

Oh- I need a permit for that? But I'm doing restoration.....

November 2016

Jason Giessow, Project coordinator
Dendra Inc: jgiessow@cox.net

www.cal-ipc.org



Some 'triggering actions' that result in needing a permit:

1. Working on land in CA (or funded by) (CEQA- CA Env Quality Act) or working on/funded by Federal land (NEPA- National Env Policy Act)

- (some exceptions for work on own land) or if you claim gov land as your own....

2. Working in wetlands:

- CDFW- SAA 1600

- ACOE- 404 (& RGP 41, Nationwide Permits)

- SWCB/RWQCB 401- (NPDES)

3. Working in endangered species habitat:

- USFWS, NMFS/NOAA, and/or CDFW

4. Working on property that is not yours:

-Right of Entry Agreements (ROEs)

Tip: Work out approaches that meet all permitting requirements

- 1. Interact with all regulators at same time-
completing one permit at a time can change
scope of project, creating need to go back and
change completed permits.**

CEQA/NEPA



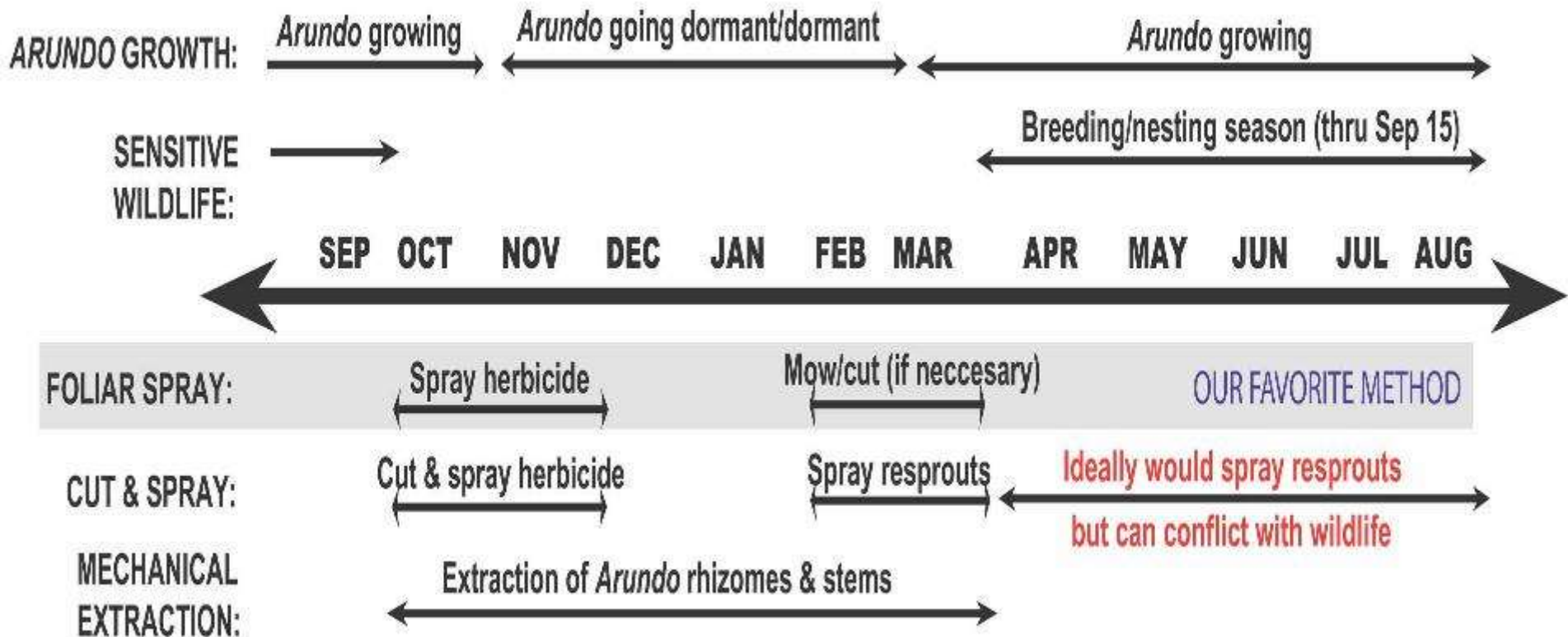
CADFW SAA1600

USFWS & ACOE

Use approaches that regulators are comfortable with.

Tip: Minimize impacts and use timing to avoid impacts

- Passive work- when fauna/flora is present/reproducing
- Active work- fall/winter (migrants gone, fish runs not active)



1. California Environmental Quality Act: (CEQA) and NEPA (similar)

- a) CEQA allows agencies and the public to be notified and review a project.
- b) There are no CEQA 'regulators'- projects are described and groups (agencies/public) make comments. Project 'lead' responds to comments and/or modifies scope of project.
- c) The process is arbitrated/controlled by the courts. If someone disagrees with the determination they must file against the project.

Environmental, historic, and other impacts included.

See State Clearinghouse Handbook

1. Initiate CEQA process:

a) Find lead: State agencies can post directly at the State clearinghouse. Local projects typically post with County government (County clerk).

b) Make determination as to type of CEQA:

- * Not a project

- * Notice of Exemption (NOE)

- * Negative Declaration (ND or MND)

- * Environmental Impact Report (EIR).

SAA 1600: If CDFW is a 'responsible agency' - they will look over and adopt your CEQA

Grant funders (WCB, Coastal Conservancy, etc.) may also adopt the CEQA.

Notice of Exemption (NOE):

- Small Habitat Rest
project: 5 acres, ex: 15333

- Minor alterations to land:
no acreage limit, ex: 15304

1. Post NOE: County
Clerk- posting fee

• You can start work
immediately: (at your
own risk)

2. 35 day clock on
challenges

3. Completed

Project Title: _____

Project Location - Specific: _____

Project Location – City: _____ Project Location – County: _____

Description of Nature, Purpose and Beneficiaries of Project: _____

Name of Public Agency Approving Project: _____

Name of Person or Agency Carrying Out Project: _____

Exempt Status: (check one)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: _____
- Statutory Exemptions. State code number: _____

Reasons why project is exempt: _____

Lead Agency
Contact Person: _____ Area Code/Telephone/Extension: _____

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: _____ Date: _____ Title: _____

- Signed by Lead Agency
 - Signed by Applicant
- Date received for filing at OPR: _____

Negative Declaration

(with or without mitigation measures): 6 months to 1 year

- 1) Notice of Preparation (NOP)
- 2) Initial Study, Negative Declaration, Notice of Completion (NOC): posted 30 days
- 3) Review comments, make decision, adopt.....
- 4) File Notice of Determination (NOD)

Negative Declaration Checklist of Responsibilities		Lead Agency	State Clearinghouse	Reviewing Agency
1	On the basis of the Initial Study, prepare Negative Declaration.	x		
2	Send 15 copies of Negative Declaration and one copy of completed NOC form to the SCH.	x		
3	Assign the SCH identification number and state review period (normally 30 days) and distribute to select state agencies.		x	
4	Review and comment on Negative Declaration. Send comments to the SCH within assigned review period.			x
5	Forward comments to Lead Agency at end of review period with a closing letter.		x	
6	<ul style="list-style-type: none"> • Consider comments received • Adopt Negative Declaration • Make decision on the project 	x		
7	File NOD with the county clerk if project is approved. Also file NOD with the SCH if project requires discretionary approval from state agency.	x		

Negative Declaration

- 1. Initial Study - background, project description, summary of mitigation measures**
- 2. Checklist - impact analysis, mitigation & minimization measures**
- 3. Determination - State Neg Dec, MND, or EIR required**

7.1 AESTHETICS	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
Would the project:				
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

7.1.1 EXISTING CONDITIONS

The Project is located within the San Gabriel Mountains, in the Big Tujunga Canyon watershed in the Angeles National Forest. Implementation of the Project's restoration tasks will take place in a variety of locations, but will be concentrated in riparian areas for removal of non-native invasive weeds and native plantings; along the lower portion of Big Tujunga Creek below the dam for aquatic habitat improvement and recreational site reconstruction; and in two small chaparral sites, to be determined.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this Project, involving at least one impact that is a "Less Than Significant With Mitigation", as indicated on the following pages.

<input type="checkbox"/>	Aesthetics	<input type="checkbox"/>	Agriculture and Forestry	<input type="checkbox"/>	Air Quality
<input checked="" type="checkbox"/>	Biological Resources	<input type="checkbox"/>	Cultural Resources	<input type="checkbox"/>	Geology/Soils
<input type="checkbox"/>	Greenhouse Gas Emissions	<input type="checkbox"/>	Hazards and Hazardous Materials	<input type="checkbox"/>	Hydrology/Water Quality
<input type="checkbox"/>	Land Use/Planning	<input type="checkbox"/>	Mineral Resources	<input type="checkbox"/>	Noise
<input type="checkbox"/>	Population/Housing	<input type="checkbox"/>	Public Services	<input type="checkbox"/>	Recreation
<input type="checkbox"/>	Transportation/Traffic	<input type="checkbox"/>	Utilities/Service Systems	<input checked="" type="checkbox"/>	Mandatory Findings of Significance

DETERMINATION:

On the basis of this initial evaluation:

<input type="checkbox"/>	I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
<input checked="" type="checkbox"/>	I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
<input type="checkbox"/>	I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
<input type="checkbox"/>	I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

1. CEQA

1. Once CEQA is done for a project it is done: unless the project changes in scope
 - Addendum: minor changes in project
2. Project area can be broad- consider landscape level project description
3. Consider working under another group's CEQA- check for approval for activities you are doing.
4. Cater your actions to avoid a more complicated CEQA process- minimize and avoid impacts (environmental, cultural, etc.).

2. Working in wetlands: DFG- 1600 SAA

CA DFG 1600 Streambed Alteration Agreement- required with any modification of habitat.

- May be possible to avoid 1600 if not working during breeding season and not cutting/removing any biomass. If you are changing vegetation structure by removing plants then you will likely need the permit.
- Several page application detailing methods and location of work. Can be obtained for a broad 'program area'.

2. Working in wetlands: CADFW SAA- 1600

- Application: project description, maps, outline other permits
- Pay Fee
- Submit CEQA (or CADFW lead)
- 30-60 days



STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE
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			

2. Working in wetlands: CADFW SAA- 1600

Habitat Restoration and Enhancement Act

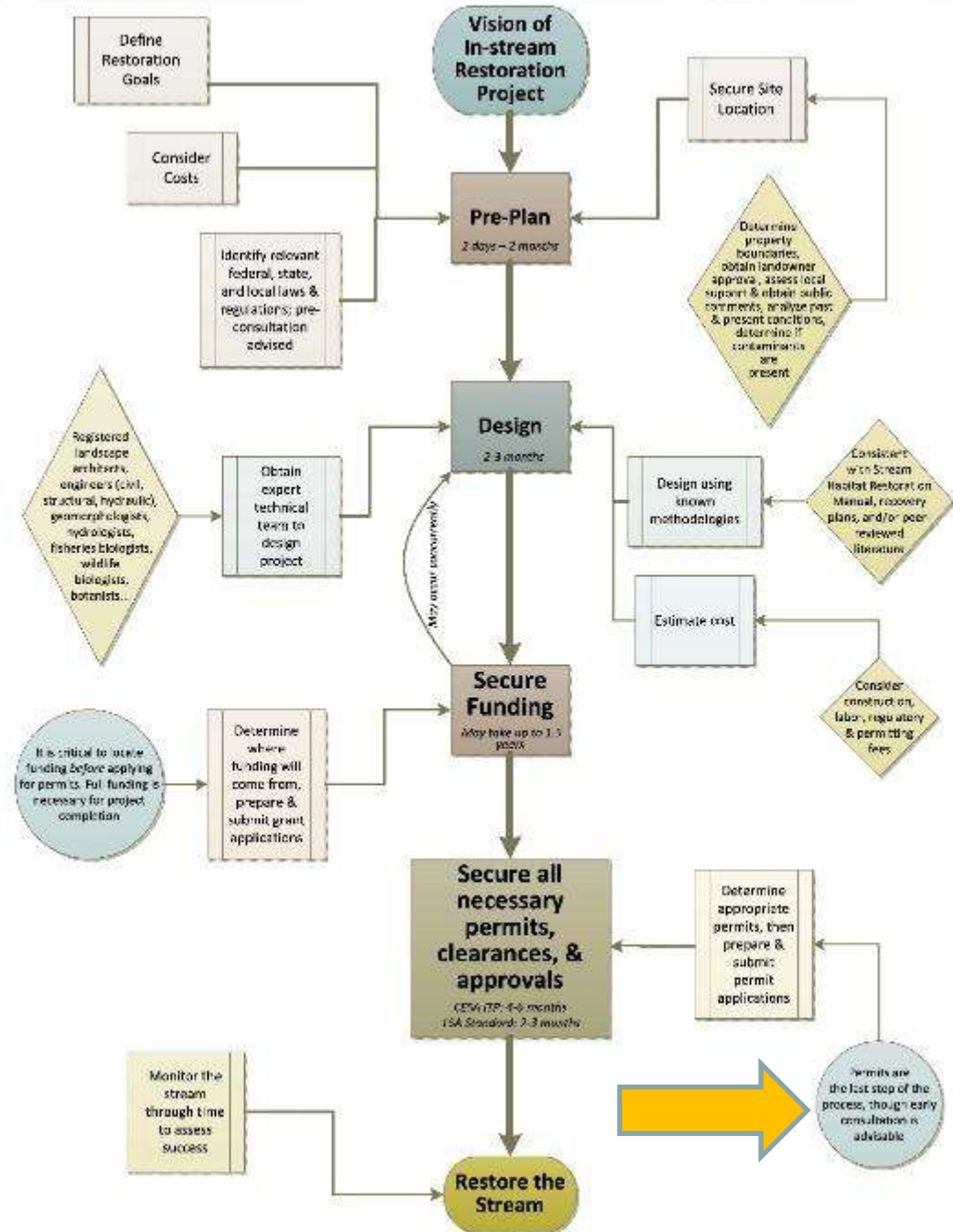
- Applies to voluntary restoration projects up to 5 acres in size and 500 cumulative linear feet of streambank or shoreline
- Eligibility based on the State Water Board's simplified permit for restoration (General 401 Water Quality Certification for Small Habitat Restoration Projects, applicable statewide)
- 30-day approval for projects with a State Water Board General 401 Certification
- 60-day approval for projects eligible for the Water Board's General Certification but receiving other types of approval from the State/Regional Water Boards

2. Working in wetlands: DFG- 1600

<https://www.wildlife.ca.gov/Conservation/environmental-review/hre-act>

- Application
- SAA fee
- CEQA done
- 401 General Cert done

Small In-stream Restoration Project Process



2. Working in wetlands: ACOE- 404

Army Corps of Engineers: 404 waters of US

- Typically needed if moving dirt (removing structures, grading, modifying slopes, creating temporary roads) but may also be needed if using large equipment where soil is disturbed.
- Initiation of 404 process creates a federal nexus between ACOE and FWS (can be important if Section 7 is needed).

2. Working in wetlands: ACOE- 404

Regional General permit #41: designed for invasives work.

- **San Diego to Santa Barbara**
- **Fast, low cost process for completing 404 and 401. \$60 fee for SWCB certification.**

Process: Application and notification of other agencies, and once file open: pre-construction notification. Annual reporting.

Nationwide Permit 27 Stream and Wetland Restoration:

- **No SWCB certification built in.**

2. Working in wetlands: SWCB 401

State or regional board discharge permit if there is 'discharge' related to your project.

General 401 certification for Small Habitat Restoration Projects (<5 ac in size)

- NOI: 8 page form
- Monitoring plan
- Reporting plan
- NPDES is still required if herbicides entering water

2. Working in wetlands: SWCB 401

NPDES: National Pollutant Discharge Elimination System

- NOI (3 pages)
- Application- including:
 - Aquatic Pesticide Application Plan (APAP): Monitoring plan (with water quality testing), Reporting plan
- 30 day public posting
- Annual fee (>\$2K)

3. US Fish and Wildlife and/or CDFW: Endangered species habitat.

Are you are working in habitat with Federally listed species?

Talk with USFWS- possible outcomes will be:

- a) No need for formal action (fast as your ability to talk with them)
- b) Letter stating adverse impact unlikely (no Section 7/10): 1 month to 2 years, if they will do it.....

‘Technical assistance letter’ or ‘Non-Federal No Take Request’

- c) Formal consultation (Section 7: Federal or Section 10: non-fed): possible take authorization (3 months to over a year)

3. US Fish and Wildlife

- 1) Consultation Required- can you work under a federal agency so you can do a Section 7 (establish a federal nexus)?
 - Trigger ACOE permit (404, RGP 41)- then ACOE works with FWS.
 - NRCS- Funder, have staff that will assist with Sec7.
 - USFWS- Funder, have staff that will assist with Sec7.
 - USFS- Would need to be on FS lands
- 2) You still will likely need to prepare a Biological Study that the ACOE then gives to FWS.
- 3) Then FWS issues Biological Opinion (BO) to ACOE. 'Take' may be issued under this.
- 4) Project will not proceed if it jeopardizes listed species.

3. NMFS/NOAA

Typically needed if you are working on river or creek with steelhead or chinook

- **Programs often get 'Technical Assistance Letter' outlining avoidance measures to assure no impacts.**

3. CDFW: Endangered species habitat California Endangered Species Act (CESA)

CESA authorizes CDFW to authorize take of state listed species- if certain conditions are met. CESA may require more conditions and mitigation obligations than FWS Section 7 BO: they are not equivalent.

DFG often interfaced with through Streambed Alteration Agreement- but different staff may complete CESA process.

4. Right of Entry Agreements (ROEs)

If you are working on other peoples property- you will need Right Entry Agreements (ROE). Funders typically require these.

- Make ROE time frame as long as possible (some funders require 10 or 20 years).
- Exclude yourself from liability (fire and flood).
- Outline benefits: lowering of fire and flood risk, free work, free permit compliance. (Be cautious about stating habitat benefits).
- ROE content varies greatly- find what works for your situation

5. Ways to shorten these processes

Build broad permits that last a long time

Program not project: Entire watershed, region

- Increases efficiency by doing it once, saves application fees, and makes your program attractive to funders.
- No 'end date' CEQA or ROEs.
- DFW: SAA 5 yr or 10 yr

5. Ways to shorten these processes

Structure your program to minimize or avoid impacts:

- a) Work outside wildlife breeding season.
- b) Use methods that avoid direct impacts.
- c) Use monitors to assure that sensitive species are not present and the avoidance/minimization measures are being followed.
- d) Fit under other groups permits or re-use approved approaches.