must be paid prior to the issuance of the agreement.

An example of a project for which the department would issue a master agreement is a large-scale development proposal comprised of multiple projects for which specific, detailed design plans have not been prepared at the time of the original notification. The master agreement will specify a process the department and entity will follow before each project begins and may identify various measures the entity will be required to incorporate as part of each project in order to protect fish and wildlife resources.

As a general rule, the process specified in the master agreement will require the entity to notify the department before beginning any project the agreement covers and submit a fee based on the cost of the project. After the department receives the notification, it will confirm that the master agreement covers the project and propose measures to protect fish and wildlife resources in addition to any included in the master agreement, if such measures are necessary for the specific project.

A master agreement will typically, but not always, encompass one or more watersheds and/or relate to a habitat conservation plan or natural community conservation plan. By contrast, if the large-scale development proposal is comprised of, for example, multiple residences, golf courses, and associated infrastructure projects for which specific, detailed design plans have been prepared by the time the entity notifies the department and the entity is ready to begin those projects, the department would issue the entity a standard agreement.

AGREEMENT EXTENSION

A renewal of an agreement executed prior to January 1, 2004, or an extension of an agreement executed on or after January 1, 2004.

Extensions

Fee: \$200

To request an extension for an existing agreement, complete an Extension Request Form, and submit to the appropriate DFG Regional office with the appropriate fee.

An extension request must be made prior to expiration date of the agreement.

An extension is not an amendment.

AGREEMENT AMENDMENT

The holder of a Lake or Streambed Alteration Agreement may request the Department to amend the agreement, provided the request is submitted to the Department in writing prior to the agreement's expiration.

Minor Amendments

Fee: \$150.

A minor amendment is one that would not significantly modify the scope or nature of any project covered by the agreement or any measure included in the agreement to protect fish and wildlife resources.

Major Amendments

Fee: \$500.

A major amendment is one that would significantly modify the scope or nature of any project covered by the agreement or any measure included in the agreement to protect fish and wildlife resources, or require additional environmental review pursuant to section 21000 *et seq.* of the Public Resources Code or section 15000 *et seq.* of title 14 of the California Code of Regulations. An amendment is not an extension.

A project may not be added to an agreement by amendment unless the agreement specifies otherwise.

To request an amendment for an existing agreement, complete an Amendment Request Form, and submit to the appropriate DFG Regional office with the appropriate fee.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

When the department is required to act as lead agency in administering or enforcing sections 1600–1616 of the Fish and Game Code, the department may charge and collect a reasonable fee from the entity to recover its estimated CEQA-related costs in accordance with section 21089 of the Public Resources Code. The department may recover its estimated CEQA-related costs by collecting from the entity one or more deposits.

If the Department is acting as lead agency, you will also be required to submit the following additional fees.

Fee:

\$1,500 initial deposit

Payment of Fees: A deposit of \$1,500 must be submitted with the notification. Additional deposits will be requested as needed. The department shall refund any unused deposit to the entity.

[Link Lake and Streambed Alteration Agreement Fees \(Table Format\)](#)

Questions and Answers

1. When must I notify the Department?

Fish and Game Code section 1602 requires any person, state or local governmental agency, or public utility to notify the Department before beginning any activity that will do one or more of the following: 1) substantially obstruct or divert the natural flow of a river, stream, or lake; 2) substantially change or use any material from the bed, channel, or bank of a river, stream, or lake; or 3) deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into a river, stream, or lake. Fish and Game Code section 1602 applies to all perennial, intermittent, and ephemeral rivers, streams, and lakes in the state. If you are not certain that your proposed activity requires notification, the Department recommends that you notify.

2. How do I notify the Department?

In order to notify the Department, a person, state or local governmental agency, or public utility must submit a complete notification package and fee to the Department regional office that serves the county where the activity will take place. The notification package is available from any Department regional office and the Department's website at www.dfg.ca.gov/1600/notification_pkg.html. The fee schedule-section 699.5 in title 14 of the California Code of Regulations- is included in the notification package. The Department's regional offices and the counties they serve are listed in the notification package and on the Department's website at www.dfg.ca.gov/regions/regions.html.

3. What happens after I notify the Department?

After you notify the Department, the Department will determine whether your notification package is complete. The Department will make this determination within 30 calendar days of receiving the notification package if you are applying for a regular agreement (i.e., an agreement for a term of five years or less). If the notification package is incomplete, the Department will contact you and specify the information you need to provide to make it complete. The Department will not process your notification package until it receives the additional information. If your notification package is complete, the Department will process it as described below. The 30-day time period does not apply to notifications for long-term agreements (i.e., agreements for a term greater than five years).

After the Department receives a complete notification package, it will determine whether you will need a Lake or Streambed Alteration Agreement for your activity. An agreement will be required if the activity could substantially adversely affect an existing fish and wildlife resource. If an agreement is required, the Department will conduct an onsite inspection, if necessary, and submit a draft agreement to you. The draft agreement will include measures to protect fish and wildlife resources while conducting the project. If you are applying for a regular agreement, the Department will submit a draft agreement to you within 60 calendar days after your notification is complete. The 60-day time period will not begin until your notification is complete. The 60-day time period does not apply to notifications for long-term agreements.

After you receive the draft agreement, you will have 30 calendar days to notify the Department whether the measures in the draft agreement are acceptable. If you agree with the measures included in the draft agreement, you will need to sign the agreement and submit it to the Department. If you disagree with any measures in the draft agreement, you must notify the Department in writing and specify the measures that are not acceptable. Upon written request, the Department will meet with you within 14 calendar days of receiving the request to resolve the disagreement. If you fail to respond, in writing, within 90 calendar days of receiving the draft agreement, the Department may withdraw that agreement.

After the Department receives the signed draft agreement, it will make it final by signing it. However, the Department will not sign the agreement until it receives your notification fee and complies with the California Environmental Quality Act (Pub. Resources Code, § 21000, et seq.)

(see "4" below). After you receive the final agreement, you may begin the project the agreement covers, provided you have obtained any other necessary local, state, and federal authorizations. If you disagree with any measures in the draft agreement and you and the Department cannot resolve the disagreement informally, you may request an arbitration panel to resolve the disagreement. If you request arbitration, a panel of arbitrators will be established within 14 calendar days of receiving the request. The panel will comprise three persons: your representative, a Department representative, and a third person mutually agreed upon by you and the Department who will serve as the panel's chair. If you and the Department cannot agree upon the third person within the 14-day period, a court will appoint the third person. The third person must have scientific expertise relevant to the fish and wildlife resources your project could affect and to the measures in the draft agreement that are in dispute. Each party will be required to pay the expenses of their selected representative and pay one-half the expenses of the third person. The panel will issue a decision within 14 days after it is established. The decision must be based on the best scientific information reasonably available at the time of the arbitration, and will be issued in the form of a final agreement. The decision will be binding on you and the Department unless you or the Department successfully petition a court to correct or vacate the decision.

The time periods described above may be extended at any time by mutual agreement. The notification package explains how to complete the notification package and the agreement process.

4. Does the Department need to comply with other state laws or regulations before issuing a Lake or Streambed Alteration Agreement?

Yes. The Department must comply with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000, et seq.) before it may issue a final Lake or Streambed Alteration Agreement. Issuance of a final Lake or Streambed Alteration Agreement occurs after the Department receives a draft Lake or Streambed Alteration Agreement from the applicant and the Department signs it. In many instances, the Department will receive a signed draft Lake or Streambed Alteration Agreement from an applicant before the lead agency has fully complied with CEQA. In those instances, the Department must wait for the lead agency to fully comply with CEQA before it may sign the draft Lake or Streambed Alteration Agreement, thereby making it final.

Under CEQA, the "lead agency" is the local or state governmental agency that has the principal responsibility for carrying out or approving the activity. All other local or state agencies with discretionary approval authority are "responsible agencies."

The lead agency must determine first whether the activity is exempt from CEQA. If the activity is not exempt, the lead agency must prepare an environmental document, which will be a negative declaration, a mitigated negative declaration, or an environmental impact report. A lead agency is entitled to recover all of its CEQA-related costs from the applicant. If the Department acts as the lead agency for the activity your draft agreement covers, it will instruct you to submit an initial deposit to cover its initial CEQA-related costs. The deposit and any further CEQA-related costs will be in addition to your notification fee.

If the Department is a responsible agency, you must submit with your notification package a copy of any document prepared by the lead agency pursuant to CEQA, if one already has been prepared. You must also identify in your notification package the lead agency. Also, Fish and Game Code section 711.4 requires the lead agency to collect a fee on behalf of the Department whenever the lead agency prepares an environmental document, unless the activity is exempt from the fee. If the lead agency prepares a negative or mitigated negative declaration, the fee is \$1,250. If the lead agency prepares an environmental impact report, the fee is \$850. For a detailed explanation of CEQA, you should consult the statute itself, the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) that implement CEQA, and CEQA handbooks and guides. CEQA and the CEQA Guidelines are available at www.ceres.ca.gov/planning.

5. Should I contact other governmental agencies regarding my proposed activity?

Depending on the activity you are proposing, in addition to a Lake or Streambed Alteration Agreement, you might need to obtain a permit, agreement, or other authorization from one or more governmental agencies. You should first contact your city and county planning departments to determine whether you need to obtain any local permits. The State and federal agencies listed below might also have permitting authority over your activity. You should contact these agencies if you are not familiar with their permitting requirements.

State agencies

- Coastal Commission
- Department of Conservation
- Department of Forestry
- Department of Water Resources
- Regional Water Quality Control Boards
- State Lands Commission
- State Water Resources Control Board

Federal agencies

- NOAA Fisheries
- U.S. Army Corps of Engineers
- U.S. Fish and Wildlife Service
- U.S. Forest Service

6. Do I need to notify the Department or obtain a Lake or Streambed Alteration Agreement for emergency work?

You do not need to notify the Department or obtain a Lake or Streambed Alteration Agreement before beginning the following emergency work: 1) immediate emergency work necessary to protect life or property; 2) immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in an area in which the Governor has proclaimed a state of emergency; and 3) emergency projects undertaken, carried out, or approved by a state or local governmental agency to maintain, repair, or restore an existing highway, within the existing right-of-way of the highway, that has been damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. Although notification is not required before beginning the emergency work, you must notify the Department in writing within 14 days after beginning the work.



STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME
NOTIFICATION OF LAKE OR STREAMBED ALTERATION



Notification Process and Instructions

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PART I: NOTIFICATION REQUIREMENT

Fish and Game Code section 1602 requires any person, state or local governmental agency, or public utility to notify the Department of Fish and Game ("Department") before beginning any activity that will do one or more of the following:

- 1) substantially obstruct or divert the natural flow of a river, stream, or lake;
- 2) substantially change the bed, channel, or bank of a river, stream, or lake;
- 3) use any material from the bed, channel, or bank of a river, stream, or lake; and/or
- 4) deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into a river, stream, or lake.

Fish and Game Code section 1602 applies to all perennial, intermittent, and ephemeral rivers, streams, and lakes in the state. ***If you are not certain that a particular project requires notification, the Department recommends that you notify.***

Note: *Although a person other than the applicant may complete the notification, "you" or "your" as used in this document refers to the applicant proposing the project because the applicant will be responsible for submitting and signing the notification.*

NOTIFYING THE DEPARTMENT

To notify the Department of any of the activities described above, complete the following steps:

Step 1: Complete the Notification of Lake or Streambed Alteration form (Form FG 2023 (Rev. 7/06)) ("notification form"). See Part II for instructions to complete this form.

Note: *If the project is part of a timber harvest plan ("THP"), you may notify the Department by submitting the THP and correct fee to the Department regional office that serves the county where the project will take place. In that case, you do not need to submit a notification form, provided the THP includes, at a minimum, the information listed in Fish and Game Code section 1611.*

Step 2: Determine the notification fee that will need to be submitted with the completed notification form or THP by referring to the enclosed fee schedule. Notification fees cover the Department's costs to process notifications and prepare Lake and Streambed Alteration Agreements ("agreement").

Step 3: Submit the completed notification form, or the THP, with all required enclosures and fees to the Department regional office that serves the county where the project will occur.

Note: *If the notification relates to timber harvesting activities in Humboldt or Del Norte County or the west portion of Trinity County, the notification must be submitted to the Department's Northern California and North Coast office in Eureka, rather than Redding. If you are not sure whether the Eureka or Redding office will review your notification or THP, contact either office for guidance to avoid any delay in processing your notification or THP.*

**Northern California and North Coast
(Region 1 – Redding)**

LSAA Program
601 Locust Street
Redding, CA 96001
(530) 225-2300

**San Joaquin Valley and Southern Sierra
(Region 4)**

LSAA Program
1234 East Shaw Avenue
Fresno, CA 93710
(559) 243-4005

**Northern California and North Coast
(Region 1 – Eureka)**

LSAA Program
619 Second Street
Eureka, CA 95501
(707) 445-6493

**South Coast
(Region 5)**

LSAA Program
4949 Viewridge Ave
San Diego, CA 92123
(858) 636-3160

**Sacramento Valley and Central Sierra
(Region 2)**

LSAA Program
1701 Nimbus Road
Rancho Cordova, CA 95670
(916) 358-2900

**Eastern Sierra and Inland Deserts
(Region 6)**

LSAA Program
4665 Lampson Avenue, Suite J
Los Alamitos, CA 90720
(562) 430-7212

**Central Coast
(Region 3)**

LSAA Program
Mailing address:
Post Office Box 47
Yountville, CA 94599
Street address:
7329 Silverado Trail
Napa, CA 94558
(707) 944-5520

PART II: INSTRUCTIONS FOR COMPLETING NOTIFICATION FORM (FG2023)

In order to notify the Department of an activity described in Part I, above, you will need to complete and submit the Notification of Lake or Streambed Alteration form (Form FG 2023 (Rev. 7/06)) ("notification form") to the appropriate Department regional office with all required enclosures and the correct notification fee.

For the notification form to be deemed complete, you **must**:

- 1) complete **all** fields in the form, unless otherwise indicated;
- 2) provide as much detail as possible so the Department can properly evaluate the project to determine whether an agreement is required;
- 3) submit all required enclosures with the notification;
- 4) provide information in the notification that is true and correct;
- 5) properly sign the notification; and
- 6) submit the notification form and required enclosures with the correct notification fee to the Department regional office that serves the county where the project will take place.

If during its review of the notification the Department determines that a biological or hydrological study (see the instructions below for boxes 11.E and 11.F) will be required in addition to the notification form and enclosures it receives, the Department will notify you that the study will need to be provided to make the notification complete.

The Department will not begin processing the notification until it determines that the notification is complete.

Instructions to complete the notification form are outlined below. "Project" means that part of the project subject to Fish and Game Code section 1602, unless otherwise specified.

1. APPLICANT PROPOSING PROJECT

Provide the name, mailing address, telephone and fax numbers, and e-mail address of the person or business, state or local governmental agency, or public utility proposing the project. The applicant will be responsible for signing the notification and any agreement and for complying with the terms and conditions of any agreement.

If the applicant is a business, agency, or utility, provide the name of the applicant's representative above the name of the applicant. For the purpose of the notification form, the applicant's representative **must** be an employee of the applicant.

2. CONTACT PERSON

Provide the name, mailing address, telephone and fax numbers, and e-mail address of the person the Department should contact regarding the project, if different from the applicant or applicant's representative.

3. PROPERTY OWNER

Provide the name, mailing address, telephone and fax numbers, and e-mail address of the owner of the property where the project will take place, if different from the applicant.

4. PROJECT NAME AND AGREEMENT TERM

A. Project Name

Provide the project name. If the project does not have a formal name or title, use a name that best describes the project. For example, if the project is the installation of a culvert on private property, you might name the project, "Culvert on Smith property." If the project has already been assigned a name for other permitting or environmental review purposes, use the same name.

B. Agreement Term Requested

An agreement may be either a regular agreement or long-term agreement. A regular agreement is one with a term of five years or less. A long-term agreement is an agreement with a term greater than five years.

Whether "Regular" or "Long-term" is checked, the Department has the discretion to determine the term of the agreement. Hence, if "Regular" is checked, the Department may decide a term of between one and five years. If "Long-term" is checked, the Department may decide either not to grant your request for a long-term agreement, but instead issue a regular agreement, or grant your request and decide some term greater than five years. If "Long-term" is checked and the Department decides not to grant your request for a long-term agreement, the Department will contact you, and thereafter process the notification as one for a regular agreement upon your written request.

If "Regular" is checked, the Department will process the notification and issue a draft agreement with a term no longer than five years in accordance with the time periods specified in Fish and Game Code sections 1602 and 1603. Specifically, the Department will determine whether the notification is complete within 30 days of receiving the notification form and correct notification fee, and issue you a draft agreement within 60 days of receiving a complete notification.

If "Long-term" is checked, the 30- and 60-day time periods described above will not apply (see Fish and Game Code section 1605(g)(5)). Hence, the Department may take longer than 30 days to determine if the notification is complete and longer than 60 days to issue a draft agreement after it receives a complete notification.

C. Project Term

Specify both the year the project will begin and the year the project will end.

Note: If "Regular" is checked in box B, the term in box C (e.g., 2005 to 2007) may not exceed five years. If "Regular" is checked in box B and the term in box C is greater than five years, the Department may consider the notification to be incomplete and suspend processing the notification.

Please be aware that the Department must often use the full 90 days it has available for notification review and agreement preparation, and may restrict work within a stream or lake to the dry season of the year. Consequently, you may want to include more than one season of possible operation in your project proposal.

D. Seasonal Work Period

Specify the time period (month and day) you intend to work on the project (e.g., August 1 to October 15). If the work period will not be the same each year, specify the time period for each year of the project (e.g., 2007: August 1 to October 15. 2008: June 1 to September 15. 2009: March 1 to July 15). The Department may restrict project work to certain periods depending on rainfall, fish migration, wildlife breeding, or other resource concerns.

E. Number of Work Days

Specify the estimated number of days of actual work that will be needed to complete the project.

5. AGREEMENT TYPE

Identify the type of agreement requested in the notification by checking the applicable box. Complete Attachment A, B, C, or D, if applicable.

A. Standard

Check this box for most construction projects, excluding: gravel, sand, or rock extraction; timber harvesting; water diversion, extraction, or impoundment; routine maintenance; restoration through Department's Fisheries Restoration Grant Program; or a Master Agreement as defined below.

B. Gravel/Sand/ Rock Extraction

Check this box *and* complete Attachment A if the project is for the commercial or non-commercial mining or extraction of gravel, sand, rock, or other aggregate material. Provide the mine identification number if the mining or excavation is *not* exempt from the Surface Mining and Reclamation Act (see Public Resources Code section 2714).

C. Timber Harvesting

Check this box *and* complete Attachment B if the project is part of a timber harvesting plan ("THP"), including a modified or program THP, or non-industrial timber management plan ("NTMP"). Provide the number assigned to the THP or NTMP.

D. Water Diversion/ Extraction/Impoundment

Check this box *and* complete Attachment C if the project is directly related to any diversion, obstruction, extraction, or impoundment of the natural flow of a river, stream, or lake. Provide the number assigned to the State Water Resources Control Board application, permit, license, registration, or other authorization to divert, extract, or impound water, if applicable.

If the diversion, obstruction, extraction, or impoundment of water is only *incidental* to the project described in the notification (e.g., temporarily dewatering a stream segment to install a culvert or bridge or drafting water as part of a timber harvesting operation) do not check this box or complete attachment.

E. Routine Maintenance

Check this box *and* complete Attachment D if the *primary* objective of the project is to maintain on a routine basis a number of existing private or public facilities, such as canals, channels, culverts, and ditches.

If the project is a one-time maintenance project, do not check this box or complete the attachment.

F. DFG Fisheries Restoration Grant Program

Check this box if the project is funded by the Department's Fisheries Restoration Grant Program *and* provide the contract number.

G. Master

Check this box for an agreement with a term of greater than five years that:

- 1) covers multiple projects that are not exclusively projects to extract gravel, sand, or rock; not exclusively projects that are included in a timber harvesting plan approved by the California Department of Forestry and Fire Protection; or not exclusively routine maintenance projects that the entity will need to complete separately at different time periods during the term of the agreement; and
- 2) describes a procedure the entity must follow for construction, maintenance, or other projects the agreement covers.

An example of a project for which the Department would issue a master agreement is a large-scale development proposal comprised of multiple projects for which specific, detailed design plans have not been prepared at the time of the original notification.

H. Master Timber Harvesting

Check this box for an agreement with a term of greater than five years that:

- 1) covers timber operations on timberland that are not exclusively projects to extract gravel, sand, or rock; not exclusively projects that are included in a timber harvesting plan approved by the California Department of Forestry and Fire Protection; or not exclusively routine maintenance projects that the entity will need to complete separately at different time periods during the term of the agreement; and
- 2) describes a procedure the entity must follow for construction, maintenance, or other projects the agreement covers.

6. FEES

A. Project

Specify the proposed project(s) for the purpose of calculating fees. "Project" means either of the following as determined by the Department:

- 1) One activity. An example of such a project is one that is limited to the removal of riparian vegetation at one location along the bank of a river, lake, or stream that will substantially change the bank.
- 2) Two or more activities that are interrelated and could or will affect similar fish and wildlife resources. An example of such a project is the construction of one bridge across a stream that requires the removal of riparian vegetation, the installation of abutments in or near the stream, and the temporary de-watering of the stream using a diversion structure. Each of those three activities together would constitute one project for the purpose of calculating the fee under this section because they are all related to the single purpose of constructing one bridge at one location.

By contrast, the construction of three bridges and two culverts across a stream at five different locations would not constitute one project, but instead would constitute five projects, even if each structure were to provide access to a common development site and/or were physically connected to each other by a road.

Note: *The Department may require the entity to separately notify of one or more projects based on type, location, and fish and wildlife resource issues.*

B. Project Cost

If the project is *not* for gravel, sand, or rock extraction; timber harvesting; or routine maintenance, provide the estimated cost to complete the project over the proposed term of the agreement. If the project is for gravel, sand, or rock extraction; timber harvesting; or routine maintenance, write "not applicable" in this box and refer to the enclosed fee schedule to determine the notification fee.

Note: For purposes of calculating the notification fee, "project" refers only to the activity that is subject to the notification requirement in Fish and Game Code section 1602 (described in Part I, above) and not the entire project. For example, if the project described in the notification is the construction of a bridge across a stream (that requires notification) and the bridge construction is part of a housing development (that except for the bridge construction does not require notification), only the cost of the bridge would be used to calculate the notification fee.

C. Project Fee

After determining the estimated project cost, refer to the fee schedule to determine the notification fee. The Department may require you to submit information that evidences the cost of the project.

Note: If the notification includes more than one project, the fee shall be calculated by adding the separate fees for each project. For example, if a notification identifies three projects, one of which will cost less than \$5,000, one which will cost \$7,500, and one of which will cost \$17,500, the fees for these projects would be \$200, \$250, and \$500 respectively. The total fee would be \$950.

D. Base Fee

If this notification is for a Standard Agreement, or an Agreement for Gravel, Sand or Rock Extraction, with a term of less than five years, skip to box 6.E. If this notification is for any other type of agreement, enter the corresponding "base fee" as identified in the fee schedule.

E. Total Fee Enclosed

Provide the amount of the total fee enclosed with the notification form. Checks must be made payable to the Department of Fish and Game.

Note: The Department may not process the notification until it receives the correct notification fee.

Example 1: Standard Agreement – Regular Term (5 years or less)

A. Project		B. Project Cost	D. Project Fee
1	Boat Ramp	\$4,500	\$200
2			
		E. Base Fee (if applicable)	N/A
		F. TOTAL FEE ENCLOSED	\$200

Example 2: Agreement for Gravel Extraction - Regular Term (5 years or less)

A. Project		B. Project Cost	D. Project Fee
1	Gravel Extraction (500 cubic yards)	N/A	\$1,000
2			
		E. Base Fee (if applicable)	N/A
		F. TOTAL FEE ENCLOSED	\$1,000

Example 3: Agreements for Timber Harvesting

A. Project		B. Project Cost	D. Project Fee
1	Culvert #1	N/A	\$100
2	Culvert #2	N/A	\$100
		E. Base Fee (if applicable)	\$1,200
		F. TOTAL FEE ENCLOSED	\$1,400

7. PRIOR NOTIFICATION AND ORDERS

A. Previous Notification and/or Agreement

Check the applicable box. If "yes" is checked, provide your name; the number assigned to the notification; and either the date the notification was submitted or the date the Department signed the final agreement, if a final agreement was issued.

B. Notification Related to Order by Court or Agency

In some instances, a court or administrative agency (e.g., the Department or a Regional Water Quality Control Board) might require you to perform work that is subject to the notification requirement in Fish and Game Code section 1602 to comply with an order, notice, or other directive ("order") issued by the court or agency. If the notification is being submitted in response to such an order, check "yes" and provide a copy of the order. If that is not the case, check "no."

Note: If the notification is being submitted in response to an order and the Department determines that an agreement is required to perform the work described in the notification to protect fish, wildlife, and plant resources, the measures the Department includes in a draft agreement to protect such resources will **not** be subject to arbitration. Instead, you must accept the measures unless the Department agrees to modify them (See Fish and Game Code section 1614).

8. PROJECT LOCATION

A. Address

Provide the street address where the project will take place (describe the location if there is no street address) and driving directions from the nearest major road or highway, known landmarks, access roads, and any other information that would allow a person not familiar with the area to find the project site. Enclose a map that marks the location of the project and denotes a north arrow and map scale.

B. River, Stream, or Lake

Provide the name of the river, stream, or lake in which or near where the project will take place. If the watercourse or waterbody is not named, please write "unnamed tributary" in the box.

C. Tributary

Provide the name of the watercourse or water body to which the river, stream, or lake specified in box 8.B is tributary.

D. Wild and Scenic Rivers

Check the appropriate box to specify whether or not the river or stream segment where the project is located is listed as a state or federal Wild and Scenic River. Refer to Public Resources Code section 5093.5 *et seq.* and section 1271 *et seq.* in title 16 of the United States Code.

Note: If the project is located within a segment of a river or stream that is listed in the state or federal Wild and Scenic River Acts, the Department cannot approve the project unless it is consistent with the act(s).

E. County

Provide the name of the county where the project will take place.

F. USGS 7.5 Minute Quad Map Name

Provide the name of the USGS 7.5 minute quadrangle map(s) that includes the property where the project will take place.

G - J. Township, Range, Section, ¼ Section

Provide the township, range, section, and ¼ section numbers of the property where the project will take place. Many county and city websites provide township, range, section, and ¼ section numbers.

K. Meridian

Provide the meridian of the property where the project will take place, if available.

L. Assessor's Parcel Number

Provide the Assessor's Parcel Number of the property where the project will take place. Among other documents, Assessor's Parcel Numbers are found on deeds and tax records.

M. Coordinates

If available, provide either the latitude and longitude or the UTM coordinates of the property where the project will take place **and** specify the datum used.

9. PROJECT CATEGORY AND WORK TYPE

Identify the project category and work type described in the notification by checking the applicable box(es). If "Other" is checked, briefly describe the type of project.

10. PROJECT DESCRIPTION

A. Describe the Project

See the instructions on the notification form.

B. Equipment

List all equipment and machinery that will be used to complete the project. If lubricants, solvents, chemicals, or other materials not normally found on construction sites will be present in the project area, list those materials in addition to the equipment and machinery that will be used to complete the project.

C. Water Presence

Check the applicable box. If "yes" is checked, complete box 10.D. If "no" is checked, skip to box 11.

D. Work in Wetted Channel

Check the applicable box. If "yes" is checked, a plan to divert water around (i.e., to dewater) the project site **must** be enclosed with the notification and should specify the method of diversion or drafting and the volume, rate, and timing of water diversion or drafting.

11. PROJECT IMPACTS

A. Modifications to River, Stream or Lake

Describe the effects to natural flow, bed, channel and bank of the river, stream, or lake. Quantify the effects and impacts in the project vicinity by noting the type, volume, and dimensions of material displaced through grading, trenching or other forms of site alteration.

Also include any impacts to the riparian zone on or adjacent to the channel floodplain. The riparian zone is the area that surrounds a channel or lake and supports (or can support) riparian vegetation that is dependent on surface or subsurface water. Include the effects of your project to this zone at least to the outer (landward) edge of the drip line of the riparian vegetation.

B. Vegetation

Check the applicable box. If "yes" is checked, complete the following tables by specifying the type of vegetation (i.e., trees such as oak, willow, or sycamore, and plant communities, such as salt marsh, freshwater marsh, wet meadow, willow thicket, riparian woodland, willow riparian woodland, desert wash woodland, riparian forest, oak riparian forest, redwood forest, riparian scrub, desert wash scrub, alkali sink scrub, oasis, vernal pool, bog, non-native, or ornamental) that will be affected temporarily and permanently, and the amount of vegetation that will be affected temporarily and permanently both in linear feet and total acres.

If trees **greater than 2 inches in diameter at breast height (4.5 ft)** will be removed as part of the project, specify the species of trees to be removed and (if available) the estimated number of trees of that species that will be removed and the range of trunk diameters measured at breast height. Trees can be grouped into size classes, for example, four oak trees approximately 10 to 20 inches in diameter. Attach a tree survey, if available.

C. Special Status Species

Special status species are endangered, rare, or threatened animal or plant species as defined in section 15380 of the California Environmental Quality Act ("CEQA") Guidelines (California Code of Regulations, title 14, section 15380).

Check the applicable box. If "yes" is checked, list each species and/or describe the habitat that will be affected.

If a species listed in this box is protected under the California or federal Endangered Species Act, you may be required to obtain take authorization from the Department and/or the U.S. Fish and Wildlife Service ("USFWS") or National Marine Fisheries Service ("NMFS"). Contact the Department, USFWS, or NMFS for information on take authorization.

D. Source

Identify the sources of information that were used to conclude that special status animal or plant species or habitat that may support such species are, or are not, present on or near the project site.

E. Biological Study

Check the applicable box. If "yes" is checked, the biological study or survey **must** be enclosed with the notification. ***If "no" is checked or the biological study enclosed with the notification is inadequate, the Department may require you to complete a biological study to evaluate the project's potential impact on biological resources before accepting the notification as complete.***

F. Hydrological Study

Check the applicable box. If "yes" is checked, the hydrological study or survey **must** be enclosed with the notification. ***If "no" is checked or the hydrological study enclosed with the notification is inadequate, the Department may require you to complete a hydrological study or provide other information on site hydraulics (e.g., flows, channel characteristics, and/or flood recurrence intervals) to evaluate the project's potential impacts on hydrology before accepting the notification as complete.***

12. MEASURES TO PROTECT FISH, WILDLIFE, AND PLANT RESOURCES

A. Erosion Control

Describe the methods or techniques that will be used to prevent sediment from entering any watercourses during and after construction. If no erosion control methods or techniques will be used, indicate "not applicable" and explain the reason they will not be used.

B. Impact Avoidance/Minimization Measures

Describe all measures that will be incorporated into the project to avoid or minimize impacts to fish, wildlife, and plant resources, other than erosion control methods or techniques. If no such measures have been identified for the project, indicate "not applicable" and explain the reason for the absence of such measures.

C. Mitigation/Compensation Measures

Describe all measures that will be incorporated into the project to mitigate or compensate for impacts to fish, wildlife, and plant resources. If no such measures have been identified for the project, indicate "not applicable" and explain the reason for the absence of such measures.

13. PERMITS

A - D. Local, State, and Federal Permits

List any local, state, and federal permits that are required for the project and check the applicable boxes (i.e., applied vs. issued). **Enclose a copy of each permit that has been issued.** You are responsible for obtaining all necessary permits and authorizations from the Department and other agencies before beginning any project described in the notification.

14. ENVIRONMENTAL REVIEW

A. CEQA, NEPA, CESA, and ESA Documents

Check the applicable boxes. If "yes" is checked, a copy of the CEQA, National Environmental Protection Act ("NEPA"), California Endangered Species Act ("CESA"), and/or federal Endangered Species Act ("ESA") document **must** be enclosed with the notification. Also write in the type of CEQA, NEPA, CESA, or ESA document if applicable.

B. State Clearinghouse Number

If copies of the CEQA document have been submitted to the State Clearinghouse for distribution to state agencies, provide the number assigned to the document by the State Clearinghouse.

C - F. CEQA Lead Agency

Check the applicable box in box C. If "yes" is checked, complete boxes D, E, and F. If "no" is checked, skip to box G.

G. Entire Project

If the project described in the notification is part of a larger project, parts of which are subject to the notification requirement in Fish and Game Code section 1602, briefly describe the entire project. For example, if the project described in the notification is the construction of a bridge across a stream (that requires notification) and the bridge construction is part of a housing development (that except for the bridge construction does not require notification), the housing development should be briefly described in this box.

If the project described in the notification is not part of a larger project, write "not applicable" in this box.

H. Filing Fee

Check the applicable box. If "yes" is checked, proof that the filing fee has been paid **must** be enclosed with the notification. If "no" is checked, explain the reason the filing fee has not been paid. A filing fee may not have been paid, for example, because the lead agency has not completed or approved or certified the CEQA document at the time the notification is submitted or one of the exceptions to payment of the filing fee applies.

Note: *If a filing fee has not been paid, but the Department determines that the fee is required, the Department may not issue a final agreement until it receives proof that the fee has been paid. For more information on filing fees, refer to Part IV.*

15. SITE INSPECTION

In order to determine whether the notification is complete, an agreement is required, and/or to identify the measures that must be incorporated into the project to protect fish, wildlife, and plant resources, the Department may need to conduct an inspection of the project site.

Box 1. Generally, non-enforcement Department personnel may only enter private property with the consent of the property owner. Checking the first box will enable Department personnel to enter the property at a reasonable time in the future without having to contact the property owner in advance. Receiving such consent in advance will help reduce the amount of time for the Department to determine whether the notification is complete and/or an agreement is needed and/or to prepare a draft agreement. If the first box is checked, provide the Department with any access instructions.

Box 2. Check the second box and provide the name and telephone number of the person the Department needs to contact before entering the property if you cannot or do not want to give the Department consent to enter the property in advance. The box should also be checked if the property owner or the owner's representative needs to be present when Department personnel visit the property.

Note: As explained in Part III, if "Regular" is checked in box 8.C and the Department determines that a site inspection is necessary to determine if the notification is complete, determine whether an agreement will be required for the project, and/or prepare a draft agreement, the 30- and 60-day time periods specified in Fish and Game Code sections 1602 and 1603 will not apply if one of the following occurs:

- 1) You are unable to schedule a date for the inspection that will reasonably allow the Department to make its completeness or agreement determination or issue a draft agreement within the 30- and 60-day time periods specified in Fish and Game Code sections 1602 and 1603.
- 2) You or the owner of the property where the project will take place (if different from the applicant) refuses to allow Department personnel to enter the property. In that case, the Department may refuse to process the notification, in which case the 30- and 60-day time periods will no longer apply.

16. DIGITAL FORMAT

If any of the information included as part of the notification is available in digital format, submit the information via digital media (e.g., CD, DVD, etc.) with the notification.

Note: The notification form must be completed and submitted in paper format, even if the information is available in digital format.

17. SIGNATURE

If the applicant is a person, that person must sign the notification in order for it to be valid. If the applicant is a business, state or local governmental agency, or public utility, only a person who is an employee of the business, agency, or utility and authorized by it to sign the notification, may sign the notification in order for it to be valid. ***Under no circumstances should a consultant or other contact person or property owner who is not the applicant or, if the applicant is a business, agency, or utility, not an authorized employee of the applicant, sign the notification.*** If that occurs, the Department may return the notification to the applicant as invalid.

PART III: PROCESSING YOUR NOTIFICATION

After the Department receives a notification, whether through the submittal of a notification form or THP, it will determine whether or not it is complete.

If you notify the Department through the submittal of a notification form, the Department will determine the notification is complete if all of the following apply:

- 1) all required fields on the notification form are completed;
- 2) all required enclosures are submitted (including a biological and/or hydrological study, if required);
- 3) the notification was properly signed;
- 4) the information in the notification is true and correct; and
- 5) the correct notification fee is provided with the notification.

If the Department determines the notification is incomplete, the Department may return the notification and specify the information or materials that will need to be provided to the Department when the notification is resubmitted. **A notification is not effective unless it is complete.** Therefore, in order to avoid any potential delay, it is important that the Notification of Lake or Streambed Alteration form (Form FG 2023 Rev. 7/06) be filled out completely and accurately and submitted to the appropriate Department regional office with all required enclosures, and any other information that will assist the Department in evaluating the project, and the correct notification fee.

If you notify the Department through the submittal of a Timber Harvest Plan ("THP"), the Department will determine the notification is complete if all of the following apply:

- 1) the THP includes, at a minimum, the information listed in Fish and Game Code section 1611;
- 2) the information in the THP is true and correct;
- 3) the THP was properly signed;
- 4) the THP is accepted for filing by the California Department of Forestry and Fire Protection; and
- 5) the correct notification fee is provided with the notification or has been paid.

Whether you notify the Department through the submittal of a notification form or THP, the Department will have 30 days to make its completeness determination, **unless** you have checked "Long-term agreement" in box 4.B of the notification form or submitted a request for a long-term agreement with the THP. The 30-day time period to determine whether a notification is complete does not apply to notifications for long-term agreements (see Fish and Game Code section 1605(g)(5)), or when one of the following occurs:

- 1) the Department and applicant mutually agree to extend the 30-day time period.
- 2) the Department determines that an onsite inspection is required before it can make its completeness determination, but you are unable to schedule a date for the inspection that will reasonably allow the Department to make the determination within the 30-day time period.

- 3) the Department determines that an onsite inspection is required before it can make its completeness determination and you or the owner of the property where the project will take place (if different from the applicant) refuses to allow Department personnel to enter the property. In that case, the Department may refuse to process the notification, in which case the 30-day time period will no longer apply.

After the Department determines that the notification or THP is complete, it will assign it to staff that will evaluate the project and determine whether you will need an agreement.

An agreement will be required if the project could substantially adversely affect an existing fish, wildlife, or plant resource. If the Department determines that an agreement is required, it will submit a draft agreement to you for review within 60 days of receiving a complete notification or THP, ***unless*** you have requested a long-term agreement. The 60-day time period does not apply to notifications for long-term agreements (see Fish and Game Code section 1605(g)(5)), or when one of the following occurs:

- 1) the Department and applicant mutually agree to extend the 60-day time period.
- 2) the Department determines that an onsite inspection is required before it can determine whether an agreement will be required or issue a draft agreement, but you are unable to schedule a date for the inspection that will reasonably allow the Department to make its agreement determination or issue a draft agreement within the 60-day time period.
- 3) the Department determines that an onsite inspection is required before it can determine whether an agreement will be required or issue a draft agreement, and you or the owner of the property where the project will take place (if different from the applicant) refuses to allow Department personnel to enter the property. In that case, the Department may refuse to process the notification, in which case the 60-day time period will no longer apply.

Whether "Regular" or "Long-term" is checked, the Department has the discretion to determine the term of the agreement. Hence, if "Regular" is checked, the Department may decide a term of between one and five years. If "Long-term" is checked, the Department may decide either not to grant your request for a long-term agreement, but instead issue a regular agreement, or grant your request and decide some term greater than five years. If "Long-term" is checked and the Department decides not to grant your request for a long-term agreement, the Department will contact you, and thereafter process the notification as one for a regular agreement upon your written request.

If you request, and the Department grants, a long-term agreement, you will be required to comply with the requirements specified in Fish and Game Code section 1605(g), which includes filing a status report with the Department every four years.

The draft agreement will include measures the Department determines are necessary to protect fish, wildlife, and plant resources while conducting the project. After receiving the draft agreement, you will have 30 days to notify the Department whether the measures in the draft agreement are acceptable. If you agree with the measures included in the draft agreement, you or your authorized representative will need to sign the agreement and submit it to the Department. If you disagree with any measures in the draft agreement, you must notify the Department in writing and specify the measures that are not acceptable. Upon written request, the Department will meet with you within 14 days of receiving the request to resolve the disagreement. If you fail to respond, in writing, within 90 days of receiving the draft agreement, the Department may withdraw the agreement.

If you disagree with any measures in the draft agreement and you and the Department cannot resolve the disagreement informally, you may request an arbitration panel to resolve the disagreement. If you request arbitration, a panel of arbitrators will be established within 14 days of receiving the request. The panel will include three persons: your representative, a Department representative, and a third person mutually agreed upon by you and the Department who will serve as the panel's chair. If you and the Department cannot agree upon the third person within the 14-day period, a court will appoint the third person. The third person must have scientific expertise relevant to the fish, wildlife, and plant resources the project could affect and to the disputed measures in the draft agreement. **Each party will be required to pay the expenses of their selected representative and pay one-half the expenses of the third person.**

The panel will issue a decision within 14 days after it is established. The decision must be based on the best scientific information reasonably available at the time of the arbitration, and will be issued in the form of a final agreement. The decision will be binding on you and the Department unless you or the Department successfully petitions a court to correct or vacate the decision.

The time periods described above may be extended at any time by mutual agreement.

Note: *The measures included in a draft agreement are not subject to arbitration if the notification is being submitted in response to an order by the court or an administrative agency that requires you to perform work subject to the notification requirement in Fish and Game Code section 1602.*

After the Department receives the signed draft agreement, it will make it final by signing it. However, the Department will not sign the agreement until it has received the correct notification fee, has complied with CEQA, and has received written proof that the filing fee (specified in Fish and Game Code section 711.4) has been paid, if a filing fee is required. After you receive the final agreement, the project described in the notification or THP and covered by the agreement may begin, provided you have obtained all necessary local, state, and federal permits or other authorizations.

Part IV: California Environmental Quality Act

The Department must comply with California Environmental Quality Act ("CEQA") before it may issue a **final** agreement. Issuance of a final agreement occurs when the Department receives the signed **draft** agreement from you **and** the Department signs it. In many instances, the Department will receive the signed draft agreement from an applicant before the lead agency has fully complied with CEQA. In those instances, the Department must wait for the lead agency to fully comply with CEQA before it may sign the draft agreement, thereby making it final.

Under CEQA, the "lead agency" is the local or state governmental agency that has the principal responsibility for carrying out or approving the project. All other local or state agencies with discretionary approval authority are "responsible agencies."

The lead agency must determine first whether the project is exempt from CEQA. If the project is not exempt, the lead agency must prepare an environmental document, which will be a negative declaration, a mitigated negative declaration, or an environmental impact report. A lead agency is entitled to recover all of its CEQA-related costs from you. If the Department acts as the lead agency for the project your draft agreement covers, it will instruct you to submit an initial deposit to cover its initial CEQA-related costs. The deposit and any further CEQA-related costs will be in addition to the notification fee.

If the Department is a responsible agency, you must submit with the notification form a copy of any document prepared by the lead agency pursuant to CEQA, if one already has been prepared. You must also identify the lead agency on the notification form (box 14.D).

Pursuant to Fish and Game Code section 711.4, you must pay a filing fee to the lead agency if the project is subject to CEQA, unless one of the exceptions specified in section 711.4(c)(2) or (3) or (d)(1) or (2) applies. If the CEQA lead agency prepares a negative declaration or mitigated negative declaration, the filing fee is \$1,250. If the CEQA lead agency prepares an environmental impact report, the filing fee is \$850. The filing fee is in addition to the notification fee.

For a detailed explanation of CEQA, please consult the statute itself (Public Resources Code section 21000, *et seq.*), the CEQA Guidelines (California Code of Regulations, title 14, section 15000 *et seq.*) that implement CEQA, and CEQA handbooks and guides.

Part V: Other Permits

Depending on the project being proposed, in addition to a Lake or Streambed Alteration Agreement, you might need to obtain a permit, agreement, or other authorization from one or more governmental agencies. You should first contact the planning departments of the city or county where the project will take place to determine whether any local permits are required for the project. The state and federal agencies listed below might also have permitting authority over the project. You should contact these agencies if you are not familiar with their permitting requirements.

STATE AGENCIES

Coastal Commission
Department of Conservation
Department of Forestry and Fire Protection
Department of Water Resources
Reclamation Board/District
Regional Water Quality Control Boards
State Lands Commission
State Water Resources Control Board

FEDERAL AGENCIES

National Marine Fisheries Service
U.S. Army Corp of Engineers
U.S. Fish and Wildlife Service
U.S. Forest Service

F-5
California Department
of Fish and Game

Section 2081 Permit

Section 2081 Permit Instructions

<http://www.dfg.ca.gov/legal/879regs.htm>



Welcome to **California**



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Application Procedures for California Incidental Take Permits

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Permits
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Sportfish Management
Stream/Lake Alteration
Wildlife Rehabilitation

783.2. Incidental Take Permit Applications (as of 8/25/06)

(Cited from: CALIFORNIA CODE OF REGULATIONS
TITLE 14. NATURAL RESOURCES DIVISION

1. FISH AND GAME COMMISSION -DEPARTMENT OF FISH AND GAME
SUBDIVISION

3. GENERAL REGULATIONS CHAPTER

6. REGULATIONS FOR IMPLEMENTATION OF THE CALIFORNIA
ENDANGERED SPECIES ACT ARTICLE

1. TAKE PROHIBITION; PERMITS FOR INCIDENTAL TAKE OF ENDANGERED
SPECIES, THREATENED SPECIES AND CANDIDATE SPECIES)

(a) Permit applications. Applications for permits under this article must be submitted to the Regional Manager. Each application must include all of the following:

- (1) Applicant's full name, mailing address, and telephone number(s). If the applicant is a corporation, firm, partnership, association, institution, or public or private agency, the name and address of the person responsible for the project or activity requiring the permit, the president or principal officer, and the registered agent for the service of process.
- (2) The common and scientific names of the species to be covered by the permit and the species' status under CESA, including whether the species is the subject of rules and guidelines pursuant to Section 2112 and Section 2114 of the Fish and Game Code.
- (3) A complete description of the project or activity for which the permit is sought.
- (4) The location where the project or activity is to occur or to be conducted.
- (5) An analysis of whether and to what extent the project or activity for which the permit is sought could result in the taking of species to be covered by the permit.
- (6) An analysis of the impacts of the proposed taking on the species.
- (7) An analysis of whether issuance of the incidental take permit would jeopardize the continued existence of a species. This analysis shall include consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (A) known population trends; (B) known threats to the species; and (C) reasonably foreseeable impacts on the species from other related projects and activities.
- (8) Proposed measures to minimize and fully mitigate the impacts of the proposed taking.
- (9) A proposed plan to monitor compliance with the minimization and mitigation measures and the effectiveness of the measures.

(10) A description of the funding source and the level of funding available for implementation of the minimization and mitigation measures.

(11) Certification in the following language:

I certify that the information submitted in this application is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to suspension or revocation of this permit and to civil and criminal penalties under the laws of the State of California.

(b) Information requirements; consultation with Department. Responses to the requirements of section 783.2(a)(5)-(a)(9) shall be based on the best scientific and other information that is reasonably available. At an applicant's request, the Department shall, to the greatest extent practicable, consult with the applicant regarding the preparation of a permit application in order to ensure that it will meet the requirements of this article when submitted to the Department. An analysis prepared pursuant to state or federal laws other than CESA that meets the requirements of section 783.2 and 783.3 may be submitted in an incidental take permit application.

HISTORY

1. New section filed 12-30-98; operative 12-30-98 pursuant to GovernmentCode section 11343.4
(d) (Register 99, No. 1).

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F-6
California Coastal Commission
Coastal Development Permit

Application and Instructions for Coastal Development Permit for San Diego County
<http://www.coastal.ca.gov/cdp/CDP-ApplicationForm-sd.pdf>

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT OFFICE
 7575 METROPOLITAN DRIVE, SUITE 103
 SAN DIEGO, CA 92108-4421
 VOICE AND TDD (619) 767-2370
 FAX (619) 767-2384



PERMIT APPLICATION INSTRUCTIONS

A completed application includes the APPLICATION FOR COASTAL DEVELOPMENT PERMIT, the appendices to the application, and **Required Attachments**.

- Please answer all questions. If a question is not applicable to your project, indicate "N.A."
- Refer to pages 8 – 9 of the APPLICATION for a list of **Required Attachments**.
- Incomplete applications will not be accepted for filing.
- All exhibits must be legible.

The following checklist is provided for the convenience of applicants in gathering necessary application materials; it is not a complete statement of filing requirements.

	Page	Item
<input type="checkbox"/> Proof of applicant's interest in the property.	7	1
<input type="checkbox"/> Assessor's parcel map(s) showing the proposed development site and all adjacent properties within 100 feet of the property boundary.	7	2
<input type="checkbox"/> Stamped envelopes (<i>no postage meter please</i>) addressed to neighboring property owners and occupants and other interested parties and a list of the same.	7, 8	4, 5
<input type="checkbox"/> Vicinity map.	8	6
<input type="checkbox"/> One set of project plan(s), site plan(s), and applicable other plans.	8	7, 11
<input type="checkbox"/> Copy of any environmental documents (DRAFT AND FINAL EIRs, EISs, NEGATIVE DECLARATION) if prepared for the project and any comments and responses.	8	9
<input type="checkbox"/> Verification of all other permits, permissions or approvals applied for or granted by public agencies.	8	10
<input type="checkbox"/> Copy of geology or soils report (if necessary).	8	11
<input type="checkbox"/> Local approval of the project.	Appendix B	
<input type="checkbox"/> Has the Notice of Pending Permit been posted in a conspicuous place?	Appendix D	
<input type="checkbox"/> Filing fee.	Appendix E	
<input type="checkbox"/> Have you and the agent (if appropriate) signed the application at the appropriate lines on pages 9, 10, and 13?		

APPLICATION FOR COASTAL DEVELOPMENT PERMIT

SECTION I. APPLICANT

1. Name, mailing address, and telephone number of all applicants.

(Area code/daytime phone number)

Note: All applicants for the development must complete Appendix A, the declaration of campaign contributions.

2. Name, mailing address and telephone number of applicant's representatives, if any. Please include all representatives who will communicate on behalf of the applicant or the applicant's business partners, for compensation, with the Commission or the staff. (It is the applicant's responsibility to update this list, as appropriate, including after the application is accepted for filing. Failure to provide this information prior to communication with the Commission or staff may result in denial of the permit or criminal penalties.)

(Area code/daytime phone number)

SECTION II. PROPOSED DEVELOPMENT

Please answer all questions. Where questions do not apply to your project (for instance, project height for a land division), indicate **Not Applicable** or **N.A.**

1. **Project Location.** Include street address, city, and/or county. If there is no street address, include other description such as nearest cross streets.

number street

city county

Assessor's Parcel Number(s) (obtainable from tax bill or County Assessor):

<i>FOR OFFICE USE ONLY</i>	RECEIVED _____
	FILED _____
	FEE _____
	DATE PAID _____
_____	APPLICATION NUMBER

2. Describe the proposed development in detail. Include secondary improvements such as grading, septic tanks, water wells, roads, driveways, outbuildings, fences, etc. (Attach additional sheets as necessary.)

a. If multi-family residential, state:

Number of units			Number of bedrooms per unit (both existing and proposed)	Type of ownership proposed
Existing units	Proposed new units	Net number of units on completion of project		
				<input type="checkbox"/> rental <input type="checkbox"/> condominium <input type="checkbox"/> stock cooperative <input type="checkbox"/> time share <input type="checkbox"/> other _____

b. If land division or lot line adjustment, indicate:

Number of lots			Size of lots to be created (indicate <i>net</i> or <i>gross</i> acreage)	
Existing Lots	Proposed new lots	Net number of lots on completion of project	Existing	Proposed

3. Estimated cost of development (not including cost of land) \$ _____
4. Project height: Maximum height of structure (ft.) _____
- above existing (natural) grade _____
 - above finished grade _____
 - as measured from centerline of frontage road _____
5. Total number of floors in structure, including subterranean floors, lofts, and mezzanines..... _____
6. Gross floor area excluding parking (sq.ft.) _____
- Gross floor area including covered parking and accessory buildings (sq.ft.) _____
7. Lot area (within property lines) (sq.ft. or acre) _____

Lot coverage	Existing (sq.ft. or acre)	New proposed (sq.ft. or acre)	Total (sq.ft. or acre)
Building			
Paved area			
Landscaped area			
Unimproved area			
<i>Grand Total (should equal lot area as shown in #7 above)</i>			

8. Is any grading proposed? Yes No

<i>If yes, complete the following.</i>			
a) Amount of cut	cu. yds.	d) Maximum height of cut slope	ft.
b) Amount of fill	cu. yds.	e) Maximum height of fill slope	ft.
c) Amount of import or export (circle which)	cu. yds.	f) Location of borrow or disposal site	

Grading, drainage, and erosion control plans must be included with this application, if applicable. In certain areas, an engineering geology report must also be included. See page 7, items # 7 and 11.

Please list any geologic or other technical reports of which you are aware that apply to this property:

9. Parking:

Number of parking spaces (indicate whether standard or compact)		
Existing Spaces	Proposed new spaces	Net number of spaces on completion of project

Is any existing parking being removed?..... Yes No

If yes, how many spaces? _____ size _____

Is tandem parking existing and/or proposed? Yes No

If yes, how many tandem sets? _____ size _____

10 Are utility extensions for the following needed to serve the project? (Please check **yes** or **no**)

a) water b) gas c) sewer d) electric e) telephone

Yes Yes Yes Yes Yes
 No No No No No

Will electric or telephone extensions be above-ground? Yes No

11. Does project include removal of trees or other vegetation? Yes No

If yes, indicate **number, type** and **size** of trees _____

_____ or **type** and **area** of other vegetation _____

SECTION III. ADDITIONAL INFORMATION

The relationship of the development to the applicable items below must be explained fully. Attach additional sheets if necessary.

1. Present use of property.

a. Are there existing structures on the property? Yes No

<i>If yes, describe</i>

- b. Will any existing structures be demolished? Yes No
 Will any existing structures be removed? Yes No

If yes to either question, describe the type of development to be demolished or removed, including the relocation site, if applicable.

2. Is the proposed development to be governed by any Development Agreement? Yes No
3. Has any application for development on this site including any subdivision been submitted previously to the California Coastal Zone Conservation Commission or the Coastal Commission? Yes No
- If yes, state previous application number(s) _____
4. a. Is the development between the first public road and the sea (including lagoons, bays, and other bodies of water connected to the sea) Yes No
- b. If yes, is public access to the shoreline and along the coast currently available on the site or near the site? Yes No

If yes, indicate the location and nature of the access, including the distance from the project site, if applicable.

- c. Will the project have an effect on public access to and along the shoreline, either directly or indirectly (e.g., removing parking used for access to the beach)? Yes No

If yes, describe the effect

5. Does the development involve diking, filling, draining, dredging or placing structures in open coastal waters, wetlands, estuaries, or lakes? (Please check **yes** or **no**)

a) *diking* b) *filling* c) *dredging* d) *placement of structures*

- | | | | |
|--------------------------|--------------------------|--------------------------|--------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Yes | Yes | Yes | Yes |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| No | No | No | No |

Amount of material to be **dredged** or **filled** (indicate which) _____ cu. yds

Location of dredged material disposal site _____

Has a U.S. Army Corps of Engineers' permit been applied for? Yes No

6. Will the development extend onto or adjoin any beach, tidelands, submerged lands or public trust lands? Yes No

For projects on State-owned lands, additional information may be required as set forth in Section IV, paragraph 10.

7. Will the development protect existing lower-cost visitor and recreational facilities? Yes No

Will the development provide public or private recreational opportunities? .. Yes No

<i>If yes, explain.</i>

8. Will the proposed development convert land currently or previously used for agriculture to another use? Yes No

If yes, how many acres will be converted? _____

9. Is the proposed development in or near:

- | | | | | |
|---|--------------------------|-----|--------------------------|----|
| a. Sensitive habitat areas (Biological survey may be required) | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| b. Areas of state or federally listed rare, threatened, or endangered species | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| c. 100-year floodplain (Hydrologic mapping may be required) | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| d. Park or recreation area | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |

10. Is the proposed development visible from:

- | | | | | |
|--|--------------------------|-----|--------------------------|----|
| a. State Highway 1 or other scenic route | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
|--|--------------------------|-----|--------------------------|----|

- b. Park, beach, or recreation area Yes No
 - c. Harbor area Yes No
11. Does the site contain any: (If yes to any of the following, please explain on an attached sheet.)
- a. Historic resources Yes No
 - b. Archaeological resources Yes No
 - c. Paleontological resources Yes No
12. Where a stream or spring is to be diverted, provide the following information:
- Estimated streamflow or spring yield (gpm) _____
- If well is to be used, existing yield (gpm) _____
- If water source is on adjacent property, attach Division of Water Rights approval and property owner's approval.

SECTION IV. REQUIRED ATTACHMENTS

The following items must be submitted with this form as part of the application.

1. **Proof of the applicant's legal interest in the property.** A copy of any of the following will be acceptable: current tax bill, recorded deed, lease, easement, or current policy of title insurance. Preliminary title reports will not be accepted for this purpose. Documentation reflecting intent to purchase such as a signed Offer to Purchase along with a receipt of deposit or signed final escrow document is also acceptable, but in such a case, issuance of the permit may be contingent on submission of evidence satisfactory to the Executive Director that the sale has been completed.

The identity of all persons or entities which have an ownership interest in the property superior to that of the applicant must be provided.
2. **Assessor's parcel map(s)** showing the page number, the applicant's property, and all other properties within 100 feet (excluding roads) of the property lines of the project site. (Available from the County Assessor.)
3. Copies of required **local approvals** for the proposed project, including zoning variances, use permits, etc., as noted on Local Agency Review Form, Appendix B. Appendix B must be completed and signed by the local government in whose jurisdiction the project site is located.
4. **Stamped envelopes addressed to each property owner and occupant of property situated within 100 feet of the property lines of the project site (excluding roads), along with a list containing the names, addresses and assessor's parcel numbers of same.** The envelopes must be plain (i.e., no return address), and regular business size (9 1/2" x 4 1/8"). Include first class postage on each one. **Metered postage is not acceptable.** Use Appendix C, attached, for the listing of names and addresses. (Alternate notice provisions may be employed at the discretion of the District Director under extraordinary circumstances.)

5. **Stamped, addressed envelopes (no metered postage, please) and a list of names and addresses of all other parties known to the applicant to be interested in the proposed development** (such as persons expressing interest at a local government hearing, etc.).
6. **A vicinity or location map** (copy of Thomas Bros. or other road map or USGS quad map) with the project site clearly marked.
7. Copy(s) of plans drawn to scale, including (as applicable):
 - site plans
 - floor plans
 - building elevations
 - grading, drainage, and erosion control plans
 - landscape plans
 - septic system plans

Trees to be removed must be marked on the site plan. In addition, a reduced site plan, 8 1/2" x 11" in size, must be submitted. Reduced copies of complete project plans will be required for large projects. NOTE: See Instruction page for number of sets of plans required.
8. Where septic systems are proposed, evidence of County approval or Regional Water Quality Control Board approval. Where water wells are proposed, evidence of County review and approval.
9. A copy of any **Draft or Final Negative Declaration, Environmental Impact Report (EIR) or Environmental Impact Statement (EIS)** prepared for the project. If available, comments of all reviewing agencies and responses to comments must be included.
10. **Verification of all other permits, permissions or approvals** applied for or granted by public agencies such as:
 - Department of Fish and Game
 - State Lands Commission
 - Army Corps of Engineers
 - U.S. Coast Guard

For projects such as seawalls located on or near state tidelands or public trust lands, the Coastal Commission must have a written determination from the State Lands Commission whether the project would encroach onto such lands and, if so, whether the State Lands Commission has approved such encroachment. See memo to *"Applicants for shoreline development"* dated December 13, 1993.
11. For development on a bluff face, bluff top, or in any area of high geologic risk, a comprehensive, site-specific **geology and soils report** (including maps) prepared in accordance with the Coastal Commission's Interpretive Guidelines. Copies of the guidelines are available from the District Office.

SECTION V. NOTICE TO APPLICANTS

Under certain circumstances, additional material may be required prior to issuance of a coastal development permit. For example, where offers of access or open space dedication are required,

preliminary title reports, land surveys, legal descriptions, subordination agreements, and other outside agreements will be required prior to issuance of the permit.

In addition, the Commission may adopt or amend regulations affecting the issuance of coastal development permits. If you would like notice of such proposals during the pendency of this application, if such proposals are reasonably related to this application, indicate that desire..... Yes No

SECTION VI. COMMUNICATION WITH COMMISSIONERS

Decisions of the Coastal Commission must be made on the basis of information available to all commissioners and the public. Therefore, permit applicants and interested parties and their representatives are advised not to discuss with commissioners any matters relating to a permit outside the public hearing. Such contacts may jeopardize the fairness of the hearing and result in invalidation of the Commission's decision by court. Any written material sent to a commissioner should also be sent to the commission office for inclusion in the public record and distribution to other Commissioners.

SECTION VII. CERTIFICATION

1. I hereby certify that I, or my authorized representative, have completed and posted or will post the **Notice of Pending Permit** card in a conspicuous place on the property within three days of submitting the application to the Commission office.
2. I hereby certify that I have read this completed application and that, to the best of my knowledge, the information in this application and all attached appendices and exhibits is complete and correct. I understand that the failure to provide any requested information or any misstatements submitted in support of the application shall be grounds for either refusing to accept this application, for denying the permit, for suspending or revoking a permit issued on the basis of such misrepresentations, or for seeking of such further relief as may seem proper to the Commission.
3. I hereby authorize representatives of the California Coastal Commission to conduct site inspections on my property. Unless arranged otherwise, these site inspections shall take place between the hours of 8:00 A.M. and 5:00 P.M.

Signature of Authorized Agent(s) or if no agent, signature of Applicant

NOTE: IF SIGNED ABOVE BY AGENT, APPLICANT MUST SIGN BELOW.

SECTION VIII. AUTHORIZATION OF AGENT

I hereby authorize _____ to act as my representative and to bind me in all matters concerning this application.

Signature of Applicant(s)
(Only the applicant(s) may sign here to authorize an agent)

APPLICATION FOR COASTAL DEVELOPMENT PERMIT

APPENDIX A

DECLARATION OF CAMPAIGN CONTRIBUTIONS

Government Code Section 84308 prohibits any Commissioner from voting on a project if he or she has received campaign contributions in excess of \$250 within the past year from project proponents or opponents, their agents, employees or family, or any person with a financial interest in the project.

In the event of such contributions, a Commissioner must disqualify himself or herself from voting on the project.

Each applicant must declare below whether any such contributions have been made to any of the listed **Commissioners** or **Alternates** (see last page).

CHECK ONE

The applicants, their agents, employees, family and/or any person with a financial interest in the project **have not contributed** over \$250 to any Commissioner(s) or Alternate(s) within the past year.

The applicants, their agents, employees, family, and/or any person with a financial interest in the project **have contributed** over \$250 to the Commissioner(s) or Alternate(s) listed below within the past year.

Commissioner or Alternate _____

Commissioner or Alternate _____

Commissioner or Alternate _____

Signature of Applicant or Authorized Agent

Date

Please type or print your name _____

APPENDIX B

LOCAL AGENCY REVIEW FORM

SECTION A (TO BE COMPLETED BY APPLICANT)

Applicant _____

Project Description _____

Location _____

Assessor's Parcel Number _____

SECTION B (TO BE COMPLETED BY LOCAL PLANNING OR BUILDING INSPECTION DEPARTMENT)

Zoning Designation _____ du/ac

General or Community Plan Designation _____ du/ac

Local Discretionary Approvals

- Proposed development meets all zoning requirements and needs no local permits other than building permits.
- Proposed development needs local discretionary approvals noted below.

Needed Received

- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Design/Architectural review |
| <input type="checkbox"/> | <input type="checkbox"/> | Variance for _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | Rezone from _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | Tentative Subdivision/Parcel Map No. _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | Grading/Land Development Permit No. _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | Planned Residential/Commercial Development Approval |
| <input type="checkbox"/> | <input type="checkbox"/> | Site Plan Review |
| <input type="checkbox"/> | <input type="checkbox"/> | Condominium Conversion Permit |
| <input type="checkbox"/> | <input type="checkbox"/> | Conditional, Special, or Major Use Permit No. _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | Other _____ |

CEQA Status

- Categorically Exempt Class _____ Item _____
- Negative Declaration Granted (Date) _____
- Environmental Impact Report Required, Final Report Certified (Date) _____
- Other _____

Prepared for the City/County of _____ by _____

Date _____ Title _____

Application No. _____

APPENDIX C

LIST OF PROPERTY OWNERS AND OCCUPANTS WITHIN 100 FEET AND THEIR ADDRESSES
(MAKE ADDITIONAL COPIES OF THIS SHEET AS NECESSARY)

APPENDIX D
(Permit Application)

DECLARATION OF POSTING

Prior to or at the time the application is submitted for filing, the applicant must post, at a conspicuous place, easily read by the public and as close as possible to the site of the proposed development, notice that an application for the proposed development has been submitted to the Commission. Such notice shall contain a general description of the nature of the proposed development. The Commission furnishes the applicant with a standardized form to be used for such posting. If the applicant fails to post the completed notice form and sign the Declaration of Posting, the Executive Director of the Commission shall refuse to file the application. 14 Cal. Code Regs. Section 13054(d).

Please sign and date this Declaration of Posting form when the site is posted; it serves as proof of posting. It should be returned to our office with the application.

<p>Pursuant to the requirements of California Administrative Code Section 13054(b), I hereby certify that on, _____ I or my authorized representative posted the Notice <small>(date of posting)</small></p> <p>of Pending Permit for application to obtain a coastal development permit for the development of _____</p> <p>_____</p> <p>_____</p> <p style="text-align: center;"><small>(description of development)</small></p> <p>Located at _____</p> <p>_____</p> <p style="text-align: center;"><small>(address of development or assessor's parcel number)</small></p> <p>The public notice was posted at _____</p> <p>_____</p> <p style="text-align: center;"><small>(a conspicuous place, easily seen by the public and as close as possible to the site of the proposed development)</small></p> <p style="text-align: right;">_____ <small>(signature)</small></p> <p style="text-align: right;">_____ <small>(date)</small></p>

NOTE: Your application cannot be processed until this **Declaration of Posting** is signed and returned to this office.

<p><i>FOR OFFICE USE ONLY</i></p> <p>PERMIT NUMBER _____</p> <p>RECEIVED _____</p> <p>DECLARATION COMPLETE _____</p>
--

