

CALIFORNIA COASTAL SEDIMENT MASTER PLAN
POLICIES, PROCEDURES, AND REGULATIONS ANALYSIS

BEACH RESTORATION REGULATORY GUIDE

FINAL

Prepared For:

California State Coastal Conservancy

1330 Broadway, 11th Floor
Oakland, California 94612-2530

Contact: Neal Fishman

Coastal Sediment Management Workgroup

135 Ridgway
Santa Rosa, CA 95401

Contact: Clifton Davenport

Prepared By:

Everest International Consultants, Inc.

444 West Ocean Boulevard, Suite 1104
Long Beach, CA 90802

Contact: David Cannon

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LIST OF ACRONYMS

APCD	Air Pollution Control District
APE	Area of Potential Effect
ASBS	Areas of Special Biological Significance
AQMD	Air Quality Management District
BA	Biological Assessment
BO	Biological Opinion
CAA	Clean Air Act
CAR	Coordination Act Report
CARB	California Air Resources Board
CATEX	Categorical Exclusion
CCA	California Coastal Act
CCC	California Coastal Commission
CCD	Coastal Consistency Determination
CDFG	California Department of Fish and Game
CDP	Coastal Development Permit
CEQA	California Environmental Quality Act
CESA	California Endangered Species Act
CSMW	California Sediment Management Workgroup
CWA	Clean Water Act
CZMA	Coastal Zone Management Act
DBW	California Department of Boating and Waterways
EA	Environmental Assessment
EFH	Essential Fish Habitat
EIR	Environmental Impact Report
EIS	Environmental Impact Statement
ESA	Endangered Species Act

FONSI	Finding of No Significant Impact
FWCA	Fish and Wildlife Coordination Act
IS	Initial Study
LCP	Local Coastal Program
MHT	Mean High Tide
MMS	Minerals Management Service
MND	Mitigated Negative Declaration
MOA	Memorandum of Agreement
MPRSA	Marine Protection, Research and Sanctuaries Act
MSFCMA	Magnuson-Stevens Fishery Conservation and Management Act
ND	Negative Declaration
NEPA	National Environmental Policy Act
NGO	Nongovernmental Organization
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service
NOD	Notice of Determination
NPDES	National Pollutant Discharge Elimination System
NRHP	National Register of Historic Places
NWP	Nationwide Permit
OCS	Outer Continental Shelf
OCSLA	Outer Continental Shelf Lands Act
PCWQCA	Porter-Colonge Water Quality Control Act
RGP	Regional General Permit
RHA	Rivers and Harbors Act
ROD	Record of Decision
RWQCB	Regional Water Quality Control Board
SAA	Streambed Alteration Agreement
SANDAG	San Diego Association of Governments
SCC	California State Coastal Conservancy

SCOUP	Sand Compatibility and Opportunistic Use Program
SEIS	Supplemental Environmental Impact Statement
SHPO	State Historic Preservation Officer
SLC	California State Lands Commission
SMP	California Sediment Master Plan
SP	Standard Permit
SWPPP	Stormwater Pollution Prevention Plan
SWRCB	State Water Resources Control Board
USACE	U.S. Army Corps of Engineers
USEPA	U.S. Environmental Protection Agency
USFWS	U.S. Fish and Wildlife Service

EXECUTIVE SUMMARY

Successful implementation of a beach restoration project (i.e., placement of beach-suitable sediment on the dry beach and/or in the nearshore area for the purpose of increasing the dimensions of the subaerial portion of the beach) requires knowledge of the regulatory environment as well as an understanding of the physical, biological, and chemical characteristics of the receiver and borrow sites. This Beach Restoration Regulatory Guide (Guide) summarizes the federal and state regulatory process involved in implementing beach restoration projects within California in order to assist coastal planners and managers that work with or for local and regional governmental organizations and agencies.

Depending on the specific nature of the project, implementing a beach restoration project requires compliance with various regulations at the federal, state, and local levels of government. The most relevant state and federal regulations are summarized in Table 1, along with corresponding regulatory requirements and agencies responsible for administering each regulation. The geographic locations conceptually subject to these regulations are shown schematically in Figure 1 for background. Federal regulations affecting beach restoration and discussed herein include: National Environmental Policy Act (NEPA); Clean Water Act (CWA); Rivers and Harbors Act (RHA); Endangered Species Act (ESA); Coastal Zone Management Act; National Historic Preservation Act; Clean Air Act, and; Outer Continental Shelf Lands Act. California regulations analyzed within this report include: California Environmental Quality Act (CEQA); California Coastal Act; California Ocean Plan; California Department of Fish and Game (CDFG) Codes, and; California State Lands Commission (SLC) requirements under the Public Resources Code.

In general, the regulatory compliance process consists of three phases: (i) environmental review; (ii) permitting; and (iii) compliance review. Environmental review is typically done first since the information contained in the environmental review documentation is used by the regulatory and resource agencies to process permits and agreements. Once the environmental review process is complete, or in some cases near completion, then the permitting phase begins. An overview of the regulatory compliance process is illustrated in Figure 5.

The environmental review process consists of NEPA and CEQA compliance, including other environmental laws. To streamline the environmental review process and as encouraged by CEQA, NEPA and CEQA documents should be prepared concurrently. NEPA and CEQA compliance processes are illustrated schematically in Figures 3 & 4. Because there are many similarities between NEPA and CEQA, it can often be difficult to understand what needs to be done in order to achieve compliance with each of these laws. The major differences between NEPA and CEQA are summarized in Table 2.

Upon completion of the environmental review process, the project applicant will submit the necessary permit and agreement applications to the appropriate agencies. In order to improve coordination and consistency in resource protection and management, the federal regulatory agencies (US Army Corps of Engineers, or USACE) and State (California Coastal Commission, or CCC) typically do not approve their permits until they have seen the final draft responses from the other agencies and worked out any response differences. USACE and the State Water Resources Control Board recently issued Regional General Permit 67, designed to streamline the beach nourishment permitting process in the USACE, Los Angeles District.

Most beach restoration projects involve the placement of material (i.e., fill) in waters of the U.S; therefore, a CWA Section 404 Permit and RHA Section 10 Permit from the USACE are usually required. A CWA Section 401 Certification from the appropriate Regional or State Water Board is needed for the 404 Permit. The CCC (and possibly a Local Coastal Program) will require either a Coastal Consistency Determination (if it's a federal project) or a Coastal Development Permit. The CDFG and SLC must also issue a Streambed Alteration Agreement and Sovereign Lands Utilization Lease, respectively. An example permitting approach illustrating movement through the process is shown in Figure 5. Triggers and corresponding processes for each regulation are described in Section 3.3.

Successful processing of all required environmental review documentation and permit information requires close coordination with representatives from the relevant regulatory and resource agencies. Contact information (as of December 2006) for each regulatory and resource agency is provided in Table 3. Each agency should be contacted early in the regulatory compliance phase to identify the agency staff member(s) that will be responsible for the project.

1. INTRODUCTION

1.1 BACKGROUND

Successful implementation of a beach restoration project (i.e., placement of beach-suitable sediment on the dry beach and/or in the nearshore area for the purpose of increasing the subaerial portion of the beach) requires some knowledge of the regulatory environment as well as an understanding of the physical, biological, and chemical environment. The U.S. Army Corps of Engineers (USACE) implements or regulates most of the beach restoration projects conducted throughout the U.S and USACE staff are familiar with the regulations required to achieve compliance with environmental regulations, especially the federal regulations. Within the state of California, the Department of Boating and Waterways (DBW) provides funding to local and regional organizations for studies related to and construction of beach restoration projects. These regional organizations (e.g., SANDAG and counties) and local agencies (e.g., coastal cities) are starting to get more involved in implementing beach restoration projects through partnerships with the USACE and DBW as well as through locally-funded individual projects. For this reason, the local organizations and agencies need to gain knowledge of the regulatory environment involved in implementing beach restoration projects at both the federal and state level. In addition, as beach restoration gains prominence, nongovernmental organizations (NGOs) and the general public are becoming more interested in the process.

1.2 PURPOSE AND FUNDING

This Beach Restoration Regulatory Guide (Guide) is meant to summarize the regulatory process involved in implementing beach restoration projects within California for coastal planners and managers that work with or for local and regional governmental organizations and agencies. Information is provided for the federal and state regulatory processes. The Guide does not cover local regulations, given the extensive number of local governmental organizations located along the coast (e.g., coastal cities, counties, and ports) and transitory nature of many of these regulations. However, local regulations for some issues (e.g., noise and air quality) are addressed indirectly in certain statewide regulations and environmental review requirements (e.g., California Environmental Quality Act). In addition, the local organizations and agencies frequently have an understanding of their own regulations and ready access to these regulations, so additional documentation of local regulations is not needed.

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2006) being developed by the California Sediment Management Workgroup (CSMW) and California State Coastal Conservancy (SCC). The document was prepared with significant input from CSMW, regulatory agency staff, and resource agency personnel, but does not necessarily represent the official position of those agencies.

1.3 DISCLAIMER OF LIABILITY

This Guide is only intended as an aid to regulatory compliance. Consultation with the agencies that have jurisdiction over the project and your attorney will determine actual regulatory requirements. Neither the California State Coastal Conservancy nor its contractors/CSMW shall be held liable for any improper or incorrect use of the information described and/or contained herein. In no event, shall the California State Coastal Conservancy nor its contractors/CSMW be liable for any direct, indirect, incidental, special, exemplary, or consequential damages.

2. RELEVANT REGULATIONS

2.1 OVERVIEW

Depending on the specific nature of the project, implementing a beach restoration project will require compliance with various regulations at the federal, state, and local levels of government. The most relevant regulations are summarized in Table 1, along with the corresponding regulatory requirements and agency responsible for administering each regulation. The geographic locations conceptually subject to these regulations are shown schematically in Figure 1 for background. The user is cautioned to check with appropriate agencies to determine whether their area of interest is covered by any given regulation. A brief description of regulations affecting beach restoration is provided below.

2.2 FEDERAL REGULATIONS AFFECTING BEACH RESTORATION

2.2.1 National Environmental Policy Act

The National Environmental Policy Act (NEPA) was enacted in 1969 to ensure that environmental impacts are given equal consideration as other factors in decision-making by federal agencies. NEPA requires that federal agencies consider the environmental effects of all federal actions, which includes issuance of any permits. In order to comply with NEPA, federal agencies are required to prepare a document that identifies and describes potential environmental impacts associated with the proposed project. Environmental documents that might be required to achieve NEPA compliance, depending on the size of the project and nature of potential impacts include: (i) Categorical Exclusion (CATEX), (ii) Environmental Assessment (EA), and (iii) Environmental Impact Statement (EIS). The EA must lead to a Finding of No Significant Impact (FONSI), otherwise, an EIS is required. While most beach restoration projects will require an EA or EIS, small-scale beach restoration projects may be designed and mitigated in such a manner that the agency can make a FONSI.

2.2.2 Clean Water Act

In 1972, the United States (U.S.) signed into law the Federal Water Pollution Control Act, later known as the Clean Water Act (CWA). The purpose of the CWA is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters or waters of the U.S. (territorial sea, contiguous zone, and oceans) by addressing both point sources and nonpoint sources of water pollution. This is to be done through a series of programs focused on technological research, water quality assessment, water quality impairment identification,

Table 1. Relevant Regulations Affecting Beach Restoration Projects

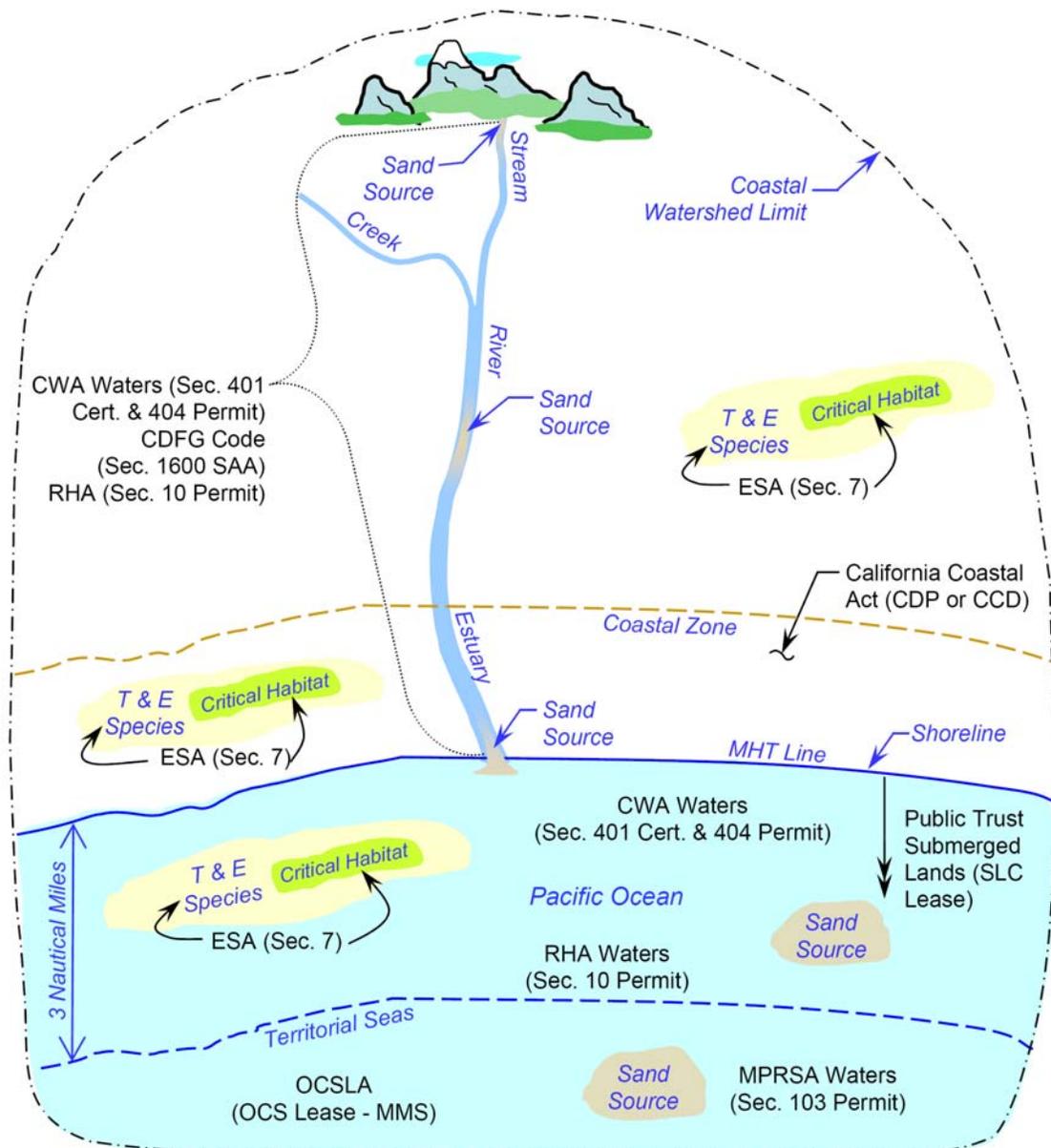
POLICY/REGULATION	REQUIREMENT	PERMITTING/APPROVAL/ RESPONSIBLE AGENCY
Federal		
National Environmental Policy Act	Compliance	Lead Federal Agency
Coastal Zone Management Act	Coastal Consistency Determination (CCD)	California Coastal Commission
Rivers and Harbors Act	Section 10 Permit	U.S. Army Corps of Engineers
Clean Air Act	Title V Operating Permit	California Air Resources Board (see below under State)
Clean Water Act	Section 401 Certification or Waiver (401 Permit)	Regional Water Quality Control Boards+
Clean Water Act	Section 402 NPDES Permit (NPDES Permit)	Regional Water Quality Control Boards+
Clean Water Act	Section 404 Permit (404 Permit)	U.S. Army Corps of Engineers
Endangered Species Act*	Section 7 Consultation	U.S. Fish and Wildlife Service
National Historic Preservation Act*	Section 106 Approval	State Historic Preservation Officer
Fish and Wildlife Coordination Act*	Coordination Act Report (CAR)	U.S. Army Corps of Engineers
Magnuson-Stevens Fishery Conservation & Management Act*	Assessment of Impacts to Essential Fish Habitat	National Marine Fisheries Service
Outer Continental Shelf Lands Act	Lease Agreement for Utilization of Outer Continental Shelf Sand	Minerals Management Service
State		
California Environmental Quality Act	Compliance	Lead CEQA Agency
California Coastal Act	Coastal Development Permit (CDP)	California Coastal Commission
Porter-Cologne Water Quality Control Act	Compliance Permits under CWA Sections 401, 402, and 404	State Water Resources Control Board Regional Water Quality Control Boards
California State Lands Public Resources Code	Lease Agreement for Utilization of Sovereign Lands	California State Lands Commission

Table 1. Relevant Regulations Affecting Beach Restoration Projects

POLICY/REGULATION	REQUIREMENT	PERMITTING/APPROVAL/ RESPONSIBLE AGENCY
State (Cont.)		
California Public Resources Code Section 1600	Streambed Alteration Agreement (SAA)	California Department of Fish and Game
California Endangered Species Act	Section 2081(b) Incidental Take Permit (State) Section 2081.1 Consistency Determination (State and Federal)	California Department of Fish and Game
Water Quality Control Plans California Ocean Plan	Consistency Compliance	Regional Water Quality Control Boards +
Clean Air Act	Title V Operating Permit	APCDs and AQMDs

** Review and compliance is usually triggered through the initial Clean Water Act Section 404 permitting process by the USACE.*

+ The SWRCB has lead responsibility when a project involves jurisdiction by more than one RWQCB.



Legend

- | | |
|---|---|
| CWA = Clean Water Act | MPRSA = Marine Protection, Research and Sanctuaries Act |
| ESA = Endangered Species Act | SLC = State Lands Commission |
| RHA = Rivers and Harbors Act | CCD = Coastal Consistency Determination |
| CDFG = California Department of Fish and Game | CDP = Coastal Development Permit |
| MHT = Mean High Tide | T & E = Threatened and Endangered |
| SAA = Streambed Alteration Agreement | |
| OCSLA = Outer Continental Shelf Lands Act | |
| MMS = Minerals Management Service | |

Note: This figure is only intended as an aid to understanding regulatory compliance. Consultation with the agencies that have jurisdiction will determine actual regulatory requirements.

Figure 1. Schematic Representation of Regulatory Geographic Limits

water quality improvement, and discharge permitting. Point sources of pollution include dredge or fill operations, treatment facilities, and industrial plants while nonpoint sources of pollution include agricultural and urban runoff and some stormwater. Sections 401 and 404 of the CWA contain regulatory requirements generally required for beach restoration projects. In addition, Section 402 contains regulatory requirements that might be required for beach restoration projects, depending on methods utilized to construct the project. These sections are summarized below and in Table 1.

CWA Section 401 requires State certification that any project involving a discharge to waters of the U.S. that requires a federal permit or license will not violate water quality standards established for the water body affected by the project. Beach restoration projects typically require a 401 permit (see CWA Section 404 discussion below). If it is determined that the proposed activity will violate water quality standards, then certification may be denied or special conditions for the activity may be required to eliminate the violation.¹ Nine Regional Water Quality Control Boards (RWQCBs) throughout the State have regional responsibility for administering the CWA Section 401 Certification Program. The State Water Resources Control Board (SWRCB) conducts the CWA Section 401 Certification if the proposed action involves more than one RWQCB jurisdiction (e.g., a Regional General Permit for beach restoration throughout southern California).

CWA Section 404 regulates the discharge of dredged or fill material into waters of the U.S., including discharges for beneficial use (e.g., beach restoration). The USACE is authorized to issue a CWA Section 404 Permit for the discharge of dredged or fill material into waters of the U.S., provided that such discharges are found to be in compliance with the CWA Section 404(b)(1) guidelines published by the U.S. Environmental Protection Agency (USEPA), and CWA Section 401. For many California beach restoration projects, even material initially placed above the mean high tide line may require a CWA Section 404 permit. The USACE and U.S. Environmental Protection Agency (USEPA) have collaboratively produced the "Inland Testing Manual" (ITM) (USEPA/USACE,1998), which provides guidelines for evaluating the environmental suitability of proposed discharges of dredged material (including beneficial use of dredged material) into waters of the U.S. under Section 404 of the CWA. The CSMW has also developed procedural recommendations for use of upland materials as part of the Sand Compatibility and Opportunistic Use Program (SCOUP); these procedural recommendations can be found at <http://www.dbw.ca.gov/csmw/csmwhome.htm>.

CWA Section 402 (National Pollutant Discharge Elimination System or NPDES) regulates the discharge of pollutants into waters of the U.S. except for discharge of dredged and fill materials, which are regulated under Sections 401 and 404 as explained above. Beach

¹ Section 401 also allows the state to waive certification at the discretion of the responsible agency, which is the State Water Resources Control Board (SWRCB).

restoration projects disturbing one acre or more of land may require a NPDES permit for storm water discharges. A NPDES permit may also be required for other categories of waste water discharge, although for beach restoration projects these are likely to be emergency conditions (e.g., spill) that would not require a permit. The CWA Section 402 NPDES Program is administered by the RWQCBs.

2.2.3 Rivers and Harbors Act

Section 10 of the Rivers and Harbors Act of 1899 (RHA) prohibits the unauthorized obstruction or alteration of any navigable water of the U.S. This section provides that any work in or over any navigable water of the U.S., or the accomplishment of any other work affecting the course, location, condition, or physical capacity of such waters, is unlawful unless the work has been approved by the USACE through the issuance of a permit (RHA Section 10 Permit). Beach restoration activities fall within this definition so the USACE will generally require a RHA Section 10 Permit for beach restoration projects. The USACE usually processes RHA Section 10 Permits concurrently with CWA Section 404 Permits.

2.2.4 Endangered Species Act

Section 7 of the Endangered Species Act (ESA) of 1973 requires all federal agencies to insure that any actions it authorizes, funds, or implements do not jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of critical habitat. Federal agencies must request the U.S. Fish and Wildlife Service (USFWS) and/or National Marine Fisheries Service (NMFS), as appropriate, to identify whether any listed species or designated critical habitat are in the proposed project area. If so, then the federal agency must prepare a biological assessment (BA) to determine whether the proposed project may affect the species or critical habitat. If the BA indicates that the species and/or habitat may be affected, the agency must consult formally or informally with the USFWS and/or NMFS. The USFWS and/or NMFS will then provide the federal agency with a biological opinion (BO) (in the case of formal consultations) regarding how the project will affect the species and/or critical habitat. If appropriate, the BO will suggest reasonable and prudent alternatives for the agency to consider if continued development of project alternatives is to occur. Projects initiated by non-federal agencies and organizations are also subject to these requirements, but without the USACE involvement, must follow the process outlined in Section 10(a) if a take permit for federally-listed species is to be authorized. The ESA Section 7 consultation process is triggered through a nexus between the potential for a take of the endangered or threatened species and a federal action, such as issuance of a permit.

2.2.5 Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) was enacted in 1972 to preserve, protect, develop, and, where possible, to restore or enhance the resources of the nation's coastal zone. To achieve this purpose, the CZMA established national policy to encourage and assist States in effectively exercising their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone. Full consideration is given to ecological, cultural, historic, and aesthetic values as well as the needs for compatible economic development. Section 307 of the CZMA requires all federal agency activities (e.g., federal projects and issuance of some federal permits) within the coastal zone (or outside the coastal zone that affect any land or water use or natural resource of the coastal zone) to be carried out in a manner consistent, to the maximum extent practicable, with the enforceable policies of state-approved coastal zone management programs. In California, the coastal zone management program is administered and managed by the CCC (California Coastal Act; (see text below on state regulations for further information), San Francisco Bay Conservation and Development Commission (McAteer-Petris Act) and SCC (California Coastal Act).

2.2.6 National Historic Preservation Act

Enacted in 1966, the National Historic Preservation Act (NHPA) created a federal program to preserve historic properties throughout the U.S. To assist the federal government in achieving program objectives, a State Historic Preservation Officer (SHPO) is responsible for developing and maintaining lists of prehistoric and historic places for inclusion in the National Register. Under Section 106 of the NHPA, the SHPO consults with federal agencies on federal activities (including the issuance of certain permits) that may affect historic properties and the content and sufficiency of any plans developed to protect, manage, or reduce/mitigate harm to such properties. For beach restoration projects, the SHPO would focus primarily on submerged artifacts (e.g., ship wrecks and Native American cultural resources) that might be affected by dredging operations. Projects initiated by non-federal agencies and organizations are also subject to NHPA. The Section 106 review process will generally be triggered through notification requirements and interagency coordination requirements associated with CWA Section 404 and NEPA.

2.2.7 Clean Air Act

The primary objective of the Clean Air Act of 1970 (CAA) is to establish federal standards for air pollutants from stationary and mobile sources and to work with states to regulate polluting emissions. The program is designed to improve air quality in areas that do not meet federal ambient air quality standards (non-attainment areas), and prevent deterioration of air quality in areas where federal standards may exceed short-term standards. The CAA includes a permitting program for construction and operation of stationary sources of hazardous air

pollutants and related activities known as the Title V Operating Permit Program. The California Air Resources Board (CARB) through various local authorities, such as Air Quality Management Districts (AQMDs) and Air Pollution Control Districts (APCDs), implements this program within California. As related to beach restoration projects, a Title V Operating Permit might be required for the operation of certain construction equipment (e.g., diesel-powered hydraulic dredge) within non-attainment areas (e.g., San Diego APCD).

2.2.8 Outer Continental Shelf Lands Act

The Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331, et. seq.) provides the authority for the Department of Interior, Minerals Management Service (MMS) to manage mineral resources on the OCS including sand and gravel as well as oil, gas, sulfur, and other minerals. The jurisdiction of MMS for leasing and regulating the recovery of minerals extends to the subsoil and seabed of all submerged lands seaward of State-owned waters to the limits of the OCS (except where this may be modified by international law or convention or affected by the Presidential Proclamation of March 10, 1983, regarding the Exclusive Economic Zone). The OCS is defined as that part of the seafloor and subsurface lying between the seaward extent of state jurisdiction and the seaward extent of Federal jurisdiction. The seaward limit of federal jurisdiction is the Exclusive Economic Zone. Public Law 103-426 (43 U.S.C. 1337(k)(2)), enacted October 31, 1994, authorizes the MMS to negotiate, on a noncompetitive basis, the rights to OCS sand, gravel, or shell resources for shore protection, beach or wetlands restoration projects, or for use in construction projects funded in whole or part by or authorized by the Federal Government. The Shore Protection Provisions of the Water Resource Development Act of 1999 (S. 507 as passed by Congress on August 4, 1999) amended that law by prohibiting the charging of State and local governments a fee for using OCS sand. For all other uses, such as private use for commercial construction material, a competitive bidding process is required for issuing leases under Section 8(k)(1) of the OCS Lands Act (OCSLA). Although the MMS has the authority to convey OCS rights to sand, gravel, and shell resources by negotiated noncompetitive agreement or by competitive lease sale, it does not develop nor maintain a schedule of lease offerings for those minerals as it does for oil and gas.. This conveyance process generally begins with a formal written request by a Federal, State, or local government agency to acquire an OCS lease to obtain sand, gravel, or shell resources for beach or wetlands restoration projects.

2.3 STATE REGULATIONS AFFECTING BEACH RESTORATION

2.3.1 California Environmental Quality Act

The California Environmental Quality Act (CEQA) was enacted into law in 1969. The purpose of CEQA is to ensure that all agencies consider the potential effects of their

proposed actions on the environment. Unlike NEPA, which is merely an informational requirement, CEQA requires agencies to avoid or minimize significant environmental impacts where feasible. CEQA states that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects. CEQA also establishes procedures to systematically identify the significant effects of proposed projects as well as feasible alternatives or mitigation measures that will avoid or substantially lessen such significant effects. These goals are achieved by environmental documentation that: (1) describes the proposed project and identifies a reasonable range of alternatives for the project; (2) summarizes potential environmental impacts associated with the project, and (3) identifies potential mitigation measures to avoid impacts or reduce impacts to levels considered insignificant. CEQA compliance documents include: (i) finding of exemption, (ii) Negative Declaration (ND) (which frequently requires incorporation of mitigation measures into the project and is thus referred to as a Mitigated Negative Declaration or MND), (iii) Environmental Impact Report (EIR); and (iv) Programmatic or Master Environmental Impact Report (to assess a series of related projects).

2.3.2 California Coastal Act

The purpose of the California Coastal Act is primarily to protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources. The Coastal Act requires all federal activities within the state's coastal zone to be carried out in a manner consistent with the enforceable policies of the Coastal Act. The Coastal Act requires that all other activities within the state's coastal zone must be done in accordance with all the provisions of the Coastal Act.

Federal agency activities must be consistent with the Coastal Act to the maximum extent practicable. This is achieved through a consistency review of Section 3 of the Coastal Act and compliance with Section 307 of the federal Coastal Zone Management Act. The resulting product is a Coastal Consistency Determination (CCD) or Federal Consistency Certification.

For non-federal agency activities Coastal Act compliance is achieved through a Coastal Development Permit (CDP), typically issued by the coastal city or county of jurisdiction, provided that such coastal jurisdiction has a Local Coastal Program (LCP) approved by the California Coastal Commission. A beach restoration project implemented by a local organization or agency will be subject to the Coastal Act and a CDP will probably be required from both the local jurisdiction and California Coastal Commission. This is because the California Coastal Commission maintains jurisdiction for the portion of the coastal zone seaward of the mean high tide line even in those areas where the local governmental body has an approved LCP.

2.3.3 California Ocean Plan

Section 13170.2 of the California Water Code directs the State Water Resources Control Board (State Water Board) to formulate and adopt a water quality control plan for ocean waters of California. The State Water Board first adopted this plan, known as the California Ocean Plan, in 1972 and updated the plan as recently as 2005. The current 2005 California Ocean Plan is available from the State Water Board web page at <http://www.waterboards.ca.gov/plnspols/docs/oplans/oceanplan2005.pdf>. The Ocean Plan is the State's basic water quality control plan for ocean waters, applies to point and nonpoint source discharges, and is implemented and interpreted by the State Water Board and the six coastal RWQCBs. The Ocean Plan lists beneficial uses of California's ocean waters which need to be protected; establishes water quality objectives necessary to achieve protection of the beneficial uses, and identifies areas where discharges are prohibited, and sets forth a program of implementation (including waste discharges limitations, monitoring, and enforcement) to ensure that water quality objectives are met. The SWRCB adopted the Ocean Plan in 1972, and has since periodically revised the Ocean Plan. It covers a wide variety of pollutants that enter the ocean including inert debris that settles to the ocean floor, metals, sediments, and storm water discharges into the ocean. Of particular significance to beach restoration projects are designated Areas of Special Biological Significance (ASBS). These areas are designated by the RWQCBs as requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable. Discharges within these areas are severely limited and, in some cases, prohibited under the Ocean Plan.

2.3.4 California Department of Fish and Game Code: Sections 1600-1616

The conservation and protection of fish and wildlife benefit the public interest and therefore is a proper responsibility of the state. Sections 1600 through 1616 of the California Department of Fish and Game Code (CDFG Code Sections 1600-1616) contain policy and regulations aimed at protecting the fish and wildlife resources of the state. Under Sections 1600-1616 of the CDFG Code it is unlawful for any entity to substantially divert or obstruct the natural flow of, or 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 may pass into any river, stream, or lake without approval from CDFG in the form of a streambed alteration agreement (SAA). A beach restoration project that involves the excavation and/or dredging of material from the bed, channel, or bank of a river, stream, or lake; or the deposit or disposal of debris, waste, or other material where it can pass into a river, stream, or lake (i.e., source area) would require a CDFG SAA. A beach restoration project that blocked or obstructed the flow of an adjacent river or stream would also require an SAA.

2.3.5 California State Lands Commission

The California State Lands Commission (SLC) has jurisdiction over all ungranted tide and submerged lands (from the mean high tide line to the three-mile offshore boundary) within the state (Public Resources Code Sections 6301, 6216). In addition to the ungranted tidelands directly managed by the SLC, the SLC has general oversight authority involving tide and submerged lands granted in trust by the Legislature to local jurisdictions. Many of the urban waterfront areas (such as ports and harbors) in California have been so statutorily granted in trust to local jurisdictions. These Trustees/Grantees assume the day-to-day management and permitting responsibilities to ensure that uses of the protected lands are consistent with the Common Law Public Trust Doctrine and statutes under which the lands are held. Many of these local trusts have their mineral resources reserved to the state and under SLC jurisdiction. The SLC has permit and leasing authority with respect to the extraction or deposition of minerals (sand) on lands and/or mineral rights under its jurisdiction. Therefore, implementation of a beach restoration project by a local organization or agency will typically require a lease or permit from SLC in accordance with Public Resources Code (Division 6 – State Lands Act). Specific provisions regarding the leasing of public lands for projects relating to dredging or deposition of sand are provided in Public Resources Code Sections 6303, 6501 *et seq.* and 6890 *et seq.* Additional provisions may be found in the California Code of Regulations, Title 2, Division 3, Chapter 1, Article 2 (sections 2000 *et seq.*). To obtain a lease or permit, the SLC usually requires an updated survey of the beach area to establish the mean high tide (MHT) line prior to construction activities. This provides information used by the SLC when determining the boundary between tidelands and uplands.

2.3.6 Porter-Cologne Water Quality Control Act

Pursuant to the Porter-Cologne Water Quality Control Act (PCWQCA) and Clean Water Act (CWA), the State Water Resources Control Board (SWRCB) adopts statewide water quality control plans for ocean waters through the California Ocean Plan (Ocean Plan), Regional Water Quality Control Plans (Basin Plans), and Thermal Water Quality Control Plan (Thermal Plan). Both the Ocean and Basin Plans identify beneficial uses within the area being addressed and establish numerical and narrative objectives for waste discharges, as well as implementation procedures for achieving these objectives.

3. REGULATORY COMPLIANCE PROCESS

3.1 OVERVIEW

In general, the regulatory compliance process consists of three phases: (i) environmental review, (ii) permitting, and (iii) compliance review. Although it is possible to prepare the required environmental review documentation in parallel with the required permitting information (e.g., permit applications and supporting documentation), this approach is generally only adopted for small, non-controversial projects and beach restoration projects would usually not fit this characterization. A possible exception to this would be projects that have been previously permitted for beneficial use of material that is similar in composition, quality, and quantity (e.g., opportunistic beach sand projects consistent with locally-approved plans and regional general permits). Consequently, environmental review is usually done first since the information contained in the environmental review documentation is used by the regulatory and resource agencies to process permits and agreements if the information is deemed adequate by the agencies. Once the environmental review process is complete, or in some cases near completion, then the permitting phase begins. An overview of the regulatory compliance process is illustrated in Figure 2. The USACE cannot issue final 404 permits until all the issues that need to be addressed under the CZMA, CWA Section 401, NHPA 106, and ESA are concluded. In most cases in California, these regulations drive the overall timeframe on permit issuance from the USACE.

3.2 ENVIRONMENTAL REVIEW

3.2.1 Overview

The environmental review process consists of compliance with NEPA and CEQA (as applicable) as well as other environmental laws such as the ESA, NHPA Section 106, and MPRSA. Most beach restoration projects involve the placement of material (i.e., fill) in waters of the U.S; therefore, a CWA Section 404 Permit and RHA Section 10 Permit from the USACE are usually required. USACE processing of these permits is considered a federal action that requires NEPA compliance review with the USACE serving as the lead agency. While the USACE usually serves as the lead agency under NEPA there are situations in which another federal agency serves as the lead. If a federal agency provides funds (e.g., Navy) or is the land owner (e.g., USFWS, MMS), then that federal agency might be the NEPA lead. NEPA and CEQA compliance can involve a relatively long process involving several steps with various decision points, depending on the complexity of the environmental issues. Since beach restoration projects involve the placement of soil and/or sediment into ocean waters and it has been determined that such activities (i.e., human-induced

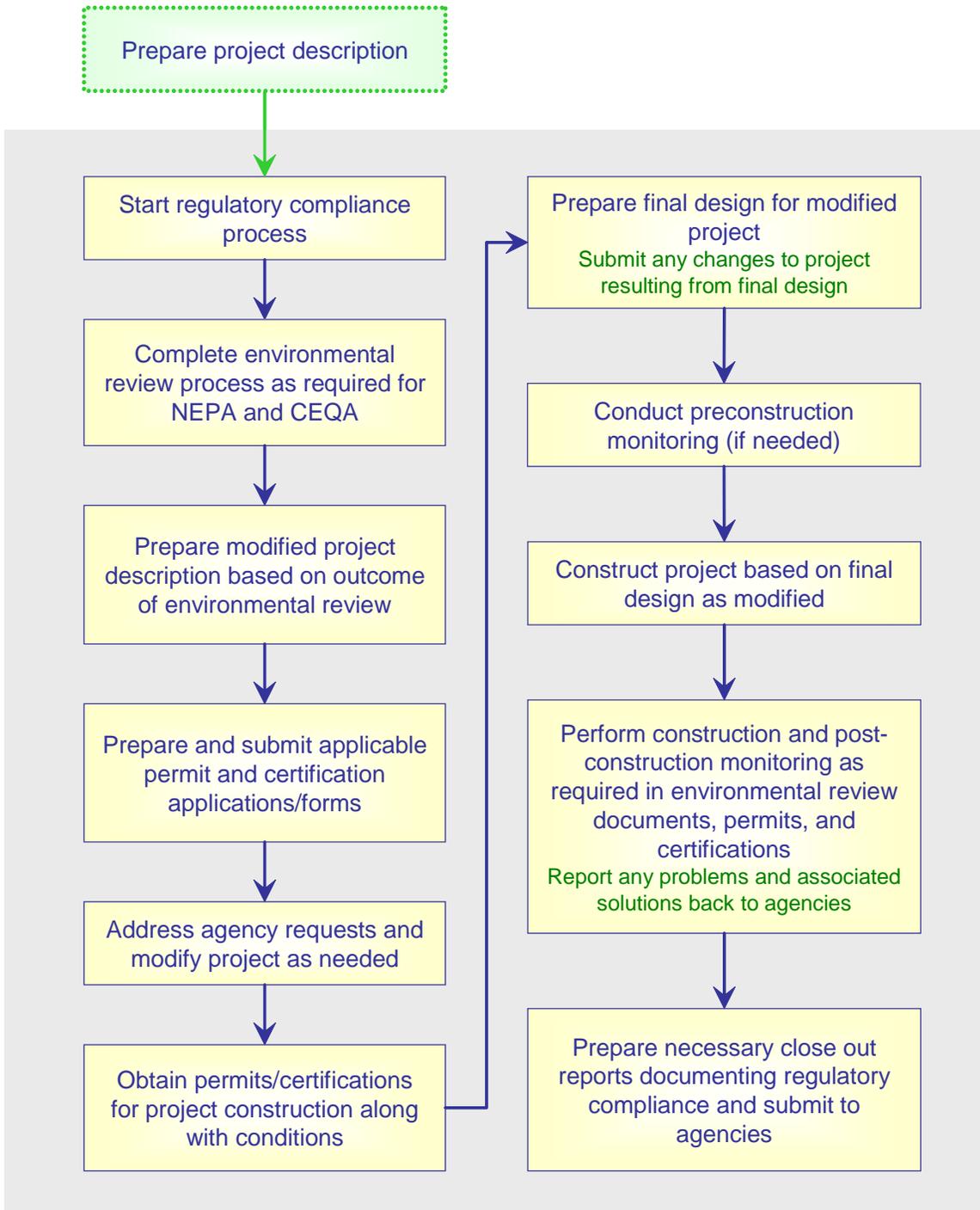


Figure 2. Federal Regulatory Compliance Process Overview

sedimentation) have a high potential to result in significant environmental impacts, beach restoration projects typically involve a relatively high level of scrutiny during the environmental review and permitting process compared to some other types of projects.

To streamline the environmental review process and as encouraged by CEQA, NEPA and CEQA documents should be prepared concurrently. Joint environmental review documents reduce redundancy in data and information presentation since many of the requirements under NEPA and CEQA are similar and most of the analyses require the same data and information. The structure of these documents is developed in a way that addresses the needs of both NEPA and CEQA, thereby allowing the responsible regulatory and resource agencies to more easily complete their review. The NEPA and CEQA compliance processes are discussed in more detail below.

3.2.2 NEPA Compliance

Triggers

Any project that is funded, assisted, conducted, regulated or approved by a federal agency that may or will cause significant direct or indirect physical change to the environment will be subject to NEPA compliance. Each federal agency is responsible for integrating NEPA compliance into their individual missions. For this reason, each federal agency has a unique set of administrative requirements and procedural guidelines for NEPA compliance. A general overview is provided below with specific emphasis on USACE procedures typically utilized for beach restoration projects since the USACE conducts most beach restoration projects.

Process

The NEPA compliance process is illustrated schematically in Figure 3. After preparation of a detailed project description, the first step in the NEPA compliance process is to determine if the project is excluded or exempt from NEPA. If excluded, the lead agency will document the decision and the NEPA compliance process is complete. If the project is not excluded or exempt from NEPA then an EA is prepared for the project or action, unless the project qualifies for a Nationwide Permit for an existing regional general permit (RGP) established in advance. At this time, there are no known exemptions from NEPA that apply to beach restoration projects. This is due to the fact that the discharge of sediment is usually considered a potential cause of significant impacts to the environment. Most beach restoration projects currently require preparation of an EA or EIS. Based on the information developed for the EA, the next step is to determine whether there will be any potential significant impacts. If there are no potentially significant impacts, then the lead federal agency will prepare a FONSI and the NEPA process is complete. If there may be significant impacts then an EIS must be prepared. At the completion of the EIS process, the decision will be documented through the filing of a Record of Decision (ROD).

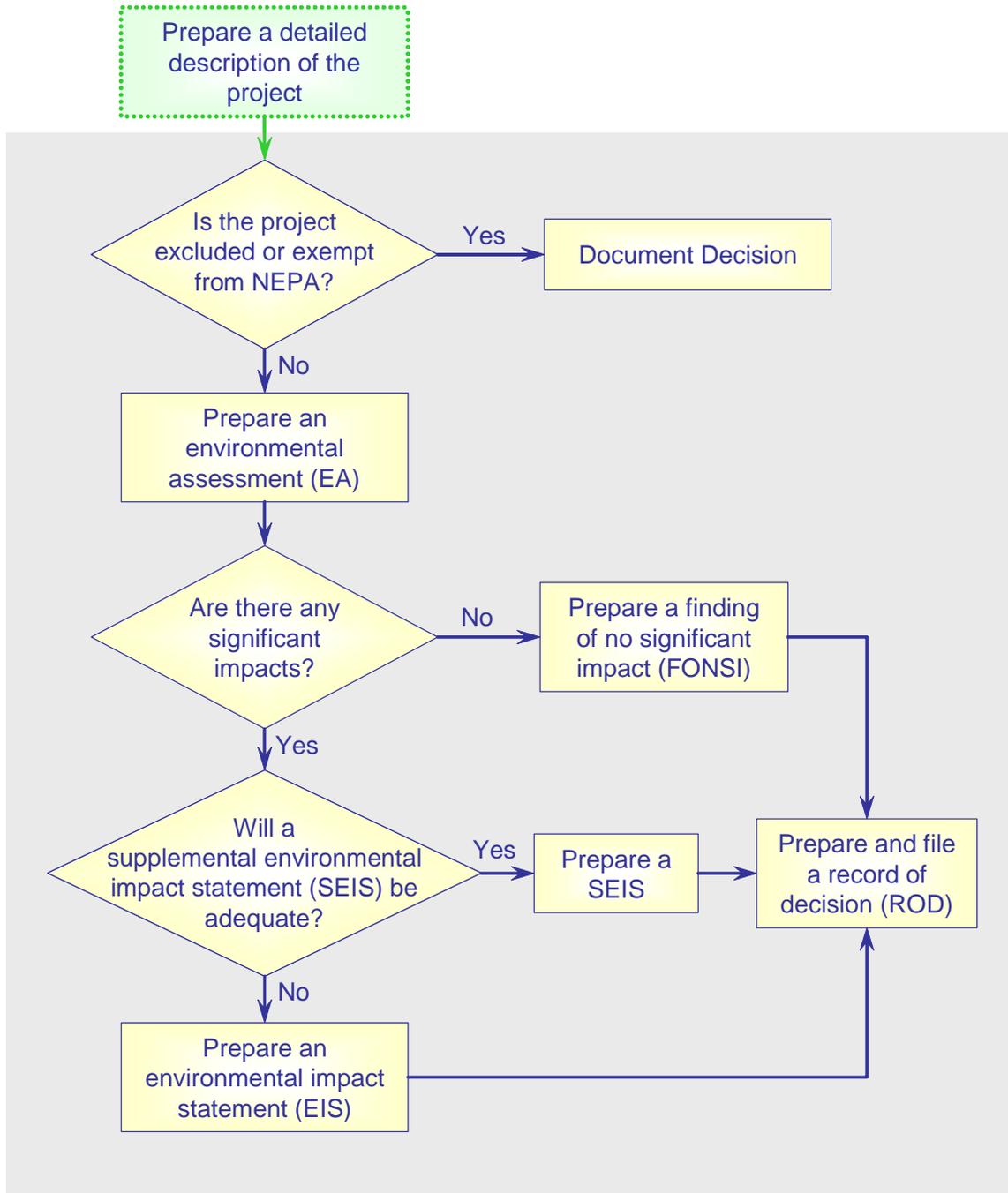


Figure 3. NEPA Compliance Flow Chart

3.2.3 Typical Timeframes

The time required to achieve NEPA compliance depends on the nature and location of the project. Relatively small projects located in areas with limited environmental resources will usually require an EA/FONSI, which takes approximately 3 months to 6 months to process. USACE standard operating procedures provide 120 days for the issuance of a Standard Individual Permit requiring an EA, but ESA consultations can lengthen the process. Larger projects located in areas with significant environmental resources will usually require an EIS, which can take 9 to 15 months to process.

3.2.4 CEQA Compliance

Triggers

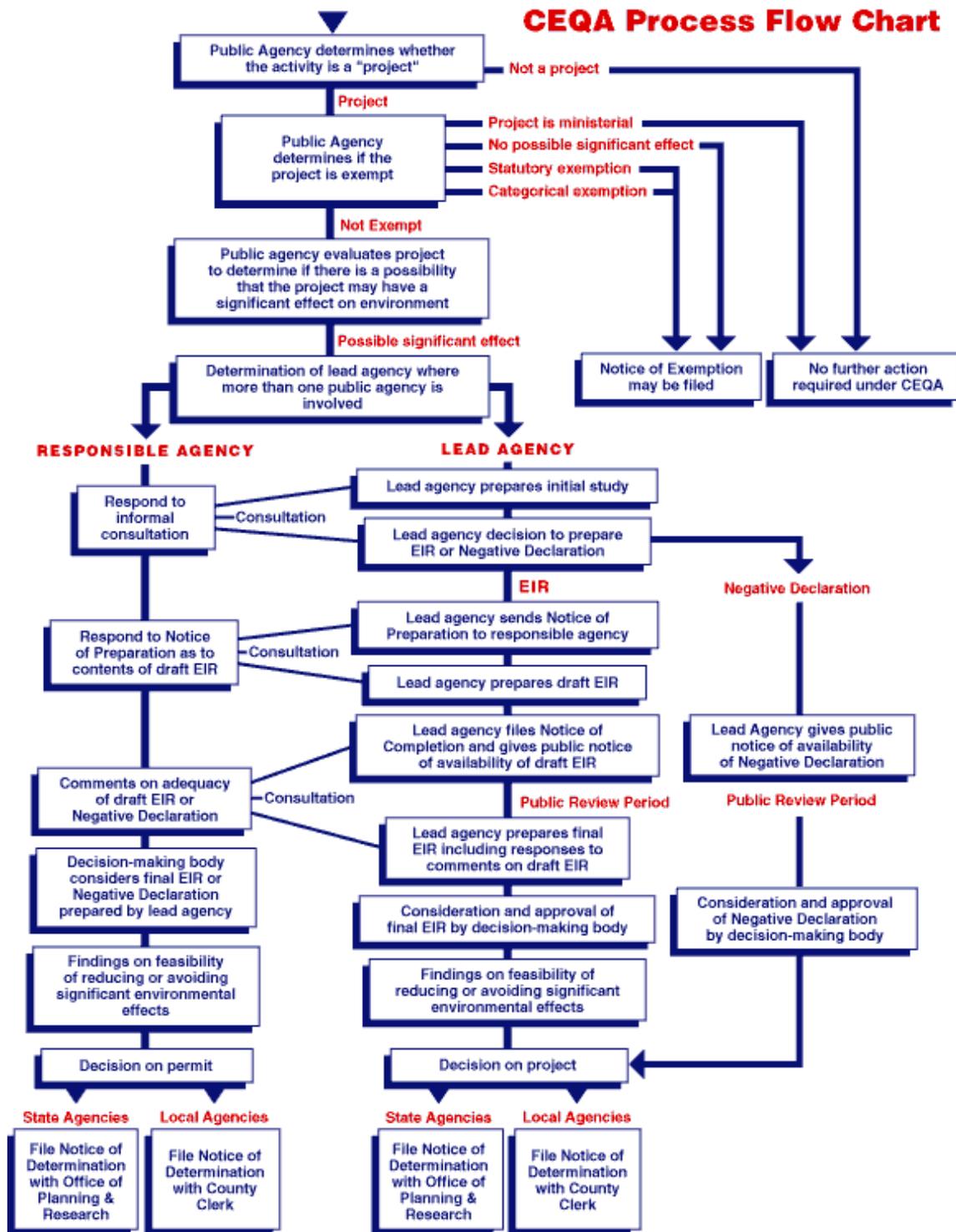
Any project directly undertaken by a public agency, or that is funded, sponsored, or permitted by a state or local agency or could potentially cause direct or indirect physical change to the environment will be subject to CEQA compliance.

Process

The CEQA compliance process is illustrated in Figure 4. After preparation of a detailed project description, the first step in the CEQA compliance process is to determine whether the project is exempt from CEQA. If the project is exempt from CEQA then the lead agency will document the decision by filing a notice of exemption and the CEQA compliance process will be complete.

At this time, there are no known exemptions from CEQA that apply to beach restoration projects. This is due to the fact that under CEQA guidelines the discharge of sediment is considered a potential cause of significant impacts to the environment. In addition, beach restoration projects with significant environmental concerns will usually require an EIR (as opposed to a ND or MND). However, opportunistic beach restoration projects in areas with limited natural resources may qualify for a ND or MND.

If the project is not exempt from CEQA then an initial study (IS) is prepared for the project. Based on the information developed for the IS, the next step is to determine if there will be any significant impacts. This is accomplished through completion of a CEQA environmental checklist and consultation with the appropriate agencies. If there are no significant impacts then the applicant will prepare a ND and the agency's decision as to whether the project can proceed will be documented through the filing of a notice of determination (NOD). If there are likely to be significant impacts then the estimated nature of the significant impacts is evaluated to determine if mitigation measures can be incorporated to reduce the level of the



Source: http://ceres.ca.gov/images/CEQA_process_chart.gif

Figure 4. CEQA Compliance Flow Chart

impacts to insignificant. If the adverse impacts can be mitigated, then the applicant will prepare a MND and the agency's decision will be documented through the filing of a NOD. If the impacts cannot be mitigated, then an EIR will be prepared and the agency's decision documented through the preparation and filing of a NOD. During the CEQA process, several state agencies may be involved in reviewing the CEQA documents depending on the project location and the activities involved in implementing, operating, and maintaining the project. The agencies that may be involved include the California Department of Fish and Game, California Coastal Commission, California Department of Parks and Recreation, California Department of Water Resources, Native American Heritage Commission, California State Lands Commission, California Department of Transportation, Regional Water Quality Control Board, State Water Resources Control Board, and California Department of Toxic Substances Control. Upon completion of the environmental document, it is submitted to the State Clearinghouse to be archived for the legal record and for future retrieval as needed. The guidelines used to implement CEQA are available at the following state website www.ceres.ca.gov/planning.

Typical Timeframes

The time required to achieve CEQA compliance depends on the nature and location of the project. Relatively small projects located in areas with limited environmental resources will usually require a ND or MND, which takes approximately 3 to 6 months to process. Larger projects located in areas with significant environmental resources will usually require an EIR, which can take 9 to 15 months to process.

3.2.5 Major Differences Between CEQA And NEPA

Because there are many similarities between NEPA and CEQA, it can often be difficult to understand what needs to be done in order to achieve compliance with the regulations adopted under each of these laws. The major differences between NEPA and CEQA are summarized in Table 2.

3.3 PERMITS

Upon completion of the environmental review process described in Section 3.2, the project applicant will submit the necessary permit and agreement applications to the appropriate agencies. The necessary permit and agreement applications are usually prepared by the project proponent and submitted to the lead agency at the same time (see Figure 5). This helps ensure that the information submitted for each application is consistent, thereby minimizing delays due to errors and omissions. In addition, the resource and regulatory agencies typically consult with one another before completing their evaluations. In some cases this consultation is a requirement under statutory law or internal agency policy while in

Table 2. Major Differences Between NEPA and CEQA

NEPA	CEQA
Agencies do not have to mitigate impacts.	Agencies must mitigate impacts when feasible.
Public noticing is not required for a FONSI (USACE does circulate a public notice to start the EA/Individual Permit process)	Public noticing required for negative declarations.
Federal register notification required for draft EIS.	Public noticing required for draft EIRs.
Federal register notification required for final EIS.	Public noticing not required for final EIRs.
No time limits for preparation of environmental documents.	Permit Streamlining Act applies for publicly-funded projects.
No statute of limitation.	Some statutes of limitation.
ROD must only address why the decision was made, and a ROD is not required for EA/FONSI.	NOD (findings) must explain whether each impact has been mitigated and, if not, why.
Alternatives must be analyzed to a similar level of detail.	Alternatives do not have to be analyzed to a similar level of detail as the proposed project.
Environmental impact analyses must include an evaluation of reasonably foreseeable indirect and cumulative impacts.	Environmental impact analyses do not have to include speculative impacts.
Document must include integration of other federal environmental laws.	Document does not have to include integration of other federal environmental laws but should identify relevant state and local ordinances.

other cases the consultation is done to improve coordination and consistency in resource protection and management. For this reason, the federal regulatory agencies will generally not approve a permit or agreement until they have seen the final draft responses from the other agencies and worked out any differences in their responses.

There are many paths that can be adopted to achieve the permits and agreements necessary to construct a beach restoration project. The path chosen depends primarily on the implementing agency and the project applicant so the U.S. Army Corps of Engineers might adopt a different path to obtain permits and agreements than a regional governmental agency (e.g., San Diego Association of Governments or SANDAG).

An example permitting approach is shown in Figure 5 to identify the various milestones involved for each permit as well as to illustrate how the various individual permits are typically integrated.

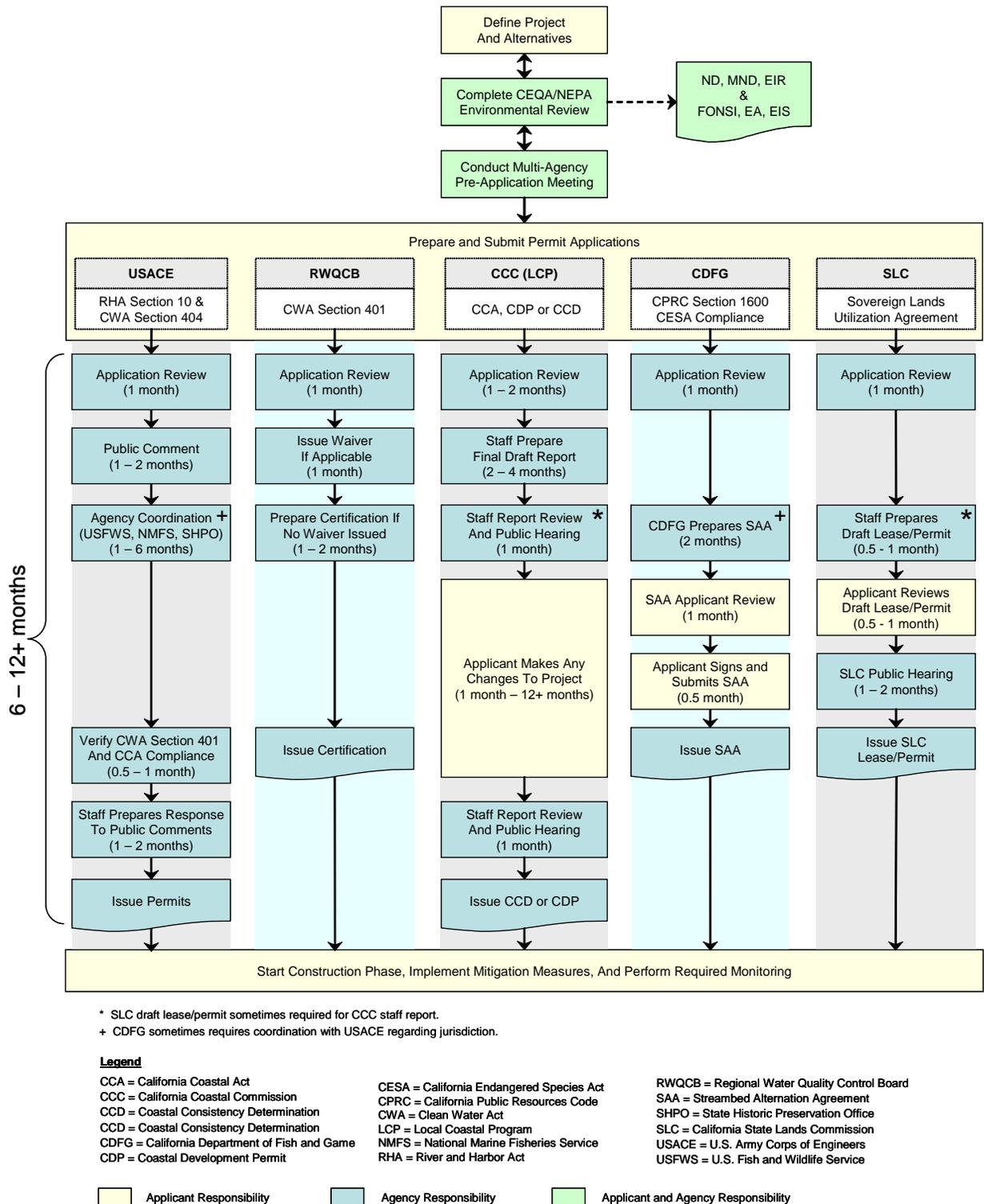


Figure 5. Detailed Permitting Process for a Typical Beach Restoration Project

The triggers and corresponding processes for each regulation are discussed below.

3.3.1 Rivers and Harbors Act: Section 10 and Clean Water Act: Section 404

Typically, the USACE processes these two permits in parallel (i.e., one permit). The discussion below is based on parallel processing of the RHA Section 10 and CWA Section 404 Permits.

Triggers

RHA Section 10

If a project will result in construction within a navigable waterway or modification of any structure in or over a navigable waterway, a permit is required under the RHA. A permit under Section 10 also will be required for a project even if the construction and/or activities are conducted outside of waters of the U.S. if the work will affect the course, location, or condition of the water body. Separate authorizations may be required for both the source site and receiver site.

CWA Section 404

If a project could result in the discharge of dredged and/or fill (rock, gravel, sand, silt, clay, etc.) material to waters of the U.S. then authorization under Section 404 of the CWA is required for the project. Separate authorizations may be required for both the source site and receiver site.

Process

The USACE issues two types of permits under CWA Section 404: (i) general permits and (ii) standard permits. General permits include nationwide permits (NWP) or regional permits (RGP) while standard permits (SP) include both letters of permission and individual permits. General permits have been developed to reduce processing times by focusing on projects of a similar nature in terms of geography (e.g., regional area) or type (e.g., maintenance dredging) in such a way that environmental impacts will be minimized. Standard permits are issued for projects and activities that do not qualify for a general permit, which typically include large projects that are anticipated to cause potential adverse environmental impacts.

Most beach restoration projects currently require a standard permit in the form of an individual permit, as no Nationwide General Permits are available for beach restoration projects. However, the Los Angeles District of the USACE and SWRCB recently issued RGP 67 for beach restoration projects in the Los Angeles District. In addition, the recently completed SCOUP Plan (Moffatt & Nichol, 2006) was developed, in large part, to facilitate smaller, opportunistic beach restoration projects throughout coastal California by identifying

consistent approaches to physical characterization and data requirements, which in turn, will speed up permit processing.

Typical Timeframe

The USACE usually completes processing of NWP's in 45 days and individual permits in 120 days, but final issuance is dependent on other authorizations, including CCDs/CDPs, CWA Section 401 Permits, ESA compliance, and EFH review. The timeframe is driven by these other agency needs in most cases.

3.3.2 Endangered Species Act

Triggers

If federally-listed threatened or endangered species or their critical habitat are present or potentially present in a project area, then some level of consultation with the USFWS and NMFS will be required. Both the USACE Regional General Permit No. 67 (RGP 67) and protocols established for SCOUP discuss preconstruction surveys to identify where species/habitats of concern are present in the proposed project's vicinity. If it can be shown that project activities are expected to have minimal effects on listed species in the project area ("May affect but not likely to adversely affect") then consultation can occur "informally" according to the ESA regulations. If a project has the potential to result in a take ("May affect") of a listed species or critical habitat then these agencies will most likely require a formal consultation. If a project is determined by the lead Federal agency to result in "no effect", consultation is not required.

Process

Most, if not all, beach restoration projects will have a federal nexus either because the project includes some level of federal funding and/or the project will be authorized by a federal agency (e.g., CWA Section 404 and/or RHA Section 10 Permit from the USACE). Therefore, the lead Federal agency will need to determine if there is an effect on a listed species and initiate the appropriate consultation. This would occur if the federal agency (USACE) determines that their action (e.g., issuance of a permit) could affect a listed species.

Informal Consultation

USFWS and/or NMFS will conduct an informal consultation when the effects of a project are determined to be discountable, insignificant, or completely beneficial to the listed species in the project area and no incidental take will occur. The project applicant must supply adequate information to USFWS and NMFS regarding the project and listed species that might be affected such that these agencies can render a decision regarding informal versus

formal consultation. Informal consultations are typically concluded with a letter to the lead agency or project applicant from USFWS and/or NMFS.

Formal Consultation

USFWS and/or NMFS will conduct a formal consultation if they determine that the effects of a project may adversely affect listed species and/or critical habitat as well as if a take of listed species is expected. At this point, the project applicant/federal agency must prepare a biological assessment (BA) that provides detailed information regarding the potential for take and all measures that will be taken to avoid, minimize, and mitigate for any take. Utilizing information in the BA, the USFWS and NMFS will conclude the formal consultation process with the preparation of a biological opinion (BO), which may include terms and conditions designed to further reduce potential impacts to listed (i.e., threatened or endangered) species and/or critical habitats. The authorization of an incidental take is also included in the BO. If the BO concludes that the proposed project would jeopardize (i.e., Jeopardy Opinion) the continued existence of a listed species or adversely modify critical habitat, the opinion must suggest reasonable and prudent alternatives that would avoid that result, if any exist. Under Section 7 of the ESA, USFWS and NMFS cannot issue an incidental take permit for an action that would render a Jeopardy Opinion.

Typical Timeframe

Compliance with the ESA is usually conducted by USFWS and NMFS through the USACE in parallel with the RHA Section 10 and CWA Section 404 permit process. Informal consultations are usually completed within one month from consultation initiation and formal consultations are usually completed within six months from consultation initiation. The ESA guidelines allow for 135 days; however, formal consultations under Section 7 can last substantially longer (e.g., a year or more) depending on the nature of the impacts and ability of the responsible agencies to adequately address and/or mitigate the impacts.

3.3.3 National Historic Preservation Act: Section 106

Triggers

Any project that is federally funded or requires a federal permit (e.g., CWA Section 404) will be subject to Section 106 of the NHPA.

Process

Compliance with the NHPA is based on a two-phase approach. Phase 1 includes the determination of the area of potential effect (APE) and review of background documents. In addition, if the results of the background document review suggest such structures and/or sites might be present in the APE then field investigations of historic structures and/or archaeological sites are conducted to identify potential historical/archaeological resources. If

the results of the Phase 1 investigation reveal that there are not likely to be any historic structures and/or archaeological sites within the APE, the permitting agency prepares a letter documenting this finding and the process is complete.

If a historic structure is still standing and/or an archaeological site is encountered within the APE then the process proceeds into Phase 2 as long as the State Historic Preservation Officer (SHPO) concurs. The purpose of Phase 2 is to determine if the historic structure and/or archaeological site is eligible for inclusion on the National Register of Historic Places (NRHP). If the results of the Phase 2 investigation indicate that the historic structure and/or archaeological site is eligible for nomination to the NRHP then the project applicant, permitting agency, and SHPO must determine the steps needed to arrive at a determination of no adverse effect. This process is usually concluded with a memorandum of agreement (MOA) between the parties that documents how the historic structure and/or archaeological site will be preserved.

Typical Timeframe

The NHPA process is usually conducted in parallel with the RHA Section 10 and CWA Section 404 permit process. Although it might take less time to achieve compliance with the NHPA, especially if the process stops at Phase 1, it typically takes six to twelve months because of the interdependence with the RHA Section 10 and CWA Section 404 permits.

3.3.4 Clean Water Act: Section 401

Triggers

The need for a water quality certification under Section 401 of the CWA is triggered by the need for a CWA Section 404 Permit. Given that beach restoration projects typically involve the direct discharge of material into federal waterways, a CWA Section 401 water quality certification will be required in most instances. If a project will disturb more than one acre, the RWQCB will also require the preparation and submittal of a Storm Water Pollution Prevention Plan (SWPPP) to address potential pollution resulting from construction activities (CWA Section 402 NPDES requirement) and a waste discharge permit or waiver to comply with the State Ocean Plan.

Process

The Regional Water Quality Control Boards are responsible for the CWA 401 certification unless the project is multi-regional, in which case the responsibility falls to the SWRCB. CWA 401 certification should be sought concurrently with a CWA Section 404 Permit because CWA Section 404 Permits cannot be issued without certification under CWA Section 401. The Regional Water Quality Control Boards require a CEQA document to proceed and may request additional information.

Typical Timeframe

The Regional Water Quality Control Boards have 60 days to act on a complete application.

3.3.5 California Coastal Act

Triggers

For the most part, all new development within the California Coastal Zone will be subject to regulation under the California Coastal Act (CCA) and most beach restoration projects are considered development under the CCA. The CCC and Local Coastal Program (LCP) agency, as appropriate, should be contacted early in the process if there are any questions about whether or not a project would require a permit. While the CCC is generally supportive of beach restoration projects because such projects help achieve many of the goals established in the CCA (e.g., beach access and preservation), regulation gives the CCC the ability to make sure that such projects are done in a manner consistent with all CCA provisions.

Process

If the project is performed in a local jurisdiction (e.g., city or county) that has an approved LCP, then the project applicant must submit an application for a coastal development permit (CDP) to the local jurisdiction. If the project is performed in a local jurisdiction that does not have an approved LCP then the project applicant must submit an application for a CDP directly to the Coastal Commission. However, local jurisdictions with an approved LCP only have regulatory authority over the portion of the Coastal Zone extending from the Mean High Tide (MHT) line to the inland boundary of the Coastal Zone in their area, and some actions on development applications by local jurisdictions are appealable to the CCC. For work done seaward of the MHT line, the project applicant will have to apply directly to the CCC for processing of the CDP. This means that a project applicant will have to obtain two CDPs (i.e., one from the local jurisdiction and one from the CCC) if the project will be done within a local jurisdiction with an approved LCP and involve work performed seaward of the MHT line.

The project applicant is required to prepare CDP applications and submit the forms to the appropriate CCC office or local jurisdiction. Information regarding the various CCC regional office locations and associated jurisdictional coverage can be found on the CCC website at: www.coastal.ca.gov. CDP application forms specific to CCC regions can also be obtained from this website.

Once the CDP application has been submitted, CCC staff and LCP agency staff (CCC/LCP staff), as appropriate, will review the application to determine if it is complete. If the application is incomplete then the CCC/LCP staff will notify the project applicant of

deficiencies within the application. It typically takes approximately one to two months for the CCC/LCP staff to make a determination.

Once CCC staff has determined that the application is complete, the project applicant is notified that the review process has begun. CCC staff will analyze the project against the CCA (Section 3) to determine if the project is consistent with the CCA. Projects within certified jurisdictions are evaluated by local government (or the CCC on appeal) for consistency with the Local Coastal Program and, if between the first public road and the sea, coastal access and recreation provisions of the CCA. Upon completion of this analysis, CCC staff will prepare a final draft report (staff report) that usually includes a description of the project, relevant sections of the CCA, consistency analysis of the project compared to relevant sections of the CCA, special conditions designed to make the project consistent with the relevant sections of the CCA, a summary of findings, and a staff recommendation to the CCC.

The final draft report will be sent to the CCC for review and the CCC will discuss the CDP application during the next, regularly scheduled public hearing. The CCC will act on the CDP application in one of the following ways: (i) approve the CDP application according to staff recommendations, (ii) approve the CDP with some staff recommendations, (iii) approve the CDP with no staff recommendations, (iv) request additional analyses and/or special conditions be incorporated into the project to improve consistency with the CCA, or (v) reject the CDP application.

If additional analyses or special conditions are required, the project applicant will need to modify the project description and resubmit it to CCC staff for further review. The new information will be submitted to the CCC and the CCC will discuss the CDP application during the next available, regularly scheduled public hearing. After the CCC has acted upon the CDP application, permit issuance may necessitate compliance with certain conditions of approval. Development activities approved by the permit must be undertaken in a manner that is consistent with the permit. Work cannot begin on the portion of the project covered under the CDP unless the project applicant has obtained all other required federal, state, and local permits and agreements.

Typical Timeframe

Obtaining a CDP from the CCC typically takes six to nine months from the time the CCC staff determines the CDP application is complete. However, depending on the complexity, size, and location of the project, it can take a year or more to obtain a CDP. It should be noted that this timeframe estimate does not include the time that might be needed for a local jurisdiction (e.g., a coastal city with an approved LCP), which might not follow the same procedures as the CCC, to process a CDP for their jurisdiction.

3.3.6 California State Lands Commission

Triggers

The State acquired sovereign ownership of all previously ungranted tidelands, submerged lands, and beds of navigable waterways upon its admission to the United States in 1850. The landward boundary of the State's sovereign interests is generally based upon the ordinary high water mark (California Civil Code Section 830) along the shore. Generally, the ordinary high water mark is equal to the mean high tide line as it existed prior to any filling or artificial accretion, and thus may not be readily apparent from present day site inspection.

The Public Trust is a sovereign public property right held by the State or its delegated trustee for the benefit of all the people. This right limits the uses of these lands to waterborne commerce, navigation, fisheries, open space, recreation, or other recognized Public Trust purposes. A lease from the Commission is required for any portion of a project extending onto State-owned lands that are under its jurisdiction.

Process

To undertake a beach restoration project, the applicant will need to submit an application, which must include, among other things, an outline of the proposed project, supporting environmental documentation under CEQA, copies or status of all other regulatory permits or approvals necessary, a legal description of the area to be leased tied to a monument or monuments of record and payment of appropriate filing and processing fees. The application should also include a pre-project mean high tide line survey as follows:

- The survey must be based on the California Coordinate System 1983 and must include a control scheme showing found monuments and coordinates referencing the tidal epoch over which the tidal statistics (e.g., mean high tide) were calculated.
- The survey must locate a minimum of two property monuments shown on an official record map.
- The vertical datum of the survey must be shown on the map with the benchmark location and elevation.
- The mean high tide line elevation and tidal epoch must be noted on the survey and SLC staff must approve the elevation prior to the fieldwork.
- Stations used to locate the mean high tide line must be at intervals of 50 feet.
- The survey must be performed by or under the supervision of a Professional Land Surveyor licensed in the state of California.

- A hardcopy map and AutoCAD drawing file must be provided to the SLC within 30 days of completion of the survey.

Pursuant to the Permit Streamlining Act, SLC staff must advise the applicant within 30 days of receipt of the application as to whether it is complete or incomplete. Once the application is deemed complete, SLC staff will prepare and transmit the lease document to the applicant for review and signature. SLC staff will prepare a calendar item with its recommendation to the SLC regarding approval of the project and lease, with special conditions if appropriate, at a public meeting. Pursuant to Section 6301.7 of the Public Resources Code, the USACE may require the SLC to enter into an agreement, with the Governor's approval, waiving on behalf of the State of California any claim to state-owned submerged lands which would otherwise fall under state jurisdiction as a result of any fill project in Los Angeles and Ventura counties. SLC meetings are typically held every two months beginning in January of each year. Upon approval by the SLC and all other regulatory agencies, the applicant may proceed with the project. Upon completion of the project, the applicant must provide copies of any and all reports or surveys detailing the results of the project.

While the above provides a general overview of the SLC application process, SLC staff evaluates each project on a case-by-case basis to determine appropriate requirements.

Typical Timeframe

Obtaining a lease agreement from the SLC typically takes two to four months once an application has been deemed complete.

3.3.7 Streambed Alteration Agreement: CDFG Code Sections 1600-1616

Triggers

A streambed alteration agreement (SAA) is required whenever a project will substantially divert, obstruct, or change the natural flow or bed, channel, or bank of any river, stream, or lake designated by CDFG. In general, a SAA will be required for any work done within a river, stream (including ephemeral streams), wash, or lake that contains or once contained fish and wildlife, or that supports or once supported riparian vegetation. This would include dredging and/or excavation done within a bed, channel, or bank of any river, stream, or estuary to obtain sediment for use in restoring beaches.

Process

The first step in preparing a SAA is to notify CDFG by completing and submitting a complete notification package and fee to the appropriate CDFG regional office. The notification package is available from the CDFG website at www.dfg.ca.gov/1600/notification_pkg.html or any CDFG regional office and the fee schedule is included in the notification package.

The CDFG regional offices and counties they serve are listed in the notification package and on the CDFG website at www.dfg.ca.gov/regions/regions.html.

After an applicant notifies CDFG, the CDFG will determine within 30 calendar days whether a notification package is complete (for a SAA with a term of five years or less). Once a notification package is deemed complete, CDFG will determine whether a SAA is needed for the project/activity. A SAA will be required if the activity could substantially adversely affect an existing fish or wildlife resource. If a SAA is required, CDFG will conduct an onsite inspection, if necessary, and submit a final draft SAA to the applicant. This document will include measures to protect fish and wildlife resources while conducting the project.

The final draft SAA usually takes 60 calendar days after submission of a complete notification package. The applicant will have 30 calendar days to notify the CDFG whether CDFG's proposed measures are acceptable. If the applicant agrees with these measures, then the SAA should be signed and submitted to CDFG. If the applicant disagrees with any of the proposed measures, they must notify CDFG in writing and specify the unacceptable measures. Upon receiving written request, CDFG staff has 14 calendar days to resolve the disagreement. If the applicant fails to respond, in writing, within 90 calendar days of receiving the final draft SAA, then CDFG may withdraw the SAA.

After CDFG receives the signed final draft SAA, it will make it final by signing it. However, CDFG will not sign the final SAA until it receives the notification fee and CEQA documentation. After the applicant receives the final SAA, work on the project covered by the SAA may begin.

Typical Timeframe

It will take approximately 4 to 6 months to process a SAA from the time that the CDFG receives an acceptable notification package; however, it can take up to one year or longer depending on the complexity of the project.

3.3.8 California Endangered Species Act: CDFG Code Section 2050

Triggers

Any project that requires either a CDFG permit (e.g., SAA) or a discretionary permit triggering CEQA is required to address potential impacts to state-listed special status species (i.e., threatened, endangered, candidate, fully protected, or special concern species). The potential impacts are addressed through compliance with the California Endangered Species Act (CESA).

Process

In practice, compliance with CESA is addressed during the CEQA and/or SAA process. Any mitigation measures required to protect state-listed species of concern will be included in the environmental review documentation required under CEQA. CDFG will review the CEQA documentation to verify that no take of state-listed species will occur and that appropriate mitigation measures are taken to avoid or minimize impacts to state-listed species. If the project will result in the take of a state-listed threatened or endangered species, CDFG can issue an incidental take permit if certain criteria are met. If a project will result in the take of a listed species, the project must include measures that will mitigate the take. If a species is listed as threatened or endangered under both CESA and ESA and the project applicant has obtained a federal incidental take permit then a consistency determination on the federal permit is needed from the state, since there is a difference between the state and federal definition of take. Dependant on findings of the consistency determination, a state incidental take permit may or may not be required.

It should be noted that CDFG cannot issue an incidental take permit for a fully protected species unless the sole purpose of the project is the recovery of that species. Given the multiple objective nature of beach restoration projects (e.g., human recreation, wildlife habitat, and flood protection), it is unlikely that CDFG would be able to issue an incidental take permit for a fully protected species impacted by a beach restoration project.

Typical Timeframe

CDFG will typically undertake compliance activities for CESA in parallel with the preparation of a SAA and coincident with CEQA. CESA compliance, if required, will take typically take 4 to 6 months.

4. AGENCY CONTACTS

Successful processing of all required environmental review documentation and permit information requires close coordination with representatives from the relevant regulatory and resource agencies. Each agency is organized differently with some organized around regulatory programs, some around geographic areas, and some around technical disciplines. It is important to make sure that the right person is involved in processing the necessary permit applications to minimize delays.

Contact information (as of August 2006) for each regulatory and resource agency are provided in Table 3. The information is organized according to the various division systems utilized by each agency (e.g., office, district, and region); however, additional effort may be required to locate an agency staff member within each division that is responsible for your specific project. In addition, the contact information provided herein should be considered as a starting point because agency staff personnel may leave the agency, be reassigned to another department, or simply be too busy to process another permit application. Therefore, each agency should be contacted early in the regulatory compliance phase to identify the agency staff member(s) that will be responsible for the project.

Table 3. Regulatory and Resource Agency Contact Information for Beach Restoration Projects

AGENCY	REGION/DISTRICT	OFFICE/AREA	CONTACT*	TELEPHONE	E-MAIL ADDRESS
U.S. Army Corps of Engineers	Los Angeles District	San Luis Obispo County	Lisa Mangione	(805) 585-2143	Lisa.Mangione@usace.army.mil
		Santa Barbara County	Jack Malone	(805) 585-2146	John.C.Malone@usace.army.mil
		Ventura County	Antal Szijj	(805) 585-2147	Antal.J.Szijj@usace.army.mil
		Los Angeles County	Daniel Swenson	(213) 452-3414	Daniel.P.Swenson@usace.army.mil
		Orange County	Cori Farrar	(213) 452-3296	Corice.J.Farrar@usace.army.mil
		San Diego County	Jeannette Baker	(858) 674-5385	Jeannette.M.Baker@usace.army.mil
	San Francisco District	North Section	Bob Smith	(415) 977-8450	robert.f.smith@usace.army.mil
		South Section	Philip Shannin	(415) 977-8445	philip.a.shannin@usace.army.mil
State Water Resources Control Board	California	State	Bill Orme	(916) 341-5464	BOrme@waterboards.ca.gov
Regional Water Quality Control Board	Region 1, North Coast		John Short	(707) 576-2065	jshort@waterboards.ca.gov
	Region 2, San Francisco Bay	San Francisco and San Mateo Coastlines	Liz Morrison	(510) 622-2433	EMorrison@waterboards.ca.gov
	Region 3, Central Coast		401 Certification Contact	(805) 549-3147	
	Region 4, Los Angeles		Valerie Carrillo	(213) 576-6759	vcarrillo@waterboards.ca.gov
	Region 8, Santa Ana		Jun Martirez	(951) 782-3258	jmartirez@waterboards.ca.gov
	Region 9, San Diego	Northern Area	Christopher Means	(858) 637-5581	cmeans@waterboards.ca.gov
		Southern Area	Phillip Hammer	(858) 627-3988	phammer@waterboards.ca.gov
California Coastal Commission	North Coast District	Counties: Del Norte, Humboldt, and Mendocino	Bob Merrill	(707) 445-7833	bmerrill@coastal.ca.gov
	North Central Coast District	Counties: Sonoma, Marin, San Francisco, and San Mateo	Chris Kern	(415) 904-5260	ckern@coastal.ca.gov
	Central Coast District	Counties: Santa Cruz, Monterey, and San Luis Obispo	Steve Monowitz	(831) 427-4863	smonowitz@coastal.ca.gov
	South Central Coast District	Counties: Santa Barbara, Ventura, and Los Angeles	Gary Timm	(805) 585-1800	gtimm@coastal.ca.gov
	South Coast District	Counties: Los Angeles and Orange	Teresa Henry	(562) 590-5071	thenry@coastal.ca.gov
	San Diego Coast District	County: San Diego	Sherilyn Sarb	(619) 767-2370	ssarb@coastal.ca.gov

Note

* As of December 2006

Legend

- CWA = Clean Water Act of 1972
- NEPA = National Environmental Policy Act of 1969
- CZMA = Coastal Zone Management Act of 1972
- CCA = California Coastal Act of 1976
- CDFG = California Department of Fish and Game
- ESA = Endangered Species Act of 1973
- RHA = River and Harbor Act of 1899
- FWCA = Fish and Wildlife Coordination Act of 1956
- MSFCMA = Magnuson-Stevens Fishery Conservation and Management Act of 1996

Table 3. Regulatory and Resource Agency Contact Information for Beach Restoration Projects

AGENCY	REGION/DISTRICT	OFFICE/AREA	CONTACT*	TELEPHONE	E-MAIL ADDRESS
California Department of Fish and Game	Northern California and North Coast Region	Del Norte and Humboldt counties	SAA Contact	(530) 225-2367	
	Central Coast Region	Mendocino, Sonoma, Marin, San Francisco, San Mateo, Santa Cruz, Monterey and San Luis Obispo	SAA Contact	(707) 944-5520	
	South Coast Region	Santa Barbara, Ventura, Los Angeles, Orange and San Diego Counties	SAA Contact	(858) 636-3160	

5. REFERENCES

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U.S. Army Corps of Engineers, Nationwide Permit Information, available at http://www.usace.army.mil/inet/functions/cw/cecwo/reg/nationwide_permits.htm.