

An Overview of Environmental Compliance

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Categories of Regulations:

- Federal Laws and Regulations
- State Laws and Regulations
- Local Ordinances and Planning Policies

When do they apply and how are they triggered?



Federal Laws and Regulations

- **NEPA – National Environmental Policy Act**
- Applies to projects with federal involvement (e.g. permits, entitlements, funding, joint projects, activities on federal land).
- Requires disclosure of project's “significant effects on the human environment”.



NEPA

Typical lead agencies under NEPA:

- U.S. Army Corps of Engineers
- National Park Service
- Bureau of Land Management
- Bureau of Reclamation
- U.S. Forest Service
- Department of Defense agencies



NEPA

Typical NEPA compliance documents:

- Categorical Exclusion (CatEx)
- Environmental Assessment/Finding of No Significant Effect (EA/FONSI)
- Environmental Impact Statement (EIS)



NEPA

EIS must:

- Consider, disclose, and discuss environmental consequences;
- Analyze alternatives;
- Be circulated for public review;
- Be finalized and followed by Record of Decision (ROD).



Section 404 of the Clean Water Act

- U.S. Army Corps of Engineers regulates discharge of dredged or fill materials into “Waters of the United States”, including adjacent wetlands;
- Typical Waters of the U.S. – Sacramento River, streams, rivers, lakes, seasonal drainages;
- Typical wetlands – freshwater marsh, seasonal wetlands, vernal pools, tidal salt marsh;
- Not included – isolated wetlands not connected to Waters of U.S. (SWANCC case).



Sections 404 Permit Options



- **Nationwide Permits:** projects with only minor effects on wetlands (typically less than 0.5 acre);
- **Letter of Permission:** projects with overall minimal impacts that have had agency review and include mitigation;
- **Individual Permits:** projects with larger impacts (e.g., over 0.5 acre); require public notice, alternatives analysis and proof that least damaging alternative is chosen.

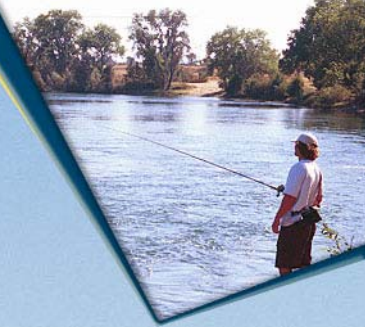


Section 10 of the Rivers and Harbors Act

- Prohibits unauthorized obstruction or alteration of navigable waters without a permit from the USACE
- Typical navigable waterways: Truckee River, Sacramento River, Lake Tahoe
- Processed in same application as Section 404 permit.



Section 7 and 10 of the Federal Endangered Species Act (FESA)



- **Section 7** - federal agencies must consult with USFWS and NOAA Fisheries (formerly NMFS) to ensure their actions don't jeopardize continued existence of federally endangered or threatened species or result in destruction or modification of their critical habitat.
- **Section 10** - projects without federal involvement that require "incidental take" permit. Applicant must prepare Habitat Conservation Plan (HCP).



Fish and Wildlife Coordination Act

- Requires federal agencies to consult with USFWS and NOAA Fisheries and State resource agencies before undertaking or approving projects that control or modify surface water.
- Examples: relocation of diversion channels, instream habitat modification;
- Typically incorporated into the NEPA process.



Section 106 of the National Historic Preservation Act



- Requires federal agencies to evaluate effects of their actions on historical and archeological resources;
- Agencies must identify historical and archeological properties in the “Area of Potential Effect”;
- If project has adverse effects on National Register of Historic Places listed or eligible properties, consult with the State Historic Preservation Officer (SHPO) to develop alternatives or mitigation measures.



Executive Order 11990 – Protection of Wetlands

- Requires agencies managing federal lands, sponsoring federal projects, or providing federal funds to follow avoidance, mitigation and preservation procedures before proposing new construction in wetlands.
- Compliance is typically integrated with CEQA/NEPA and Section 404 process.



Executive Order 11312: Prevention and Control of Invasive Species

- **Directs federal agencies to prevent and control introductions of invasive species;**
- **Established national Invasive Species Council and Advisory Committee;**
- **Mandated preparation of National Invasive Species Management Plan;**
- **Compliance typically integrated with NEPA process.**



State Laws and Regulations

CEQA – California Environmental Quality Act

- Applies to discretionary action of a California public agency;

Typical lead agencies under CEQA:

- City and county governments;
- California state agencies;
- Water agencies and irrigation districts



CEQA



Public agencies must:

- disclose potential environmental impacts;
- mitigate significant environmental effects if feasible;
- disclose agency decision making,
- enhance public participation,
- foster intergovernmental coordination.



CEQA

Typical CEQA compliance documents:

- Categorical Exemption (CatEx)
- Initial Study/Mitigated Negative Declaration (IS/MND)
- Environmental Impact Report (EIR)



Section 401 Certification

- **Section 401** of federal Clean Water Act requires protection of state water quality standards from projects that discharge dredge or fill material into waters of the U.S.;
- If a 404 permit from the USACE is required, Section 401 Clean Water certification is typically required from the Regional Water Quality Control Board;
- Proof of CEQA compliance is needed for permit application.



National Pollutant Discharge Elimination System (NPDES)



- Implemented by State Water Resources Control Board (SWRCB) and Regional Water Quality Control Boards (RWQCB);
- Regulates point source discharges (i.e. wastewater treatment plant discharges) and non-point source dischargers (i.e. urban runoff) into surface waters of the U.S.;
- General and individual permits are issued;
- File Notice of Intent for under existing permit, fee, and typically a Stormwater Pollution Prevention Plan (SWPPP).



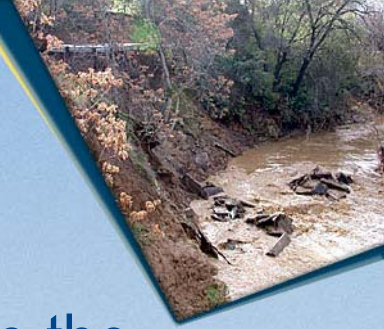
California Endangered Species Act (CESA)

- Prohibits “take” of plant and animal species listed as endangered or threatened by DFG;
- Take includes hunting, pursuing, catching, capturing, killing, or attempting these activities;
- Unlike FESA, CESA does not include habitat modification;
- DFG may issue “take authorization” under Section 2081 of CESA;
- Applicant must “fully mitigate” impacts of take.



Section 1600 Streambed Alteration Agreement

- Required for projects that divert, obstruct or change the natural flow or affect the bed, channel or bank of a river, stream or lake, or use material from a streambed;
- Typical projects: bank stabilization, installation of outfall structures, weed control using heavy equipment;
- Application requires proof of CEQA compliance, fee, and mitigation plan for impacts to riparian vegetation.



State Lands Lease

- Issued by State Lands Commission;
- Required for use of sovereign lands, including submerged land, tidal land, and historic river courses;
- May involve lease payment, which can be waived for restoration projects.



Reclamation Board Encroachment Permit

- For projects that would affect existing state flood control project facilities such as levees, dams, reservoirs and floodways;
- Applicant must ensure that integrity and safety of flood control structure is maintained, and that project is consistent with state flood control plans.



California Department of Transportation (Caltrans) Encroachment Permit

- For projects affecting areas within the right-of-way (ROW) of state-owned roadways;
- Project must be compatible with primary uses of state highway system;
- Permits protect safety of permittees and highway users and state's highway investment.



Air District Authorities



- Local and regional air districts issue “authorities to construct” and “permits to operate”;
- Monitor air pollution to ensure compliance with national, state and local emission standards;
- Enforce attainment and maintenance of ambient air quality standards adopted by the CA Air Resources Board and U.S. EPA.



Local Ordinances

- Variable requirements depending on city or county;
- Check with local planning department

Examples:

- Local tree preservation ordinances
- Grading Permits
- Building Permits
- Conditional Use Permits
- Burn Permits



Local Resource Protection and Conservation Plans

- Local planning accounts for more and more natural resources conservation;
- Requirements vary by locality.

Examples:

- Habitat Conservation Plan - HCP
- Natural Communities Conservation Plan – NCCP
- Watershed Plans



Questions ?

