

Handbook

of Regulatory Compliance

for the

CALFED

Bay-Delta Program



CALFED/1415

***Handbook of
Regulatory Compliance
for the
CALFED Bay-Delta Program***

November 8, 1996

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Acronyms

ACHP	Advisory Council on Historic Preservation
AIRFA	American Indian Religious Freedom Act
APCD	Air Pollution Control District
APE	area of potential effects
AQMD	Air Quality Management District
Bay-Delta	San Francisco Bay/Sacramento-San Joaquin Delta
BCDC	San Francisco Bay Conservation and Development Commission
BDAC	Bay-Delta Advisory Council
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
BMPs	best management practices
CALFED	CALFED Bay-Delta Program
Caltrans	California Department of Transportation
CDC	California Department of Conservation
CEQ	U.S. Council on Environmental Quality
CEQA	California Environmental Quality Act
CESA	California Endangered Species Act
cfs	cubic feet per second
Corps	U.S. Army Corps of Engineers
CZMA	Coastal Zone Management Act
DOI	U.S. Department of the Interior
DOT	U.S. Department of Transportation
DSOD	California Division of Safety of Dams
DWR	California Department of Water Resources
EA	environmental assessment
EIR/EIS	environmental impact report/environmental impact statement
EPA	U.S. Environmental Protection Agency
FACTA	1990 Food, Agriculture, Conservation, and Trade Act
ESA	federal Endangered Species Act
FHWA	Federal Highway Administration
FONSI	finding of no significant impact
FPPA	Farmland Protection Policy Act of 1981
FWCA	Fish and Wildlife Coordination Act
MA	Management Authorization
MOA	memorandum of agreement
MOU	memorandum of understanding
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NPDES	National Pollutant Discharge Elimination System

NPS	National Park Service
NRCS	Natural Resources Conservation Service
NRHP	National Register of Historic Places
OPPD	Caltrans Office of Project Planning and Design
Reclamation	U.S. Bureau of Reclamation
ROW	right-of-way
RWQCB	Regional Water Quality Control Board
SHPO	State Historic Preservation Officer
SLC	State Lands Commission
SMARA	Surface Mining and Reclamation Act
SWRCB	California State Water Resources Control Board
USCG	U.S. Coast Guard
USFS	U.S. Forest Service
USFWS	U.S. Fish and Wildlife Service
WDR	Waste Discharge Requirement

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Introduction

This handbook presents an overview of the federal, State, and local laws and regulations for implementing the CALFED Bay-Delta Program (CALFED). This handbook is intended to give the reader an understanding of the key steps, requirements, and decision points in project approvals for CALFED and implementing agencies. It is also intended to serve as a reference for project planning, permit processing, and environmental documentation requirements. It is necessarily general in nature and does not discuss all exceptions and variations to laws and regulations. This handbook should not be construed as legal advice and should not be relied on for that purpose. Consultation with agency counsel may be required in dealing with specific factual situations. Inclusion in this publication of requirements of regulatory agencies is not intended in every instance to indicate concurrence with such requirements by CALFED.

CALFED BACKGROUND

In 1994, the State and federal governments signed the Bay-Delta Accord authorizing formation of CALFED, a cooperative of State and federal agencies with management and regulatory responsibilities in the Bay-Delta. CALFED is an effort to develop a long-term solution to problems affecting the San Francisco Bay/Sacramento-San Joaquin Delta (Bay-Delta) Estuary in northern California. Ecosystem quality, water quality, water supply reliability, and Bay-Delta system vulnerability are the broad areas of concern.

Established in May 1995, CALFED comprises a consortium of five state agencies (the California

Resources Agency, Department of Water Resources, Department of Fish and Game, Environmental Protection Agency, and State Water Resources Control Board) and five federal agencies (the U.S. Department of the Interior, Bureau of Reclamation, Fish and Wildlife Service, Environmental Protection Agency, and National Marine Fisheries Service). The U.S. Army Corps of Engineers participates as a cooperating agency. Chartered under the Federal Advisory Committee Act, CALFED is a collaborative effort between the agencies and Bay-Delta "stakeholders", who contribute to CALFED design, problem solving, and decision making. These stakeholders—urban and agricultural water users, fishing interests, environmental organizations, businesses, and others—are known as the Bay-Delta Advisory Council, or BDAC.

CALFED is being carried out in three phases:

- Actions that could resolve Bay-Delta problems and meet CALFED objectives were identified during Phase I, which began in May 1995. Actions were developed, assembled, and refined to a short list of three potential alternatives.
- A preferred alternative will be identified during Phase II, which began in June 1996. Programmatic environmental review is focusing on broad policy and resource-allocation decisions and is designed to inform decision makers about the inter-related and cumulative consequences of the alternatives. Reconnaissance-level analysis and prefeasibility-level planning are further refining the alternatives developed during

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Phase I. Phase II is expected to conclude in fall 1998.

- Site-specific environmental review of individual components of the preferred alternative will be conducted during Phase III. Site-specific elements of the preferred alternative could be implemented as early as September 1998 and should continue, in stages, over several years.

ORGANIZATION OF THIS HANDBOOK

The remainder of this chapter describes the process used in developing this handbook and suggests ways for project proponents to approach project design, agency coordination, and public involvement. CALFED action categories are listed at the end of the chapter.

Chapter 2 addresses compliance requirements for adoption of the overall program being developed during preparation of the Programmatic EIR/EIS in Phase II. Chapter 3 addresses compliance requirements for project-specific actions developed during implementation of CALFED in Phase III.

SCOPE OF PERMIT HANDBOOK

As a cooperative interagency effort, CALFED is required to comply with many federal and State laws, including the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA). NEPA and CEQA require that agencies study the environmental effects of their proposed actions and encourage consultation with other agencies that may have specific jurisdiction or expertise.

CALFED has met with each key resource and permitting agency to determine the regulatory

requirements affecting both broad policy decisions and specific components of CALFED. The handbook describes these requirements from a broad program-level perspective and on a project-specific basis and presents them in the matrix at the end of this chapter.

PROGRAM-LEVEL REGULATORY REQUIREMENTS MATRIX

Development and environmental review of a preferred alternative during Phase II will require compliance with several federal and State regulations, even though no specific action is implemented. Compliance with additional regulations, although not required, could facilitate the permit processes during Phase III implementation of the individual components of the preferred alternative. The table, "Phase II Compliance Requirements", presents the pertinent program-level regulations, which are discussed in more detail in Chapter 2.

PROJECT-LEVEL REGULATORY REQUIREMENTS MATRIX

Project proponents who will implement individual components of the preferred alternative during Phase III will find an overview of the regulatory permits and consultations that may be required in the regulatory matrix at the end of this chapter. Information from several agencies, as well as from the California Permit Handbook (issued by the California Trade and Commerce Agency, Office of Permit Assistance), was the basis for the discussion of project-level regulatory compliance requirements in Chapter 3. Chapter 3 follows the same basic format as the California Permit Handbook, summarizing and enhancing the information relevant to CALFED.

To use the regulatory matrix, the project proponent implementing the individual components of

Phase II Compliance Requirements

CALFED's programmatic mitigation should be included in each project description.	
Endangered Species Act	Section 7 consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service is required.
Fish and Wildlife Coordination Act	Consultation with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Game is required.
Section 404 of the Clean Water Act	Although no permit is required, the Programmatic EIR/EIS should include information consistent with EPA's Section 404(b)(1) Guidelines.
Coastal Zone Management Act	A consistency analysis and concurrence by the San Francisco Bay Conservation Development Commission are required.
National Historic Preservation Act	Section 106 consultation with the State Historic Preservation Officer is required.
CEQ Memoranda on Farmland Preservation/Farmland Protection Policy Act	Coordination with the Natural Resources Conservation Service is required.
Agriculture Improvement and Reform Act of 1996	Coordination with the Natural Resources Conservation Service is required.
Executive Order 11988 Floodplain Management	Scoping and analysis in the Programmatic EIR/EIS should include development of programmatic mitigation to include in project descriptions of individual components of the preferred alternative.
Executive Order 11990 Protection of Wetlands	Scoping and analysis in the Programmatic EIR/EIS should include development of programmatic mitigation to incorporate in project descriptions of individual components of the preferred alternative.
Executive Order 12898 Environmental Justice	Scoping and analysis in the Programmatic EIR/EIS should include development of programmatic mitigation to incorporate in project descriptions of individual components of the preferred alternative.
American Indian Religious Freedom Act	Analysis in the Programmatic EIR/EIS should include development of programmatic mitigation to incorporate in project descriptions of individual components of the preferred alternative.
California Endangered Species Act	Section 2090 consultation with the California Department of Fish and Game is required.
Public Trust Doctrine	Analysis in the Programmatic EIR/EIS should include development of programmatic mitigation to incorporate in project descriptions of individual components of the preferred alternative. Coordination with State Lands Commission (SLC) should be pursued at the early stages of project planning to determine whether mitigations are necessary to protect Public Trust Values and whether SLC authorization is required for project implementation.
Indian Trust Assets	Department of the Interior and Reclamation policy require an assessment of Indian Trust Assets. Federal agencies should determine if Indian Trust Assets are present in their project area through consultation with the U.S. Bureau of Indian Affairs and proceed with Native American consultation as appropriate.

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the preferred alternative must first select an action category from the top row of the matrix and match the action category with the appropriate permitting agency in the left-hand column. (An expanded description of the action categories is provided below.) The agencies and regulatory approvals included are those typically required for projects in specific geographic areas or affecting specific resources. The matrix should not be viewed as conclusive or exhaustive. Additional permits, licenses, and agreements may be required after further project-specific investigation and analysis.

SUGGESTIONS FOR PROJECT PROPONENTS

Project-level documentation is required to define specific actions, evaluate potential beneficial and adverse effects and compliance with pertinent environmental law, and provide concerned agencies and the public with an opportunity to review and participate in the planning and review process to aid responsible decision makers in their consideration of project and permit approval. Project-level documentation should be developed and processed for approval when the project proponent (i.e., lead agencies or permit applicant) has adequately defined specific actions and has determined to proceed with obtaining approval for implementing those actions.

PROPERTY PURCHASE AND SITE DESIGN

Applicants should carefully review potential environmental issues associated with the project site and site design and should investigate site information through a preliminary constraints analysis. Environmental conditions, such as the presence of hazardous materials, wetlands, endangered species, or cultural resources, may greatly increase the cost of development

because of the regulatory permits and associated mitigation that would be required. The best purchase contracting mechanism may be to secure an option to buy.

AGENCY COORDINATION

Before approaching agencies, a project proponent should have a defined project and an awareness of the framework of federal, State, and local regulations that govern projects by reviewing permit conditions issued for other projects, staff reports, and pertinent studies. This awareness will allow the project proponent to better understand how regulatory agencies approach project permitting.

Projects should be designed to minimize adverse environmental impacts. If environmental issues are resolved by the project proponent, the time an agency will need to review and perhaps redesign a project by imposing conditions to limit environmental impacts will be reduced. To allow sufficient time to identify and find acceptable solutions to environmental problems, project proponents should consult with regulatory agencies at the earliest stages of a project. A project proponent should attempt to reduce adverse impacts through careful planning and incorporation of agency suggestions provided during early consultation, should respond promptly to agency requests for information, and should be punctual for various consultations and meetings.

REVIEW BY THE PUBLIC

Project proponents should actively solicit views and suggestions from the general public. Press releases, newsletters, and announcements, as well as presentations at neighborhood association meetings, can be used to keep the public informed about a project.

CALFED BAY-DELTA PROGRAM ACTION CATEGORIES

The following is a list of the estimated types of action categories that may be implemented as part of Phase III of CALFED. This list of categories is presented to give the reader an understanding of the types of actions that may be implemented through the CALFED process. The actual individual actions of Phase III of CALFED will not be identified until the end of the Phase II process.

RESTORE BAY-DELTA SYSTEM HABITATS

- **Restoration of Bay-Delta System Shallow-Water (Tidal) Habitat**
 - Convert existing leveed lands to tidal action
 - Conserve existing shallow-water habitat from erosion
 - Restore tidal action to existing diked wetlands
 - Reconstruct levees to include shallow-water habitat
 - Fill deep water to produce shallow-water habitat
- **Restoration of Bay-Delta System Riverine Habitat**
 - Reconstruct river banks and shallow areas
 - Restore and preserve channel islands
 - Restore natural channel configurations
 - Modify channel/levee construction practices to include riverine elements
- **Restoration of Bay-Delta System Riparian Habitat**
 - Improve and protect degraded riparian habitats
 - Establish new areas of riparian habitat
 - Reestablish historic riparian areas
- **Modify levee maintenance practices**
- **Protect existing riparian habitat**
- **Restoration of Bay-Delta System Wetland Habitat**
 - Restore, enhance, and create wetlands
 - Expand wetland acquisition programs
 - Convert agricultural lands to wetlands
 - Protect existing wetland habitat
- **Restoration of Bay-Delta System Terrestrial Habitat**
 - Protect existing upland habitat
 - Establish upland habitat on levees
 - Establish upland habitat on fallowed croplands
 - Establish oak woodlands on suitable soils
 - Encourage wildlife-friendly agricultural practices
 - Preserve agricultural land uses providing habitat
 - Clean up sites contaminated with toxic substances
- **Implementation of Integrated Habitat Management Programs**
 - Establish regional ecosystem restoration guidelines
 - Implement integrated regional habitat management
 - Develop cooperative management agreements
 - Establish mitigation banking program
- **Establishment of Floodways and Meander Belts**
 - Relocate levees to widen floodways
 - Allow river channels to meander
 - Acquire Delta islands as overflow areas
 - Restore floodways as habitat corridors
- **Control of Introduced Species**
 - Remove or reduce non-native species in key habitats

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- Improve regulation of ballast-water releases
- Improve border inspection practices
- Inspect for invasions of non-native species
- Modify habitat to favor native species

- **Delta Waterfowl Habitat Management**

- Manage agricultural crops for waterfowl forage production
- Improve management of public waterfowl areas
- Implement terrestrial predator control programs
- Increase sources and availability of wildlife forage

RESTORE UPSTREAM HABITAT

- **Restoration of Upstream Anadromous Fish Habitat**

- Manage flows and temperatures in upstream habitats
- Restore and replenish spawning gravels
- Restore channel configurations
- Restore shoreline habitat conditions
- Modify gravel-mining practices
- Improve floodway drainage to reduce fish stranding

- **Improvements for Upstream Fish Passage**

- Modify passage at upstream dams and other barriers
- Modify natural barriers to improve passage

- **Restoration of Upstream Riparian Habitat**

- Restrict livestock grazing in riparian corridors
- Revegetate degraded riparian habitats
- Protect riparian lands through purchase/easements

- Restore flows to dewatered riparian habitats

- **Restoration of Upstream Wetland Habitat**

- Modify floodways to support wetland habitats
- Reuse agricultural drainage to create wetlands
- Reuse urban wastewater effluent to create wetlands
- Manage groundwater recharge for wetland habitat

REDUCE EFFECTS OF DIVERSIONS

- **Delta Inflow/Outflow/Export Management**

Actions regarding Delta Inflows:

- Modify upstream consumptive use
- Modify upstream reservoir operations criteria
- Modify Delta inflow timing pattern
- Provide instream pulse flows for fish passage
- Provide instream flows to attract fish

Actions regarding Delta Diversions and Outflows:

- Modify volume and timing of exports
- Modify in-Delta consumptive use
- Modify central-Delta channel operations
- Modify export operations criteria
- Establish a Delta watermaster to manage flows
- Use real-time monitoring and adaptive management

- **Modification of Diversion Timing Patterns**

- Modify diversion timing of in-Delta diversions

- Modify diversion timing of export diversions
 - Coordinate State Water Project/Central Valley Project diversion timing
 - Modify diversion timing through Montezuma Salinity Control Gate
 - Use real-time monitoring and adaptive management
- **Increased Rates of Diversion Capacity**
 - Obtain approvals for expanded export capacities
 - Enlarge export pumping capacities
 - Increase diversion capability at Red Bluff Diversion Dam
 - **Acquisition of Long-Term Water Supplies for Fish and Wildlife**
 - Acquire water to augment instream flows
 - Obtain shifts in timing of instream flows
 - Obtain shifts in diversion timing patterns
 - Acquire water for refuge habitat use
 - Modify water law to establish instream rights
 - **Installation and Improvement of Fish Screens**
 - Improve screens at Delta export pumps
 - Improve other existing fish-screen systems
 - Install screens on other in-Delta diversions
 - Install screens on upstream diversions
 - Consolidate and screen existing small diversions
 - Enforce screening requirements
 - **Improvement of Bay-Delta System Fish Migration**
 - Install barriers to block fish movement into Old River
 - Install barriers to keep fish in Sacramento River
- Install barriers to divert fish from Sacramento River to western distributaries
 - Operate fish barrier on San Joaquin River at Merced River confluence in fall
 - Provide instream pulse flows for fish passage
 - Provide instream flows for fish attraction
- **Improvement of Fish Salvage Operations**
 - Improve design of salvage facilities
 - Improve operation of salvage facilities
 - Improve fish hauling and release procedures
 - **Removal and Control of Aquatic Predators**
 - Harvest predators at Delta export pumps
 - Harvest predators in upstream habitats
- MANAGE THE ENHANCEMENT OF ANADROMOUS FISH POPULATIONS**
- **Fish Hatchery Operations**
 - Expand hatchery capacities
 - Construct new hatcheries on the San Joaquin River
 - Improve hatchery operations
 - Reduce hatchery effects on wild fish populations
 - Implement tagging of hatchery-bred fish
 - Establish new captive breeding programs
 - **Fish-Harvest Management**
 - Improve regulation of commercial take
 - Improve regulation of recreational take
 - Improve enforcement of harvest regulations
- REDUCE RELIANCE ON DELTA EXPORTS**
- **Desalination**
 - Expand desalination of Southern California supplies

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- Expand desalination of San Joaquin Valley supplies
 - Improve desalination technologies and cost
 - Educate users about desalination feasibility
 - **Water Conservation**
 - Increase use of districtwide conservation practices
 - Increase use of on-farm conservation practices
 - Increase use of municipal conservation practices
 - Increase use of industrial conservation practices
 - Implement financial incentive policies
 - Implement conservation-oriented rate structures
 - Educate users about conservation technologies
 - **Water Reclamation**
 - Recharge groundwater with reclaimed water
 - Use reclaimed water for agricultural irrigation
 - Reclaim saline agricultural drainage water
 - Recycle and treat water for potable reuse
 - Use reclaimed water for nonpotable urban uses
 - Use reclaimed water for landscape irrigation
 - Use reclaimed water for power plant cooling
 - Use reclaimed water for industrial processes
 - Use reclaimed water to repel salinity intrusion
 - Improve reclamation technologies and cost
 - Educate public about water reclamation
 - **Land Retirement and Fallowing**
 - Encourage land fallowing during drought periods
 - Develop incentive programs for land retirement
 - Purchase lands or easements
 - Retire lands with drainage problems
 - **Water Pricing**
 - Establish incentives for pricing to reduce demand
 - Educate users about pricing feasibility
 - Remove legal obstacles to pricing incentive programs
- ENHANCE WATER SUPPLIES**
- **Watershed Management**
 - Manage vegetation cover to increase yield
 - Manage riparian zones to protect water quality
 - Manage land uses to reduce sedimentation
 - Explore ability to increase precipitation
 - **New or Expanded Onstream Storage**
 - Construct new storage facilities south of the Delta
 - Construct new storage facilities north of the Delta
 - Enlarge existing onstream storage reservoirs
 - Modify operations of existing onstream reservoirs
 - **New or Expanded Offstream Storage**
 - Construct new storage facilities south of the Delta
 - Construct new storage facilities north of the Delta
 - Construct new storage facilities in Delta
 - Enlarge existing offstream storage reservoirs

- Modify operations of existing offstream reservoirs
 - **Groundwater Banking and Conjunctive Use**
 - Establish incentives for conjunctive use
 - Modify water code to encourage conjunctive use
 - Establish conjunctive-use programs
 - Store groundwater south of the Delta
 - Store groundwater north of the Delta
 - Implement techniques to increase groundwater recharge
 - **Improvement of Through-Delta Conveyance**
 - Increase capacities of existing eastside channels
 - Increase flows from the Sacramento River to the central Delta
 - Modify Delta levees to increase flow cross sections
 - Construct pump/siphon systems between Delta channels
 - Expand existing intakes at the Delta export facilities
 - Construct expanded export intake/forebay pumping system
 - **Construction and Improvement of Conveyance Facilities**
 - Construct eastside isolated transfer system
 - Construct westside isolated transfer system
 - Construct small isolated transfer facility
 - Convert Delta islands to storage/conveyance system
 - Construct conveyance to offstream storage
 - Construct conveyance to groundwater storage
 - **Changes in Locations of Diversions**
 - Relocate Delta export pumps from key habitats
 - Relocate other in-Delta diversions for more reliable supplies
 - Consolidate in-Delta agricultural diversions
 - Relocate upstream diversions from key habitats
 - Improve diversion designs when relocating
- INCREASE SUPPLY PREDICTABILITY**
- **Water Transfers**
 - Modify water code to ease transfers
 - Improve procedures for transfer permitting
 - Coordinate diversion and conveyance of transfers
 - **Long-Term Planning for Drought Contingencies**
 - Increase water storage capacities at user locations
 - Establish incentives for long-term planning
 - Conduct integrated resources planning
 - Establish incentives for long-term conservation
 - Develop alternate supplies for drought situations
 - **Water Resources Data and Information Management**
 - Establish a comprehensive water-data system
 - Implement real-time data management system
 - Integrate data for adaptive management decisions
 - Establish accessible data management system

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- **Establishment of Institution for Integrated Long-Term Water Management**
 - Establish long-term guarantees for management
 - Establish institution to implement guarantees
 - Coordinate multiagency roles in management
 - Coordinate groundwater and surface-water management
 - Establish incentives for cooperation/coordination
 - Establish a public awareness and education program
 - **Establishment of Export Capacity Market**
 - Establish procedures for allocation of export capacity
 - Establish institution to allocate export capacity
 - Coordinate water transfers and export capacity
 - Market export capacity for environmental benefits
 - **Integration of Land Use and Water Supply Planning**
 - Coordinate land uses with water supplies
 - Encourage local determination of available supplies
 - Encourage local assessment of water supply reliability
- MANAGE WATER QUALITY**
- **Installation and Operation of Flow Barriers**
 - Install flow barriers to manage south-Delta quality
 - Install weirs to control salinity intrusion
 - **Management of Agricultural Drainage**
 - Implement source-control regulations for pollutants
 - Implement pollutant-load limits in San Joaquin River
 - Reduce or control volume of agricultural discharges
 - Modify cropping and irrigation practices
 - Export agricultural drainage to other watersheds
 - Retire lands with drainage disposal problems
 - Improve pest control practices
 - Avoid use of high-salinity irrigation water
 - Manage irrigation tailwater to reduce pesticides
 - Manage drainage timing to reduce instream impacts
 - Treat drainage to remove salt or other pollutants
 - Dilute pollutants in Delta inflows from San Joaquin River using stored water
 - **Management of Urban/Industrial Drainage and Wastewater Discharge**
 - Retain and manage stormwater runoff
 - Implement urban awareness/education programs
 - Treat discharges to remove problem constituents
 - Construct wetlands to treat wastewater effluent
 - Increase key nutrient inputs to estuary
 - Enforce wastewater discharge requirements
 - Prevent toxic discharges from industrial plants
 - **Dredged Material Management**
 - Limit dredging to slack tides
 - Limit dredging to avoid fish migration periods

- Use techniques to localize sediment movement
 - Dispose of dredged materials at nonaquatic or other suitable sites
 - Remove contaminated sediments in critical habitat sites
 - Ensure material used for levee maintenance is uncontaminated
- **Management of Abandoned-Mine Drainage**
 - Manage discharges from abandoned mines
 - Remediate abandoned mining sites discharging pollutants
- IMPROVE SYSTEM RELIABILITY**
- **Levee Maintenance and Stabilization**
 - Maintain and stabilize existing levees
 - Modify agricultural practices to reduce subsidence
 - Use infilling to correct past subsidence
 - Implement uniform maintenance standards
 - Provide funding for maintenance and stabilization
 - **Improvement of Flood Protection Levels and Seismic Stabilities**
 - Reconstruct levees to higher design standards
 - Reconstruct levees to higher seismic standards
 - Relocate levees to more stable sites
 - Widen floodways to increase flood conveyance
 - Establish and manage flood overflow areas
- **Rerouting and Protection of Infrastructure from Flooding and Seismic Risks**
 - Maintain/reconstruct levees around infrastructure
 - Reconstruct infrastructure to increase reliability
 - Relocate/reroute infrastructure
 - **Establishment of Long-Term Funding Mechanisms**
 - Establish a disaster contingency funding program
 - Establish a Bay-Delta financing authority
 - Provide low-cost debt financing for local agencies
 - Establish a bond financing mechanism
 - Establish a statewide water utility surcharge ☞

**CALFED Bay-Delta Program
Project-Level Regulatory Matrix**
(Page 1 of 4)

Regulatory Agencies	Restore Bay-Delta System Habitats										Restore Upstream Habitat		
	1	2	3	4	5	6	7	8	9	10	11	12	13
	Shallow Water Habitat	Riverine Habitat	Riparian Habitat	Wetland Habitat	Terrestrial Habitat	Habitat Management Programs	Floodways and Meander Belts	Control Introduced Species	Delta Waterfowl	Anadromous Fish Habitat	Fish Passage	Riparian Habitat	Wetland Habitat
Federal Agencies													
Environmental Protection Agency	●	●	○	●	●	●	●	●	●	●	○	●	●
Army Corps of Engineers	●	●	○	●	●	●	●	●	●	●	○	●	●
Fish and Wildlife Service	●	●	●	●	●	●	●	●	●	●	●	●	●
National Marine Fisheries Service	●	●	●	●	●	●	●	●	●	●	●	●	●
Natural Resources Conservation Service					○								●
Bureau of Reclamation						●							
Coast Guard						●							
Bureau of Land Management													
Bureau of Indian Affairs						○					○		
National Park Service											○		
Forest Service											○		
Federal Highway Administration									○				
State and Regional Agencies													
State Water Resources Control Board													
Water Rights	●	●	●	●	●								●
Water Quality	●	●	●	●	●								●
Department of Fish and Game	●	●	●	●	●	●	●	●	●	●	●	●	●
California Endangered Species Act	●	●	●	●	●	●	●	●	●	●	●	●	●
Streambed Alteration Agreement	●	●	●	●	○	●	○	●	●	●	●	●	●
State Historic Preservation Officer	●	●	●	●	●	●	●	●	●	●	●	●	●
State Lands Commission	●	●	●	●	●	○	●	○	●	○	○	○	○
State Reclamation Board									●				
Department of Water Resources								●					
State Water Project								●					
Safety of Dams								●					
California Coastal Commission and San Francisco Bay Conservation and Development Commission	○	○	○	○	○								
Department of Conservation					●								
All Districts													
Department of Transportation									○				
Local Permits													
City or County Approvals/Entitlements	●	●	●	●	●	●	●	●	●	●	●	●	●

- Action will most likely require regulatory compliance
- Action may require regulatory compliance, depending on location

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C-000093

**CALFED Bay-Delta Program
Project-Level Regulatory Matrix**
(Page 2 of 4)

Regulatory Agencies	Reduce Effects of Diversions														Reduce Reliance on Delta Exports			
	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	
Federal Agencies																		
Environmental Protection Agency	●	●	○	●	●	●	●	●	●	●	●	●	●	●	●	●	●	
Army Corps of Engineers	●	●	○	●	●	●	●	●	●	●	●	●	●	●	●	●	○	
Fish and Wildlife Service	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	
National Marine Fisheries Service	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	
Natural Resources Conservation Service					○												●	
Bureau of Reclamation						●												
Coast Guard					○	○												
Bureau of Land Management																		
Bureau of Indian Affairs																		
National Park Service																		
Forest Service												○						
Federal Highway Administration									○									
State and Regional Agencies																		
State Water Resources Control Board	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	
Water Rights	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	
Water Quality	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	
Department of Fish and Game	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	
California Endangered Species Act	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	
Streambed Alteration Agreement	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	
State Historic Preservation Officer	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	
State Lands Commission			○										○					
State Reclamation Board																		
Department of Water Resources									●									
State Water Project										●								
Safety of Dams																		
California Coast Commission and San Francisco Bay Conservation and Development Commission	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	
Department of Conservation										●								
Air Districts																		
Department of Transportation										○								
Local Permits																		
City or County Approvals/Entitlements	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●	

- Action will most likely require regulatory compliance
- Action may require regulatory compliance, depending on location

**CALFED Bay-Delta Program
Project-Level Regulatory Matrix**
(Page 3 of 4)

Regulatory Agencies

	Enhance Water Supplies							Increase Supply Predictability						
	Watershed Management	New or Expanded Onstream Storage	New or Expanded Offstream Storage	Groundwater Banking and Conjunctive Use	Improve Through Delta Conveyance Facilities	Construction and Improvement of Conveyance Facilities	Changes in Locations of Divisions	Water Transfers	Long-Term Planning for Drought Contingencies	Water Resources and Information Management	Institution for Integrated Long-Term Water Management	Export Capacity Market	Integrate Land Use and Water Supply Planning	
Federal Agencies	29	30	31	32	33	34	35	36	37	38	39	40	41	
Environmental Protection Agency	●	●			●	●	●							
Army Corps of Engineers	○	●	○		●	●	●							
Fish and Wildlife Service		○	●	●		●	●	●			●	●		
National Marine Fisheries Service			●	●		●	●	●			●	●		
Natural Resources Conservation Service							●							
Bureau of Reclamation					●	●	●	●	●	●	●	●		
Coast Guard		●			○	●								
Bureau of Land Management	●	○	○											
Bureau of Indian Affairs	○	○	○											
National Park Service	●	○	○											
Forest Service	●	○	○											
Federal Highway Administration														
State and Regional Agencies														
State Water Resources Control Board														
Water Rights	●	●	●	●	●	●	●	●	●	●	●	●	●	
Water Quality	●	●	●		●	●								
Department of Fish and Game														
California Endangered Species Act	●	●	●	●	●	●	●	●	●				●	
Streambed Alteration Agreement	○	●			●	●	●							
State Historic Preservation Officer		●	●			●								
State Lands Commission		●	○		●	●	●							
State Reclamation Board					●	●	●							
Department of Water Resources														
State Water Project	●	●	●	●	●	●	●	●	●	●	●	●	●	
Safety of Dams		●	●		●	●								
California Coast Commission and San Francisco Bay Conservation and Development Commission					○	○	○							
Department of Conservation														
Air Districts			○	○	○	○								
Department of Transportation														
Local Permits														
City or County Approvals/Entitlements		●	●		●	●	●		●				●	

- Action will most likely require regulatory compliance
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**CALFED Bay-Delta Program
Project-Level Regulatory Matrix
(Page 4 of 4)**

Regulatory Agencies

Regulatory Agencies	Manage Water Quality				Improve System Reliability					
	42	43	44	45	46	47	48	49	50	
Federal Agencies										
Environmental Protection Agency	●		○	○	●	●	●			
Army Corps of Engineers	●			○		●	●	○		
Fish and Wildlife Service	●		○							
National Marine Fisheries Service										
Natural Resources Conservation Service	●			○						
Bureau of Reclamation										
Coast Guard	●							○		
Bureau of Land Management										
Bureau of Indian Affairs										
National Park Service										
Forest Service										
Federal Highway Administration								○		
State and Regional Agencies										
State Water Resources Control Board										
Water Rights										
Water Quality	●	●	●	●	●	●	●	●		
Department of Fish and Game										
California Endangered Species Act	●	●	●	●	●	●	●	●		
Streambed Alteration Agreement	●			●		●	●	●		
State Historic Preservation Officer	●									
State Lands Commission	●		●	●		●	●	●		
State Reclamation Board	○	●	●	●		●	●	●		
Department of Water Resources										
State Water Project	●					●	●	●	●	
Safety of Dams	●								●	
California Coast Commission and San Francisco Bay Conservation and Development Commission	○		○	●		○	○	○		
Department of Conservation		●								
Air Districts						○	○	○		
Department of Transportation								○		
Local Permits										
City or County Approvals/Entitlements	●			●		●	●	●		

- Action will most likely require regulatory compliance
- Action may require regulatory compliance, depending on location

Program-Level Regulatory Compliance

NEPA AND CEQA	2-1
OTHER FEDERAL AND STATE REQUIREMENTS	2-1
FEDERAL LAWS, EXECUTIVE ORDERS, ADMINISTRATIVE POLICIES, AND IMPLEMENTING REGULATIONS	2-1
ENDANGERED SPECIES ACT	2-1
FISH AND WILDLIFE COORDINATION ACT	2-3
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COASTAL ZONE MANAGEMENT ACT	2-5
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Program-Level Regulatory Compliance

This chapter addresses environmental compliance requirements of program-level actions and selection of a preferred alternative during Phase II of CALFED. Other environmental requirements that could help expedite the environmental review process during Phase III implementation of individual components of the preferred alternative are also discussed.

NEPA AND CEQA

When a federal or State agency proposes a broad policy-oriented action or project, NEPA and CEQA require that implications of overall policy decisions, alternatives to the action, and mitigation measures for any impacts be addressed in a programmatic environmental impact report/environmental impact statement (EIR/EIS). A programmatic EIR/EIS allows agencies to evaluate the potential effects of a program as a whole and simplifies preparation of subsequent project-specific environmental documents. In this approach, known as "tiering" (Figure 2-1), a first-tier document such as a programmatic EIR/EIS addresses the broad issues relating to a project. Additional environmental documents on project-specific impacts are prepared when necessary, thus avoiding duplicate considerations of broad policy decisions when future individual aspects of the program are under review. These second-tier documents must incorporate the programmatic EIR/EIS by reference, briefly summarizing pertinent discussions in the first-tier document and concentrating on site-specific issues.

In Phase II, CALFED will analyze the alternatives identified in Phase I in a Programmatic EIR/EIS and will select a preferred alternative. Consistent with the tiering approach described above, the Programmatic EIR/EIS will focus on CALFED's broad policy decisions and the general environmental impacts that could result from those decisions.

OTHER FEDERAL AND STATE REQUIREMENTS

In addition to NEPA and CEQA, CALFED must comply with other federal and State regulations addressing specific resources. Pertinent federal and State regulations are discussed generally in the following sections and in more detail in Chapter 3.

FEDERAL LAWS, EXECUTIVE ORDERS, ADMINISTRATIVE POLICIES, AND IMPLEMENTING REGULATIONS

ENDANGERED SPECIES ACT (16 USC 1531 ET SEQ.)

For major federal actions, Section 7 of the Endangered Species Act of 1973 (ESA), as amended, requires federal agencies, in consultation with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS), to ensure that their actions do not jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of the critical habitat of these species. The ESA

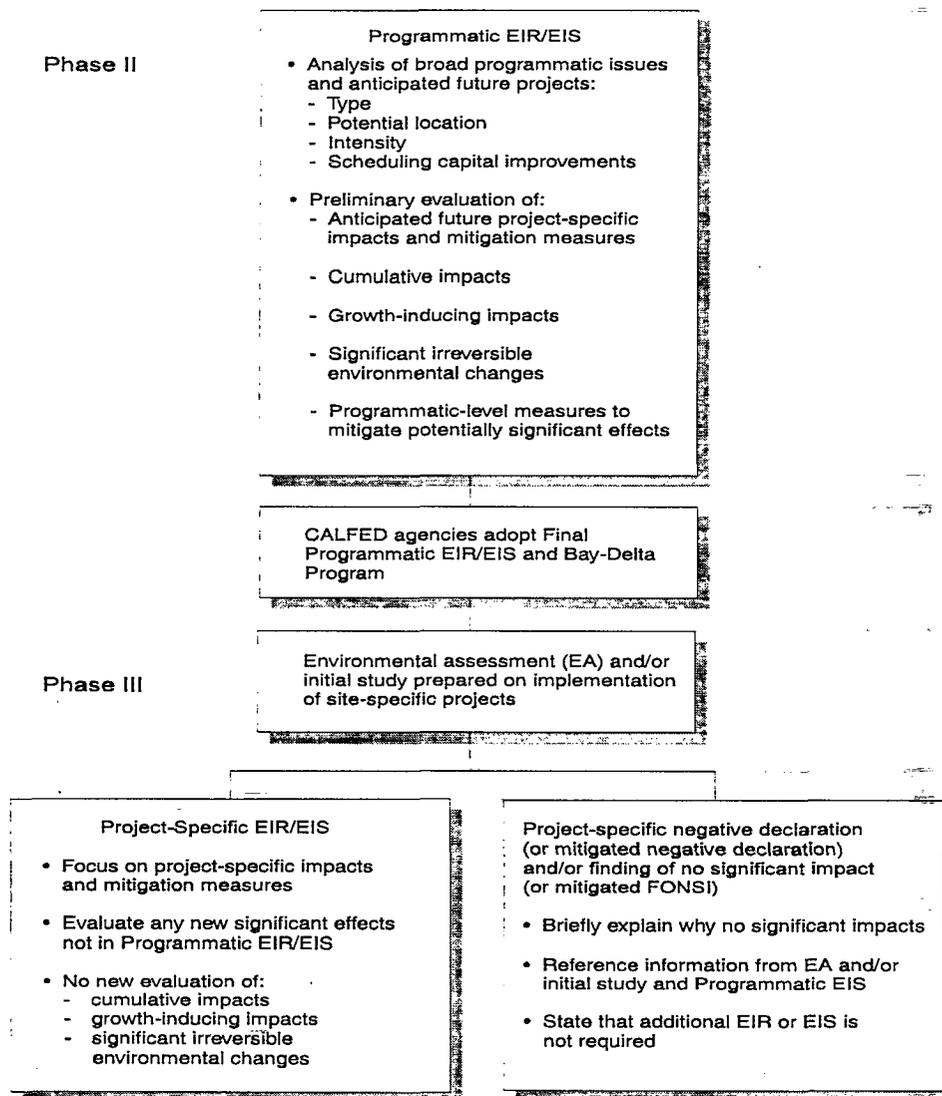
2

Program-Level Regulatory Compliance

definition of "major federal actions" is equivalent to the NEPA definition, which calls for preparation of feasibility reports authorizing a series of connected projects.

The Phase II programmatic environmental review, reconnaissance-level analysis, and prefeasibility-level planning to prepare the Programmatic EIR/EIS and select a preferred alternative are considered major federal actions requiring compliance with Section 7 of ESA.

Figure 2-1. Content and Preparation of Programmatic EIR/EIS and Project-Specific NEPA/CEQA Compliance for Phases II and III



Section 7 calls for initial informal consultation with USFWS and NMFS; federal agencies must request a list of threatened and endangered species that could be present in the project vicinity and prepare a biological assessment to determine the proposed action's effect on those species. If the biological assessment concludes that the proposed action may affect the species, the federal agencies must request formal consultation with USFWS and NMFS to determine whether the proposed action will jeopardize the continued existence of the species. USFWS and NMFS conduct these formal consultations with the federal agencies and any nonfederal project applicants for a 90-day period. At the conclusion of consultations, USFWS and NMFS have 45 days to prepare separate biological opinions on whether the proposed action will jeopardize the continued existence of the species.

CALFED will consult with USFWS and NMFS during preparation of the Programmatic EIR/EIS. Because these agencies are part of CALFED, the Programmatic EIR/EIS will incorporate their concerns over species listed under ESA. The Section 7 consultation process would follow the tiered approach discussed for NEPA and CEQA. A broad analysis of the preferred alternative selected during Phase II would be followed by project-specific analyses of individual federal agency actions during Phase III. This tiered approach would also ensure ESA compliance for Phase III individual actions that affect listed species if no federal agency action is involved.

When feasible, mitigation measures will be incorporated into CALFED's programmatic environmental review, reconnaissance-level analysis, and prefeasibility-level planning in the Programmatic EIR/EIS and selection of a preferred alternative. Second-tier consultations for individual actions will be simplified because the project description of the specific actions will

contain commitments to particular mitigation measures developed during consultations in Phase II.

The Section 7 consultation process for Phase II of CALFED will be initiated with the Sacramento Endangered Species Office of USFWS and with the Santa Rosa Endangered Species Office of NMFS. Informal consultation between CALFED and USFWS and NMFS is taking place during Phase II and is focusing on specific species and geographic regions. If it is determined that the proposed action may affect a listed species, a biological assessment will be prepared by CALFED and submitted to USFWS and NMFS for review and concurrence. Following acceptance of the biological assessment, USFWS and NMFS will prepare separate biological opinions.

FISH AND WILDLIFE COORDINATION ACT (16 USC 661 ET SEQ.)

The Fish and Wildlife Coordination Act (FWCA) requires federal agencies to consult with USFWS, NMFS, and the state fish and wildlife resource agency before undertaking or approving water projects that control or modify surface water. This consultation is intended to promote conservation of fish and wildlife resources by preventing their loss or damage and to provide for development and improvement of fish and wildlife resources in connection with water projects. Federal agencies undertaking water projects are required to fully consider recommendations made by USFWS, NMFS, and the state fish and wildlife resource agency in project reports, such as NEPA and CEQA documents, and include measures to reduce impacts on wildlife in project plans.

USFWS and NMFS may be required to prepare an FWCA report with input from the state fish and wildlife resource agency. This report

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Program-Level Regulatory Compliance

should include assessment of the impacts of the proposed action on preservation, conservation, and enhancement of fish and wildlife resources. The report should also include recommendations for preserving, mitigating losses of, and enhancing affected resources. The FWCA report is a separate analysis of species of concern to USFWS and the state fish and wildlife resource agency and does not replace the analysis required by Section 7 of ESA.

CALFED's selection of a preferred alternative at the conclusion of Phase II will involve approval of projects (some of which will either be undertaken directly or approved by a federal agency) that will control or modify surface water and therefore will require compliance with FWCA. USFWS and NMFS have committed to preparing a proposal to CALFED for completing the FWCA process. CALFED will coordinate with USFWS, NMFS, and DFG during preparation of the Programmatic EIR/EIS. Because USFWS, NMFS, and DFG are CALFED agencies, the Programmatic EIR/EIS will incorporate their concerns about conservation of wildlife resources. A process will be developed to facilitate compliance with FWCA for federal agency involvement in implementation of specific projects during Phase III.

SECTION 404 OF THE CLEAN WATER ACT (33 USC 1344)

Under Section 404 of the Clean Water Act, a Department of the Army permit must be obtained from the U.S. Army Corps of Engineers (Corps) to discharge dredged or fill material into waters of the United States, including wetlands. The Corps reviews applications for permits in accordance with the U.S. Environmental Protection Agency's (EPA's) Section 404(b)(1) Guidelines, which, in part, require that no discharge of dredged or fill materials shall be permitted if there is a practicable alternative that

would have less adverse impacts on the aquatic ecosystem and no other significant adverse environmental consequences. Before issuing the permit, the Corps must also determine that the project is not contrary to the public interest.

Selection of the preferred alternative during Phase II would not require a permit. Corps permits will be required, however, for individual components of the preferred alternative. Before issuing a permit under Section 404 for a Phase III project-level action, the Corps must document, in compliance with the requirement of Section 404(b)(1) Guidelines, that no practicable alternative to the proposed discharge exists that would have less adverse impacts on the aquatic ecosystem. Section 404(b)(1) Guidelines direct that, when the proposed activity is not water-dependent, a less-damaging practicable alternative is presumed to exist onsite or offsite. According to Section 404(b)(1) Guidelines, the practicability of an alternative is a function of cost and technical and logistical factors, including availability of the alternative site to the permit applicant at the time of market entry, in light of overall project purposes. The applicant bears the burden of demonstrating that no practicable alternative exists that will meet the project purpose.

The Corps prefers that the scope of the Programmatic EIR/EIS, and especially the identification and selection process for the preferred alternative, substantially satisfy the offsite alternatives element of the Section 404(b)(1) Guidelines alternatives analysis requirement for the Phase III project-level actions. The Corps, as a cooperating agency, is working with CALFED to ensure that the purpose and need descriptions and the alternatives screening analysis developed during Phase II meet the requirements of Section 404(b)(1) Guidelines for any discharge activities proposed in Phase III. At the Phase III level, the Corps would not revisit the issue of developing

alternatives to meet the overall program-level activity objective and would focus only on the onsite alternatives to permit the least environmentally damaging practicable alternative. Although no Corps permit action is required in Phase II, the alternatives analysis for the Programmatic EIR/EIS should meet the requirements of Section 404(b)(1) Guidelines.

COASTAL ZONE MANAGEMENT ACT (16 USC 1451)

The Coastal Zone Management Act (CZMA) requires federal agencies to preserve, protect, and, where possible, restore and enhance the resources of the coastal zone. Coastal states must develop coastal zone management programs to be reviewed and approved by the Secretary of Commerce through the National Oceanic and Atmospheric Administration (NOAA). Federal agencies must certify that proposed activities within or affecting the coastal zone are consistent with the coastal state's program. The coastal state must notify the federal agency of its concurrence with or objection to the certification. If the coastal state finds that the proposed activity is inconsistent with its program, the federal agency must obtain an override from the Secretary of Commerce before commencing the action.

California has developed a coastal zone management program through the California Coastal Act of 1976. Local governments within the coastal zone are responsible for implementing the program. The San Francisco Bay Conservation and Development Commission (BCDC) oversees the San Francisco Bay segment of the coastal zone management program and has permit jurisdiction over projects taking place at any location in the bay and within 100 feet inland from the mean high-tide line (mean high water), or 5 feet above mean sea level in marshland around San Francisco and Suisun Bays. It also has jurisdiction over

projects within certain waterways up to the legally defined Sacramento-San Joaquin Delta (east of Chipps Island) that empty into the bay and within specific salt ponds and managed wetlands. In addition, BCDC has direct permit authority over all activities and land uses defined in the Suisun Marsh Preservation Act, specifically projects within the "primary management area", which includes all tidal waters and marshes, seasonal marshes, managed wetlands, and lowland grasslands. Any person or public agency proposing to deposit fill, extract materials, or change the use of water, land, or structures in or around San Francisco or Suisun Bays must obtain a development permit or, in the Suisun Marsh, a marsh development permit from BCDC.

The preferred alternative, selected at the conclusion of Phase II, may include implementation of projects (either undertaken directly or indirectly approved by federal agencies) that will most likely involve the deposit of fill, extraction of materials, or change the use of water, land, or structures in or around San Francisco or Suisun Bays and therefore will require compliance with the CZMA. CALFED would be required to certify that the preferred alternative is consistent with California's coastal zone management program and may include measures to avoid and mitigate coastal zone effects, as implemented by BCDC. CALFED would submit a written consistency analysis to BCDC for concurrence. The environmental review for project-level actions that could affect coastal zone resources requiring either an additional consistency analysis for federal actions or individual local coastal permits may then be simplified because, as provided in the broader CALFED approach, project descriptions of specific actions would already contain commitments to mitigation measures to avoid and mitigate impacts on resources of the coastal zone.

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Program-Level Regulatory Compliance

NATIONAL HISTORIC PRESERVATION ACT (16 USC 470 ET SEQ.)

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to evaluate the effects of proposed federal actions on historical, archeological, and cultural resources. Agencies are required to identify historical or archeological properties on or near proposed action sites, including properties listed on the National Register of Historic Places (NRHP) and those properties that the agency and the State Historic Preservation Officer (SHPO) agree are eligible for listing on NRHP. If an action will have an adverse effect on NRHP-listed properties or those eligible for listing on NRHP, the agencies must consult with SHPO and the Advisory Council on Historic Preservation (ACHP) to develop alternatives or mitigation measures to minimize the effect.

CALFED will coordinate preparation of the Programmatic EIR/EIS with SHPO. Consultation during Phase II may be facilitated through development and approval of a programmatic agreement outlining the steps and timing of compliance with Section 106 and addressing CALFED's potential effect on cultural resources. Signatories to this agreement would be ACHP, SHPO, and CALFED. A process within the programmatic agreement for tiered compliance may be developed to facilitate compliance with Section 106 for federal agency involvement during implementation of specific projects during Phase III.

U.S. COUNCIL ON ENVIRONMENTAL QUALITY MEMORANDA ON FARMLAND PRESERVATION AND FARMLAND PROTECTION POLICY ACT (7 USC 4201, 7 CFR 658)

The Farmland Protection Policy Act of 1981 (FPPA) and memoranda dated August 30, 1976, and August 11, 1980, from the U.S. Council on Environmental Quality (CEQ) to heads of

agencies require federal agencies preparing EISs to include farmland assessments designed to minimize adverse impacts on prime and unique farmlands. The Natural Resources Conservation Service (NRCS) has the authority under FPPA to identify prime or unique farmland. Before taking any action that would result in conversion of designated prime or unique farmland for nonagricultural purposes, the federal agency must examine the potential impacts of the proposed action and, if there are adverse effects on farmland preservation, consider alternatives to lessen the adverse effects. The federal agency must also ensure that its programs, to the extent practicable, are compatible with state, local, and private programs for the protection of farmlands and encourage other federal agencies to make the analysis of farm conversion impacts a part of their NEPA review.

The preferred alternative, selected at the conclusion of Phase II, may involve projects that could affect federally owned land or federally funded projects that may adversely affect prime and unique farmlands. The environmental analysis of CALFED alternatives in the Programmatic EIR/EIS should include a thorough discussion of effects on prime and unique farmlands, an evaluation of farmlands using NRCS and the California Department of Conservation (CDC) soil classifications, and an evaluation of CALFED effects on prime and unique farmlands as determined by CDC's Farmland Mapping and Monitoring Program.

NRCS involvement in CALFED will follow the tiered approach used in the NEPA/CEQA process. During Phase II, NRCS will analyze the effects of the preferred alternative on prime and unique farmlands. Where feasible, mitigation measures will be incorporated into CALFED's programmatic environmental review and selection of a preferred alternative. During Phase III, NRCS would comment on the project-specific

analysis of the individual proposed action's effect on prime and unique farmlands. As provided in the broader CALFED approach, the project description of the specific actions would already contain commitments to particular mitigation measures.

FEDERAL AGRICULTURE IMPROVEMENT AND REFORM ACT OF 1996

The Federal Agriculture Improvement and Reform Act of 1996, also known as the 1996 Farm Bill, was signed into law in April 1996. Title III of the act addresses conservation provisions designed to provide landowners with a variety of incentives programs and technical assistance for incorporating sound conservation practices into farming, grazing, and livestock operations. The 1996 Farm Bill replaces and incorporates portions of previous farm bills, including the Food Security Act of 1985 and the 1990 Farm Bill.

Under Title III, the Wetlands Reserve Program and the Conservation Reserve Program, also known as "Swampbuster", of the Food Security Act of 1985 are extended through 2002. Changes in the programs, addressed in previous farm bills, provide landowners with more options for protecting wetlands and highly erodible lands. The wetland conservation provisions were modified to provide farmers with more flexibility to meet wetland conservation compliance requirements. Changes include expanding areas where mitigation can be used; allowing mitigation by restoration, enhancement, or creation; and changing the abandonment clause. Also addressed under Title III is a new Wildlife Habitat Incentives Program to help landowners improve wildlife habitat on private land. A Flood Risk Reduction Program was established to provide incentives to move farming operations from frequently flooded land.

NRCS is the government agency primarily responsible for implementing the conservation provisions of the 1996 Farm Bill. Implementing the CALFED preferred alternative, including provisions affecting agricultural lands, will be coordinated through the programs developed in the 1996 Farm Bill (such as the Wetlands Reserve Program or the Conservation Reserve Program). Although no specific permit is required, the Programmatic EIR/EIS analysis of effects on agriculture should be coordinated with NRCS and the analysis performed in compliance with FPPA (as described above).

EXECUTIVE ORDER 11988 (FLOODPLAIN MANAGEMENT)

Executive Order 11988 is a flood-hazard policy for federal agencies. It requires that all federal agencies take action to reduce the risk of flood loss; to restore and preserve the natural and beneficial values served by floodplains; and to minimize the impact of floods on human safety, health, and welfare. CALFED's selection of the preferred alternative at the conclusion of Phase II will involve implementation of projects that affect floodplains and will require compliance with Executive Order 11988.

In Phase II, the alternatives refined through the scoping process and analyzed in the Programmatic EIR/EIS should reflect consideration of ways to avoid the risk of flood loss and the impact of floods on human safety, health, and welfare and methods to restore and preserve the natural and beneficial values served by floodplains. If the preferred alternative involves siting in a floodplain, mitigation measures should be identified in CALFED's programmatic environmental review and incorporated into the preferred alternative to minimize flood-hazard potential. The environmental review for project-level actions that could be affected by flood hazards may then be simplified because, as provided in the

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Program-Level Regulatory Compliance

broader CALFED approach, the project description of the specific actions would already contain commitments to particular mitigation measures to avoid and mitigate flood-hazard effects.

EXECUTIVE ORDER 11990 (PROTECTION OF WETLANDS)

Executive Order 11990 is an overall wetlands policy for all agencies managing federal lands, sponsoring federal projects, or providing federal funds to state or local projects. It requires federal agencies to follow avoidance, mitigation, and preservation procedures with public input before proposing new construction in wetlands. When federal lands are proposed for lease or sale to nonfederal parties, Executive Order 11990 requires that restrictions be placed in the lease or conveyance to protect and enhance the wetlands on the property. Executive Order 11990 has the effect of restricting the sale of federal lands containing wetlands; however, it does not apply to federal discretionary authority for nonfederal projects (other than funding) on nonfederal land.

CALFED's selection of the preferred alternative at the conclusion of Phase II may involve implementation of projects that affect federally owned land or federally funded projects that include wetlands and therefore will require compliance with Executive Order 11990. Where feasible, mitigation measures to avoid, mitigate, and preserve wetlands will be incorporated into CALFED's programmatic environmental review, reconnaissance-level analysis, and prefeasibility-level planning in the Programmatic EIR/EIS. The environmental review for project-level actions that could affect wetlands may then be simplified because, as provided in the broader CALFED approach, the project description of the specific actions would already contain commitments to particular mitigation measures to avoid, mitigate, and

preserve wetlands. Also, compliance may be achieved in coordination with Section 404 compliance.

EXECUTIVE ORDER 12898 (ENVIRONMENTAL JUSTICE IN MINORITY AND LOW-INCOME POPULATIONS)

Executive Order 12898 requires federal agencies to identify and address disproportionately high and adverse human health and environmental effects of federal programs, policies, and activities on minority and low-income populations. Federal agencies are directed to ensure that federal programs or activities do not result, either directly or indirectly, in discrimination on the basis of race, color, or national origin. Federal agencies are required to provide opportunities for input in the NEPA process by affected communities and to evaluate significant and adverse environmental effects of proposed federal actions on minority and low-income communities during preparation of federal environmental documents. If a proposed federal action will not result in significant adverse impacts on minority and low-income populations, the environmental document must describe how Executive Order 12898 was addressed during the NEPA process. EPA has taken a leadership role to oversee the process of coordinating and guiding federal agencies in the development of strategies for achieving environmental justice.

CALFED's selection of the preferred alternative at the conclusion of Phase II may involve implementation of projects that have environmental effects, including human health, social, and economic effects, on minority and low-income residential populations (such as in farming communities). CALFED has provided (during scoping) and will continue to provide opportunities for input from local minority and low-income communities in the preparation of the Programmatic EIR/EIS, including identifying

potential effects and mitigation measures in consultation with affected communities and improving the accessibility of meetings, crucial documents, and notices. The Programmatic EIR/EIS's environmental analysis should include a thorough discussion of identified concerns of minorities and low-income communities. The analysis should include an evaluation of the impacts of potential effects and mitigation measures on minority and low-income communities.

AMERICAN INDIAN RELIGIOUS FREEDOM ACT OF 1978 (42 USC 1996)

The American Indian Religious Freedom Act (AIRFA) sets forth the policy of the U.S. Department of the Interior (DOI) to protect and preserve the observance of traditional Native American religions. The act requires federal agencies to evaluate their policies and procedures to ensure compliance with this policy. CALFED's selection of a preferred alternative at the conclusion of Phase II may involve implementation of projects (either undertaken directly or indirectly approved by federal agencies) that could involve impacts on the observance of traditional Native American religions and therefore will require compliance with AIRFA.

The environmental analysis of CALFED alternatives should include a thorough discussion of impacts on the observance of traditional Native American religions. The analysis should include an evaluation of effects on Native American religious practices to ensure compliance with AIRFA. Where feasible, mitigation measures to minimize the effect on the observance of traditional Native American religions will be incorporated into CALFED's programmatic environmental review, reconnaissance-level analysis, and prefeasibility-level planning in the Programmatic EIR/EIS and the selection of a preferred alternative for CALFED. The

environmental review for project-level actions that could affect Native American religious practices may then be simplified because, as provided in the broader CALFED approach, the project description of the specific actions would already contain commitments to particular mitigation measures to avoid and mitigate effects on Native American religious practices.

STATE LAWS AND IMPLEMENTING REGULATIONS

CALIFORNIA ENDANGERED SPECIES ACT (CALIFORNIA FISH AND GAME CODE SEC. 2050 ET SEQ.)

The California Endangered Species Act (CESA) requires a State agency, when acting as a lead agency for purposes of complying with CEQA, to consult with DFG to ensure that its action does not jeopardize the continued existence of a species listed as endangered or threatened under CESA. When a draft EIR (or negative declaration) is issued and the State lead agency concludes that the proposed action may affect a listed species under CESA, the agency is required to request formal consultation with DFG. DFG uses the information in the draft EIR to prepare a Biological Opinion on whether the action would jeopardize the continued existence of the State-listed species. CESA requires that when an action affects a species listed under both CESA and ESA, and the project is subject to State lead agency and federal agency action, DFG must request and participate in the federal consultation to the greatest extent practicable. Wherever possible, DFG should adopt the federal Biological Opinion in its Biological Opinion.

Preparation of the Programmatic EIR/EIS involves State agencies acting as lead agencies for purposes of complying with CEQA; therefore, these State lead agencies are required to comply with the consultation requirement of

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CESA. Consultation with DFG will be concurrent with CALFED's preparation of the Programmatic EIR/EIS. Because DFG, USFWS, and NMFS are CALFED agencies, the Programmatic EIR/EIS will incorporate, for those species listed under both CESA and ESA, concerns on species listed under CESA. The CESA consultation process for CALFED, as with the Section 7 ESA consultation process, would follow the tiered approach being used in the NEPA/CEQA process, with the first tier consisting of a broad programmatic analysis of the selection of the preferred alternative for Phase II of CALFED, followed by second-tier CESA consultations consisting of project-specific analysis of individual State lead agency actions for Phase III. It is expected that this tiered approach would also cover CESA compliance for Phase III individual actions that affect State-listed species, where no State lead agency action is involved.

Where feasible, mitigation measures will be incorporated into CALFED's programmatic environmental review, reconnaissance-level analysis, and prefeasibility-level planning in the Programmatic EIR/EIS and the selection of a preferred alternative. Second-tier consultations for the individual actions may then be simplified because the project description of the specific actions would already contain commitments to particular mitigation measures, as provided by the consultation for Phase II of CALFED.

The CESA consultation process for Phase II of CALFED will be initiated with DFG. Informal consultation between CALFED and DFG (along with USFWS and NMFS for those species listed under both CESA and ESA) should begin at the start of Phase II; it is recommended that meetings be set up to focus on specific species and geographic regions. Although a biological assessment is not required under CESA, it is recommended that one be prepared, as an addendum to the Programmatic EIR/EIS, to

facilitate CESA consultation. This biological assessment will be prepared by CALFED and submitted to DFG by the time the draft Programmatic EIR/EIS is issued for public review. DFG will prepare written findings of its Biological Opinion as to whether any of the alternatives analyzed in the Programmatic EIR/EIS would jeopardize the continued existence of State-listed species, and recommend reasonable and prudent measures. CALFED agencies will be required to enter into an agreement with DFG for adoption of these measures as mitigation for management of the State-listed species. DFG will participate in the ESA consultation process and, for those species listed under ESA and CESA, may adopt the federal Biological Opinion as its written findings of its Biological Opinion.

STATE LANDS COMMISSION (CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 3, SECTION 1900 ET SEQ.; AND PUBLIC RESOURCES CODE SECTION 6001 ET SEQ.)

The State Lands Commission (SLC) is charged with the administration of certain State-owned lands: sovereign lands that lie in the beds of tidal and navigable water bodies within the State's boundaries, and school lands that were granted to the State by the federal government to support public schools. Within the Bay-Delta area, lands under SLC jurisdiction are generally limited to sovereign lands.

California received title to its sovereign lands upon its admission to the United States to be held for the benefit of all of its people, subject to the Public Trust for water-related commerce, navigation, fisheries, recreation, and open space.

The boundaries of the State's sovereign lands are generally based on the extent and location of the subject waterways as they last naturally existed, before artificial accretions were added. On tidal waterways, the State owns fee title to

the bed of the river below the last natural ordinary high-water mark. In some cases, particularly in the Bay Area during the 1800s, the State sold some of its tidelands, lands lying between the ordinary high- and low-water marks. In these cases, the State retains a Public Trust easement over the sold tidelands. On nontidal navigable waterways, the State holds fee title to the bed below the last natural ordinary low-water mark, and holds a Public Trust easement over privately owned lands between the last natural ordinary low- and high-water marks. Very often, the precise location of these boundaries is uncertain. Boundaries may be established through agreement or court judgment.

The State can no longer sell its sovereign lands, but SLC may lease the sovereign-fee lands for various Public Trust purposes. A lease will be required for any projects involving the construction of structures on the sovereign-fee lands and for some activities that do not include such improvements. SLC leases and other agreements may be designed to encompass activities or projects that will occur over an extended period or geographic area, provided such activities meet specific criteria.

Private landowners may use their lands that remain subject to the State's Public Trust easement for any purpose consistent with Public Trust needs in the area. SLC may become involved in assessing Public Trust needs by evaluating projects proposed to be located within the easement area.

CALFED's selection of the preferred alternative during Phase II is not an activity affecting the public trust. However, the conclusion of Phase II may involve implementation of projects (either undertaken directly or indirectly approved by federal agencies) that will most likely encompass activities or projects that will occur over an extended time or geographic area.

These projects may require the specific uses of, or improvements to, State-owned lands managed by SLC and therefore will require compliance with the purposes of Public Trust. CALFED would be required to verify that the action of the preferred alternative is consistent with California's doctrine of Public Trust, as implemented by SLC. During preparation of the Programmatic EIR/EIS in Phase II, CALFED would be required to prepare an analysis that demonstrates that the preferred alternative is consistent with the doctrine of Public Trust. ☺

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Project-Level Regulatory Compliance

This chapter addresses environmental compliance requirements of implementing individual components of the preferred alternative during Phase III of CALFED. The Programmatic EIR/EIS prepared in Phase II will provide a useful assessment of the overall effects of CALFED in the form of a first-tier environmental document. Additional environmental compliance documents that incorporate the Programmatic EIR/EIS by reference and summarize pertinent issues may be required to identify and evaluate Phase III implementation of the individual components of the preferred alternative (see Figure 2-1 in Chapter 2). These additional documents will focus on the site-specific issues of implementing that portion of CALFED not fully addressed in the Programmatic EIR/EIS.

NEPA AND CEQA

Key Project Features Triggering Preparation of a CALFED Project-Specific Draft EIR or EIS

- The project-specific action was not adequately addressed in the Programmatic EIR/EIS or substantially changed since completion of the Programmatic EIR/EIS.
- The project-specific action cannot meet the conditions of NEPA's categorical exclusions or CEQA's statutory or categorical exemptions.
- The project-specific action could cause a significant effect on the environment and no mitigation is added to the project description before the environmental assessment or initial study is released for public review.

Implementation of the individual components of the CALFED preferred alternative may be subject to NEPA and CEQA either because an agency will directly implement the project or because the project requires permit approval from a State or federal agency. If no discretionary agency action is involved, either as project proponent or permitting agency, NEPA and CEQA compliance is not required.

The project proponent, if not an agency, must determine which federal or State agency has jurisdiction over implementation of the particular individual component of the preferred alternative to determine whether NEPA or CEQA apply. NEPA applies to an action that requires permits, entitlements, or funding from a federal agency; is jointly undertaken with a federal agency; or is proposed on federal land. CEQA applies to an action that is directly undertaken by a California public agency; is supported in whole or part through California public agency contracts, grants, subsidies, loans, or other assistance from a public agency; or involves California public agency issuance of a permit, lease, license, certificate, or other entitlement for use by a public agency.

CALFED will comply with NEPA and CEQA by preparing a Programmatic EIR/EIS for the Phase II selection of the preferred alternative; however, the scope of this compliance generally will not be broad enough to cover compliance requirements for Phase III implementation of the individual components of the preferred alternative. The CALFED Programmatic EIR/EIS is expected to provide a useful

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assessment of the beneficial and adverse effects of CALFED and component resources within the system in the form of a first-tier environmental document. This approach avoids duplicative considerations of broad policy decisions and larger scale analyses, such as cumulative and growth-inducing impacts, when future individual aspects of the program are considered.

Additional environmental compliance documents may be required to identify and evaluate Phase III implementation of the individual components of the preferred alternative to comply with NEPA or CEQA. Subsequent environmental documents will need only to incorporate by reference and summarize the issues discussed in the Programmatic EIR/EIS and may concentrate on the site-specific issues of implementing that portion of CALFED not addressed in the Programmatic EIR/EIS.

NEPA and CEQA processes and terminology are similar (Figure 3-1).

IDENTIFYING THE LEAD AGENCY

The lead agency is the one with primary responsibility for ensuring compliance with NEPA and CEQA. If more than one federal, State, or local agency is involved, the lead agency is determined according to:

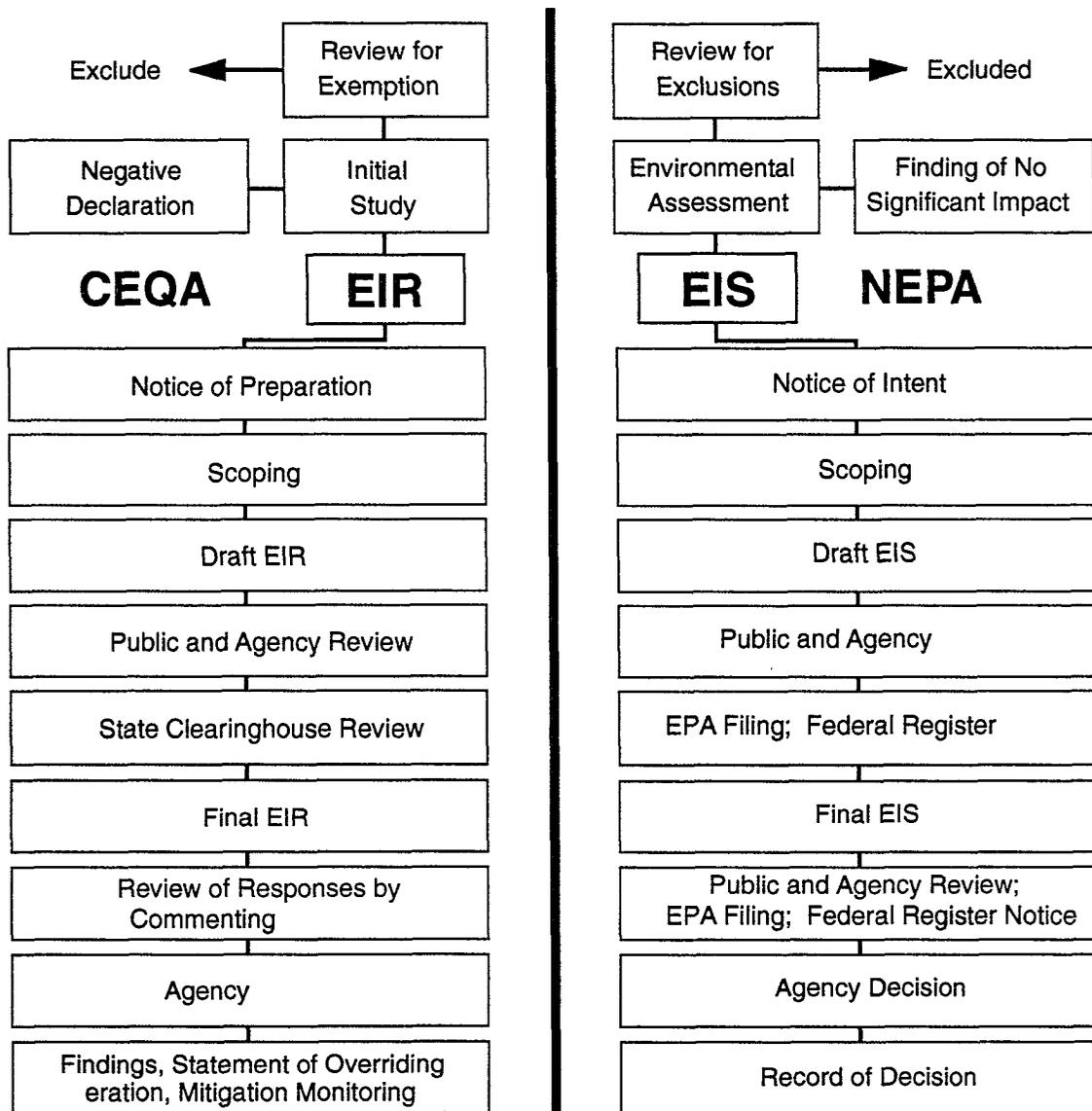
- magnitude of involvement,
- approval or disapproval authority over the proposed action,
- expertise with regard to environmental effects,
- duration of involvement, and
- sequence of involvement.

Other federal agencies that have discretionary authority over some aspect of or interest in the project are considered “cooperating” agencies. Other State or local agencies having discretionary authority over some aspect of the project are considered “responsible” agencies.

To properly assess and implement specific elements of CALFED, it will be necessary to define specific actions or projects in sufficient detail to clearly describe all physical and administrative features of each proposed action for consideration by responsible decision makers and concerned agencies. Each project-level action will be based on identification of either the proponent lead agency or private entity responsible for the proposed action, a clear statement of purpose of and need for the proposed action, and a description of the proposed action’s relationship to CALFED. These actions will be defined by delineating specific project locations and elements and will include clear descriptions of resource requirements (materials and energy), designs, plans and specifications, construction activities (e.g., mobilization and demobilization, personnel, equipment, durations), and requirements for project operations and maintenance (e.g., activities, durations, frequencies, equipment, resources, personnel) including mitigation and monitoring plans.

During preliminary review of the proposed action, the lead agency must determine whether NEPA and CEQA apply to the activity being evaluated. As discussed in the following presentations, the agency must conduct a preliminary screening to determine whether the activity is considered a “project” under the definition of NEPA and CEQA, whether it falls under a specific exemption from NEPA and CEQA requirements, or whether preparation of further documentation is required and, if so, what type.

Figure 3-1. CEQA and NEPA: Parallel Processes



Source: R. E. Bass, A. I. Herson, and K. M. Bogdan. 1996
 CEQA Deskbook. Solano Press Books. Point Arena, CA.

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CATEGORICAL EXCLUSIONS AND STATUTORY AND CATEGORICAL EXEMPTIONS

NEPA EXCLUSIONS

A federal lead agency is not required to prepare a detailed environmental review (an environmental assessment [EA] and either a finding of no significant impact [FONSI] or an EIS) for NEPA compliance if an action qualifies for a categorical exclusion. Each federal agency's NEPA regulations list actions that, when considered individually and cumulatively, do not have significant effects on the quality of the human environment and are categorically excluded from NEPA documentation. However, if extraordinary circumstances exist, as defined by the federal agency's NEPA regulations, preparation of an EA and FONSI or EIS may be required. Although an EA and FONSI or EIS may not be required for a federal action because of a categorical exclusion, the action is not exempt from compliance with other pertinent federal laws such as the Endangered Species Act, Fish and Wildlife Coordination Act, and National Historic Preservation Act.

CEQA EXEMPTIONS

The CEQA lead agency is not required to prepare a detailed environmental review (an initial study and either a negative declaration or EIR) for CEQA compliance if the action qualifies under a statutory or categorical exemption. CEQA and the State CEQA Guidelines list statutory exemptions and classes of categorical exemptions that are exempt from the CEQA process. However, if certain circumstances apply to the proposed action, as defined by CEQA and the guidelines, certain classes of categorical exemptions may not apply.

ENVIRONMENTAL ASSESSMENT AND INITIAL STUDY

Unless a proposed action normally requires an EIR or EIS, the lead agency prepares an EA or initial study to determine whether the proposed action has the potential to cause significant environmental effects. An EA or initial study should include:

- a brief discussion of the proposed action;
- environmental impacts of the proposed action;
- alternatives to the proposed action (required in an EA only);
- a list of agencies, interest groups, and members of the public consulted; and
- supporting technical data or appendices.

The EA or initial study should be concise to facilitate meaningful review and decision making and may be supplemented or revised if required. Typically, copies of the draft and final documents are provided to concerned agencies, interest groups, and interested individuals for coordination and review.

Mitigation to reduce impacts of a proposed action to a less-than-significant level may be incorporated in the project before the EA or initial study is issued to the public.

Based on the results of an EA or initial study, and using the information in a Programmatic EIR/EIS, the lead agency decides whether it is necessary to prepare an EIS or EIR for implementation of individual components of a proposed action. If it is not necessary to prepare an EIS, the federal lead agency prepares a

FONSI. If it is not necessary to prepare an EIR, the State or local lead agency prepares a negative declaration.

FONSI AND NEGATIVE DECLARATION

Preparation of a FONSI or negative declaration during Phase III will be based on information analyzed in an EA or initial study and the Programmatic EIR/EIS and reflects pertinent data obtained from cooperating and responsible agencies and the interested public. A FONSI or negative declaration should briefly present reasons that a proposed action does not have a significant impact on the quality of the human environment by referencing, not duplicating, the information included in the EA or initial study and Programmatic EIR/EIS and state that an additional EIS or EIR is not required. A mitigated FONSI should, and a negative declaration must, present all mitigation that has become part of the project.

DRAFT EIS AND EIR

As stated above, if a project has the potential to cause a significant effect on the environment, the federal agency needs to prepare an EIS and the State or local agency needs to prepare an EIR. Phase III implementation of an individual component of the preferred alternative may require preparation of an EIS, EIR, or joint EIR/EIS if the project-specific action:

- was not adequately addressed in the Programmatic EIR/EIS or was substantially changed since completion of the Programmatic EIR/EIS,
- cannot meet the conditions of NEPA's categorical exclusions or CEQA's statutory or categorical exemptions, and

- has the potential to cause a significant effect on the environment and no mitigation is added to the project description before the initial study is released for public review.

If an EIS is prepared, a notice of intent is published in the Federal Register and the scoping process begins. If an EIR is prepared, a notice of preparation is sent to responsible and interested agencies and the public. The lead agency prepares the draft EIS or EIR, including information gained from the scoping process and consultation with federal, State, and local agencies that have jurisdiction or special expertise. The EIS must disclose and discuss all major points of view on the environmental impacts of a reasonable range of alternatives. The EIR must include discussion of the environmental effects of the proposed project and an evaluation of a reasonable range of alternatives.

The lead agency must circulate the draft EIS or EIR for public and agency review and must obtain the comments of other federal or State and local agencies with jurisdiction over, or special expertise with regard to, the proposed action. Comments should also be requested from the project applicant (if not the lead agency), agencies requesting to be notified, Native American tribes, and the public.

FINAL EIS AND EIR

A final EIS or EIR is prepared after comments on the draft document are received and reviewed. The final EIS or EIR must contain the lead agency's responses to all comments and must discuss any opposing views on substantive issues raised. The final EIS is circulated to federal agencies with jurisdiction or expertise, environmental regulatory agencies, the project applicant, persons requesting to be notified, and persons who submitted comments. The final EIR does not need to be circulated; however, the

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CEQA lead agency is required to send commenting agencies a copy of the draft responses prior to certifying the EIR.

RECORD OF DECISION AND FINDINGS

When the federal lead agency determines that the EIS meets the requirements of NEPA, it may adopt the EIS and approve the proposed project. The Record of Decision, a written public record explaining a particular course of action, is prepared by the federal lead agency. When the State or local lead agency determines that the EIR meets the requirements of CEQA, it certifies the EIR. When the State or local lead agency takes action on the project, it must make findings regarding the significant impacts in the EIR; adopt a mitigation monitoring or reporting program for the mitigation measures made a condition of project approval; and adopt a statement of overriding considerations, if applicable, for the proposed project's significant and unavoidable impacts.

FEDERAL REGULATORY AGENCIES

Federal agencies that may have jurisdiction over an aspect of Phase III implementation of individual components of the preferred alternative for CALFED have established guidelines and procedures for obtaining approvals or permits and meeting legal requirements. These requirements are identified and addressed below for each agency.

Federal regulatory compliance requirements apply to CALFED and project-level actions in a variety of ways. Several of the federal agencies directly participate in CALFED planning activities that may modify and enhance facilities and systems to meet CALFED goals. The discussions that follow describe the key responsibilities of federal agencies in relation to regulatory compliance for Phase III implementation of the individual components of the CALFED preferred alternative. Federal regulations implemented by State or regional agencies (i.e., Section 106 of the National Historic Preservation Act and Sections 401 and 402 of the Clean Water Act) are discussed under "State and Local Regulatory Agencies" later in this chapter.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Key Project Features for CALFED

- Activity requires preparation of an EIS in compliance with NEPA
- Activity requires compliance with Section 404 of the Clean Water Act
- Activity requires compliance with the Clean Air Act

JURISDICTION AND DUTIES

Although the U.S. Environmental Protection Agency (EPA) typically does not issue permits for projects, it has key roles under NEPA, Section 404 of the Clean Water Act, and the Clean Air Act. As a reviewing agency, EPA is responsible for overseeing and reviewing all EISs for legal and technical adequacy. EPA also acts as the federal clearinghouse, receiving all EISs and providing notices in the Federal Register about the intent to prepare EISs or the availability of EISs for public review. As a lead or cooperating agency when it has particular permitting authority or interest in a project, EPA may prepare the NEPA document or consult with lead agencies about NEPA, related laws and regulations, and other EPA environmental programs.

In its role as a reviewing agency, EPA follows the national environmental regulatory enforcement strategy documented in the EPA Federal Facilities Compliance Strategy Manual (November 1988), also known as the "EPA Yellow Book". EPA reviews and submits recommendations on planning, design, construction, and operation of federal actions and related permit actions and is responsible for:

- reviewing all EISs, EAs, joint EIRs/EISs, and, if applicable, State environmental disclosure documents for consistency with federal environmental laws and regulations;
- consulting and reviewing all proposed actions that require compliance with Section 404 of the Clean Water Act and EPA Section 404(b)(1) Guidelines (EPA maintains the Wetlands Information Hotline [1-800-832-7828] to provide regulatory, legislative, and technical information on wetlands issues); and

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- consulting and reviewing all proposed actions that require compliance with the Clean Air Act, as amended.

PERMITS AND CONSULTATION REQUIREMENTS FOR CALFED

All proposed federal actions undertaken by CALFED will most likely require documentation to comply with NEPA. If an EIS is required, EPA will be involved in providing a notice of availability of the EIS for public review and in reviewing the EIS for legal and technical adequacy. If an action requires compliance with Section 404 of the Clean Water Act, EPA may review the action for compliance with Section 404(b)(1) Guidelines. All federal lead agencies for proposed actions and related NEPA documentation are required to provide a statement of conformity with Section 176 of the Clean Air Act. Statements of conformity will be reviewed by EPA during its NEPA review.

AUTHORITIES

- Federal Facilities Compliance Strategy, Office of Federal Activities, EPA, November 1988
- EPA Section 404(b)(1) Guidelines
- 33 USC 1251-1376 (Federal Water Pollution Control Act/Clean Water Act, as amended)
- 42 USC 7401-7642 (Clean Air Act, as amended)

U.S. ARMY CORPS OF ENGINEERS**Key Project Features for CALFED**

- Activity located in waters of the United States, including wetlands
- Activity falls under a Nationwide Permit
- Activity covered under a specific regional permit or Letter of Permission
- Activity considered a discharge of dredged or fill material
- Activity located in navigable waters of the United States
- Activity affects facilities designed, built, or managed by the U.S. Army Corps of Engineers

JURISDICTION AND DUTIES

The U.S. Army Corps of Engineers (Corps) has jurisdictional authority to regulate all activities that dredge, dam, or divert navigable waters or that result in the deposit of dredged and fill material into waters of the United States, including, but not limited to, perennial and intermittent streams, lakes, ponds, and wetlands (refer to Figure 3-2). Its authority to issue permits derives from Sections 301 and 404 of the Clean Water Act and Sections 9, 10, and 13 of the Rivers and Harbors Act of 1899. Additionally, the Corps is responsible for certifying and approving modifications or improvements to facilities designed, built, and managed by the Corps (e.g., flood control levees, reservoirs).

Other laws and regulations that may affect the regulatory authority of the Corps include NEPA, EPA Section 404(b)(1) Guidelines,

Section 401 of the Clean Water Act, the Coastal Zone Management Act, the Fish and Wildlife Coordination Act, the federal Endangered Species Act (ESA), the National Historic Preservation Act, and the Wild and Scenic Rivers Act.

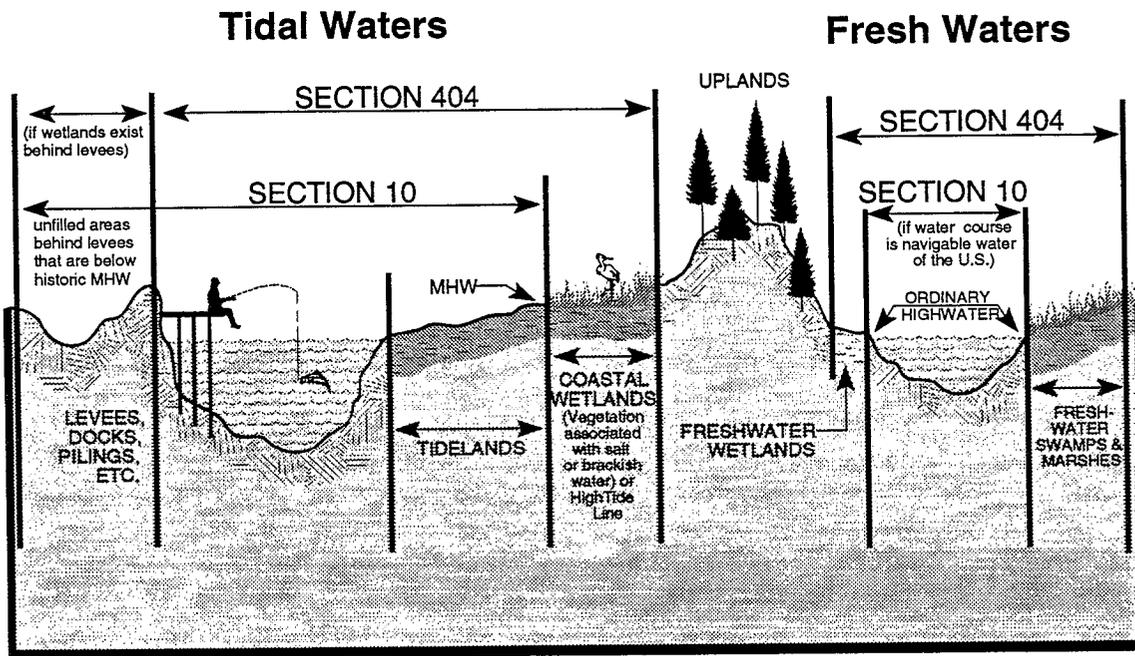
Types of activities that require permits from the Corps include:

- construction or modification of dams and dikes in navigable waters of the United States;
- other structures or work, including excavation, dredging, and/or disposal activities, in navigable waters of the United States;
- activities that alter or modify the course, condition, location, or physical capacity of navigable waters of the United States;
- construction of fixed structures and artificial islands on the outer continental shelf; and
- discharges of dredged or fill material into waters of the United States.

Section 404 of the Clean Water Act uses the terms "navigable water" and "waters of the United States". Waters of the United States are broadly defined by 33 CFR Part 328.3(a) to include navigable waters and others, as:

- (1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (2) All interstate waters including interstate wetlands;

Figure 3-2. Jurisdictional Boundaries in Waters of the United States



SOURCE: U.S. Army Corps of Engineers
PRODUCED BY: McCutchen, Doyle, Brown & Ebersole
R. Uram/N. Beecher

(3) All waters such as intrastate lakes, rivers, streams (perennial and intermittent), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce, including any such waters:

- (i) which are or could be used by interstate or foreign travelers for recreational or other purposes; or
- (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
- (iii) which are used or could be used for industrial purpose by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as waters of the United States;

(5) Tributaries of waters identified in this section above;

(6) The territorial seas; and

(7) Wetlands adjacent to waters (other than those that are themselves wetlands) identified in this section above.

Wetlands are further defined as "areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions".

(NOTE: Forthcoming changes in regulatory responsibility under Section 404 of the Clean Water Act will transfer management authority to the Natural Resources Conservation Service for wetland delineations on agricultural land [cultivated land and rangeland] from the Corps.

When the new roles and guidelines are formally defined and adopted, this discussion will be updated to reflect the changes.)

Corps jurisdiction under the Rivers and Harbors Act of 1899 is limited to those activities affecting the navigable waters of the United States. Navigable waters of the United States are defined as those waters subject to the ebb and flow of the tide shoreward to the mean high water mark and/or those that are presently used, have been used in the past, or may be susceptible to use to transport interstate or foreign commerce.

To a great extent, the regulatory authority of the Corps under the Rivers and Harbors Act of 1899 has been superseded by Section 404 of the Clean Water Act. The jurisdiction of the Corps under the Clean Water Act overlaps and extends beyond the geographic scope of its jurisdiction under the Rivers and Harbors Act (Figure 3-2).

PERMITS AND CONSULTATION

Examples of CALFED project-specific actions that may require a Corps permit include construction of flood protection facilities (e.g., levees, channels, weirs, dams, reservoirs); artificial canals and islands, beach nourishment and protection facilities (e.g., breakwaters, groins, jetties, bulkheads), piers and wharves, moorings, boat ramps, or marinas; ocean dumping; and mining activities that involve dredging and discharging sand, gravel, stone, clay, or similar materials into waters of the United States.

PERMITS ISSUED UNDER SECTION 404 OF THE CLEAN WATER ACT

Section 404 of the Clean Water Act authorizes the Corps to issue permits for discharges of dredged or fill material into waters of the United

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States. General permits may be issued for similar actions with similar environmental effects or individual permits may be issued for separate actions. Permits issued under Section 10 of the Rivers and Harbors Act of 1899 are discussed at the end of this section.

CALFED project-specific actions typically subject to Section 404 requirements are those that would take place in wetlands or channels that convey natural runoff, including intermittent streams, even if they have been realigned. Artificial channels that convey only irrigation water are usually not included. Within stream channels, a permit under Section 404 would be needed for any discharge activity below the ordinary high-water level, which is the water level at a flow equal to the mean annual flood. Examples of such discharge activities include excavation, mechanized vegetation removal, placement or alteration of structures that have the intended effect of functioning as a fill activity, or any discharge activity that would affect wetlands or the surface-water conveyance or capacity of a channel. The following activities are generally exempt from Section 404 permitting:

- normal farming practices (ongoing plowing, seeding, harvesting, minor drainage) in areas that are already cultivated;
- maintenance of existing dams, reservoirs, dikes, and levees;
- construction or maintenance of farm stockponds and irrigation ditches;
- maintenance of nonjurisdictional drainage ditches; and
- construction of farm roads in accordance with best management practices (BMPs) and environmental law.

Project proponents should contact the Corps to verify applicability of the exemptions. (Section 404 permit requirements and exemptions for the Natural Resources Conservation Service are discussed later in this chapter.)

Nationwide Permits. A Nationwide Permit is a type of General Permit that has been developed and adopted by the Corps, in cooperation with concerned agencies, to streamline the Section 404 process for those activities having minimal environmental impacts. A General Permit can be issued on a nationwide, statewide, or regional basis. Nationwide Permits, issued by the Corps on a national level, authorize certain activities that comply with general and specific conditions. Typical processing time for a Nationwide Permit is 30 to 60 days. Thirty-seven Nationwide Permits have been established by the Corps in cooperation with concerned agencies. These Nationwide Permits are currently being revised for renewal in 1997. The Corps is currently accepting comments on the proposed revisions to the Nationwide Permits.

Examples of Nationwide Permits that may be applicable to implementation of CALFED project-specific actions are listed below; the Corps should always be consulted to determine whether any apply.

- Nationwide Permit 13, Minor Bank Stabilization, applies to bank stabilization activities necessary to prevent erosion.
- Nationwide Permit 14, Minor Road Crossings, applies to certain minor road crossings with culverts or bridges that affect less than 1/3 acre of waters of the United States, and no more than 200 linear feet of fill in wetland areas.

- Nationwide Permit 26, Isolated Waters and Headwaters, allows placement of fill in small headwaters streams that have a mean flow of less than 5 cubic feet per second and for projects affecting less than 10 acres of waters of the United States. Dams constructed on small drainages in foothill areas, for example, may qualify for authorization under this permit. For discharges affecting less than 1.0 acre of waters of the United States, applicants do not need to notify the Corps prior to the activity if the activity meets all other requirements for Nationwide Permit 26. For activities affecting 1.0 acre or more, applicants must notify the Corps prior to implementation.
- Nationwide Permit 27, Wetland Restoration Activities, allows fill by private landowners in altered or degraded nontidal wetlands for the purpose of restoration. Nationwide Permit 27 requires a binding agreement with the U.S. Fish and Wildlife Service or Natural Resources Conservation Service.

Nationwide Permits must comply with a set of general conditions, BMPs, and construction practices to minimize adverse environmental impacts. Two of the general conditions require special attention:

- Condition 3: Endangered Species. An activity under a Nationwide Permit must not jeopardize a federally listed threatened or endangered species. If the activity may affect a listed species or its habitat, the Corps must initiate and complete a Section 7 endangered species consultation. Once the Corps has successfully completed the consultation, it can allow the activity to proceed under a Nationwide Permit or may require an Individual Permit for the activity.

- Condition 9: Cultural Resource. The permit applicant must notify the Corps if the proposed activity may adversely affect historic properties (e.g., archaeological sites, historic sites, historic structures) that are included, or are eligible for listing, on the National Register of Historic Places. The Corps must provide the Advisory Council on Historic Preservation with an opportunity to comment on the proposed activity and must consider any recommendations made by the council. Significant unavoidable impacts on important cultural resources would preclude issuance of a permit.

Once it is determined that the conditions of a Nationwide Permit are met, no application to the Corps is required; however, several Nationwide Permits require that the Corps be notified before an activity is undertaken (see list of Nationwide Permits above). For these Nationwide Permits, the Corps will issue confirmation that all conditions have been met. NEPA compliance for Corps involvement in a project authorized by a Nationwide Permit is completed at the time the permit is issued. The Corps does not require additional NEPA compliance for confirmation that an activity is permitted under a Nationwide Permit.

Regional Permits or Letters of Permission. The Corps district office with jurisdiction may determine that certain activities within certain geographic areas may have minimal effects on the environment, although the activities are not specifically covered by a Nationwide Permit.

Regional Permits are a type of General Permit. A Regional Permit may be issued by a Division or District Engineer for an individual activity if it has impacts that are individually and cumulatively minimal, it falls within one of the

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Nationwide Permits (Effective January 21, 1992)							
Permit No.	Permit Title	Requires Notification	Requires Notification in Certain Circumstances*	Permit No.	Permit Title	Requires Notification	Requires Notification in Certain Circumstances*
1	Aids to Navigation			21	Surface Mining Activities (Coal)	✓	
2	Structures in Artificial Canals			22	Removal of Vessels		
3	Maintenance			23	Categorical Exclusions		
4	Fish and Wildlife Harvesting Activities			24	State Administered Section 404 Programs		
5	Scientific Measurement Devices		✓	25	Structural Discharges		
6	Survey Activities			26	Headwaters and Isolated Waters		✓
7	Outfall Structures	✓		27	Wetland Restoration Activities		
8	Oil and Gas Structures			28	Modification of Existing Marinas		
9	Structures in Fleeting and Anchorage Areas			29	Reserved		
10	Mooring Buoys			30	Reserved		
11	Temporary Recreational Structures			31	Reserved		
12	Utility Line Bedding and Backfill			32	Complete Enforcement Actions		
13	Bank Stabilization		✓	33	Temporary Construction and Access	✓	
14	Road Crossing		✓	34	Cranberry Production Activities	✓	
15	Fills at U.S. Coast Guard Approved Bridges			35	Maintenance Dredging of Existing Basins		
16	Return Water from Upland Contained Disposal Areas			36	Boat Ramps		
17	Hydropower Projects	✓		37	Emergency Watershed Protection	✓	
18	Minor Discharges (de minimis discharge as determined by the Corps)		✓	38	Cleanup of Hazardous and Toxic Waste	✓	
19	Minor Dredging (25 cubic yards)			39	Reserved		
20	Oil and Gas Cleanup			40	Farm Buildings		

Project-Level Regulatory Compliance

Nationwide Permits (Effective January 21, 1992)

- * The following Nationwide Permits require notification only in certain circumstances:
5. Small weirs and flumes that involve 10-25 cubic yards of fill.
 13. Bank stabilization requires notification to the district engineer when the activity exceeds 500 feet in total length or exceeds an average of 1 cubic foot per linear foot of shoreline.
 14. Road crossing activities require notification only if the project involves a discharge of dredged or fill material into a special aquatic site.
 18. Minor discharges activities require notification only if the discharge exceeds 10 cubic yards or is in a special aquatic site.
 26. Headwaters and isolated waters discharges require notification only if the area of wetland disturbance exceeds 1 acre.

specific categories authorized by Regional Permits, and the action does not require further authorization by an Individual Permit. The Corps district will determine and add appropriate conditions to the Regional Permit to protect the public interest. When the Corps district determines on a case-by-case basis that the concerns for the aquatic environment so indicate, it may exercise discretionary authority to override the Regional Permit and require an individual application and review. A Regional Permit may be revoked by the Corps district if it is determined that it is contrary to the public interest. Following revocation, applications for future activities in areas covered by the Regional Permit will be processed as applications for Individual Permits. No Regional Permit will be issued for a period of more than 5 years.

Letters of Permission are authorized by Section 404 and may be issued through an abbreviated processing procedure that includes coordination with federal and State fish and wildlife agencies, as required by the Fish and Wildlife Coordination Act, and a public interest evaluation. Publication of an individual public notice may be required. Letters of Permission may be used:

- in those cases subject to Section 10 of the Rivers and Harbors Act of 1899 when, in the opinion of the district engineer, the proposed work would be minor, would not have significant individual or cumulative impacts on environmental values or the public interest, and is not likely to result in substantial controversy; and
- in those cases subject to Section 404 of the Clean Water Act after:
 - the District Engineer, through consultation with federal and State fish and wildlife agencies, the Regional Administrator, EPA, State water quality certifying agency (see "California State Water Resources Control Board" in this chapter for a discussion of compliance with Section 401 of the Clean Water Act), and, if appropriate, the State Coastal Zone Management Act agency (see "San Francisco Bay Conservation and Development Commission"), develops a list of categories of activities proposed for authorization;

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- the District Engineer issues a public notice advertising the proposed list and procedures, requesting comments and offering an opportunity for public hearing; and
- a Section 401 certification has been issued or waived and, if appropriate, Coastal Zone Management Act consistency concurrence obtained or presumed either on a generic or individual basis.

Standard Individual Permits. Projects proposed in waters of the United States that involve discharge activities and are not eligible for exemptions, a Nationwide Permit, or other General Permit require Standard Individual Permits. Standard Individual Permits are issued to a single entity (e.g., an agency, joint-power agency, individual, or company) to authorize specific activities.

Individual permits require submission of an individual application and compliance with the Corps' formal review process. This process provides opportunities for public notice and comment; requires preparation of an alternatives analysis as required by EPA Section 404(b)(1) Guidelines and NEPA; and requires compliance with NEPA's environmental review process. The Corps' decision to issue an individual permit is based on an evaluation of probable impacts of the proposed activity, analyzed according to Section 404(b)(1) Guidelines, and the effect the proposed activity will have on the public interest.

WHERE TO APPLY FOR PERMITS

Depending on the location of the project-specific CALFED action, permit applications should be submitted to one of the three Corps district offices with regional responsibility (refer to Figure 3-3). Most actions will most likely be coordinated with the Sacramento District.

Sacramento District
Attn: CESPCK-CO-R
U.S. Army Corps of Engineers
1325 J Street
Sacramento, CA 95814

San Francisco District
Attn: CESPN-CO-R
U.S. Army Corps of Engineers
211 Main Street
San Francisco, CA 94105-1905

Los Angeles District
Attn: CESPL-CO-R
U.S. Army Corps of Engineers
911 Wilshire Boulevard
Los Angeles, CA 90053-2325

HOW TO APPLY FOR A PERMIT

The regulatory branch of the Corps may be contacted at any time to answer questions about Corps jurisdiction over a project site or proposed activity. Although not required, a preapplication meeting with the Corps, EPA, and U.S. Fish and Wildlife Service (and, as appropriate, National Marine Fisheries Service, DFG, other relevant State resource agencies, and local and regional agencies with authority over land use at the project location) is encouraged to allow the attending resource agencies to contribute information that may expedite the permit process. At this meeting, the project proponent may be informed of

Figure 3-3. U.S. Army Corps of Engineers Districts



Source: California Office of Permit Assistance. 1996.
California Permit Handbook. California Trade and
Commerce Agency. Sacramento, CA.

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modification or mitigation features that may be required to be incorporated into the project design as part of the Corps' formal application process.

The permit applicant should submit a completed ENG Form 4345, "Application for Department of the Army Permit", which requests the following information.

- A detailed description of the proposed action/activity, including the purpose, need, intended use (public, private, commercial, other), and type and approximate dimensions of facility, structures, fills, and excavations (lengths, widths, heights, depths). If an activity will involve navigation, commercial, or recreational boating, the type of vessels that will use the facility and the facilities for handling wastes should be described. If an activity will involve the discharge of dredged or fill material, the type of material (e.g., rock, sand, gravel); composition and quantity of material (in cubic yards); and mode of transportation to and location of borrow or disposal sites should be described.
- The names and addresses of property owners whose property adjoins the affected water body or wetland and of other parties that may have a direct interest so that they may be notified of the proposed action and potential effects.
- Complete information on the location of the proposed action, including the tax assessor's description; street address, if applicable; political jurisdictions (nearby community, city, county); and name of water body, wetland, or other recognizable landmarks in sufficient detail to easily locate the site.
- Information on previous project authorizations, completions, or permits, including a list of all related applications submitted to other entities, approvals, certifications, and disapprovals received by federal, State, and local government agencies with jurisdiction.
- Names and addresses of the project applicant and authorized agent (if any) and beginning and end dates of the project. The signatures of applicants or authorized agents (Block 10 on ENG Form 4345) is understood to affirm that the applicant possesses the requisite property interest to undertake the proposed activity.
- The applicant must submit one set of 8½- by 11-inch original drawings or good-quality copies that show the location and character of the proposed activity, including a vicinity map with the name of the waterway, location of the action, political boundaries, roads, graphic scale, and north arrow; a plan view showing tidal waters, existing shorelines, water depths, principal dimensions of any proposed structures, volume and type of fill, and identification of any wetlands (e.g., swamps, bogs, marshes); and an elevational or cross-sectional view of the proposed project.

In addition to the basic permit application, supporting documentation requirements will be determined in consultation with the Corps for each permit action. In the Corps' decision to issue a Standard Individual Permit under Section 404, the Corps must document, in compliance with the requirement of EPA Section 404(b)(1) Guidelines, that the permit is being issued in the absence of practicable alternatives to the proposed discharge that would have less adverse impacts on the aquatic ecosystem. The EPA guidelines direct that, when the proposed activity is not water-

dependent, there is a presumption that an upland less-damaging practicable alternative exists. According to EPA guidelines, the practicability of an alternative is a function of cost and technical and logistical factors, including availability to the project proponent at the time of market entry, in light of overall project purposes. The applicant bears the burden of demonstrating that no practicable alternatives exist that will meet the proposed purpose.

Integral to the process of project selection is conformance to the concept of sequencing. Procedurally, this is best articulated within the project purpose statement. The Section 404(b)(1) Guidelines and the Corps' and EPA's MOA on wetlands mitigation require that projects should avoid or minimize negative effects on wetlands. According to the MOA, the proper sequence of mitigation priority in project design is to:

- first, avoid adverse effects on wetlands;
- second, if avoiding adverse effects is not practicable, minimize effects on wetlands to the extent practicable; and
- third, compensate for those impacts on wetlands that are unavoidable.

If the discharge activities cannot avoid the jurisdictional areas, the project proponent should, according to EPA Section 404(b)(1) Guidelines and the MOA on wetlands mitigation, strive to minimize disturbance to "special aquatic sites" and amount of acreage affected within the jurisdictional boundaries.

The Corps also will be required to comply with NEPA and therefore may require that an environmental analysis accompany the application.

PERMIT APPLICATION FEE

Fees are required for most permits and are due when the permit is issued. If the Corps issues a permit, \$10 will be charged for a permit for a noncommercial activity and \$100 for a commercial or industrial activity. No fees are required for permits to government agencies or letters of permission, or for transferring a permit from one property owner to another.

EVALUATION AND PROCESSING OF PERMIT APPLICATION

A typical processing procedure for a Standard Individual Permit is shown in Figure 3-4. The Corps reviews the completed ENG Form 4345 and supporting information to evaluate the proposed action and to determine the appropriate form of authorization (e.g., Standard Individual Permit or General Permit). The Corps will begin to process the application on receipt of all required information.

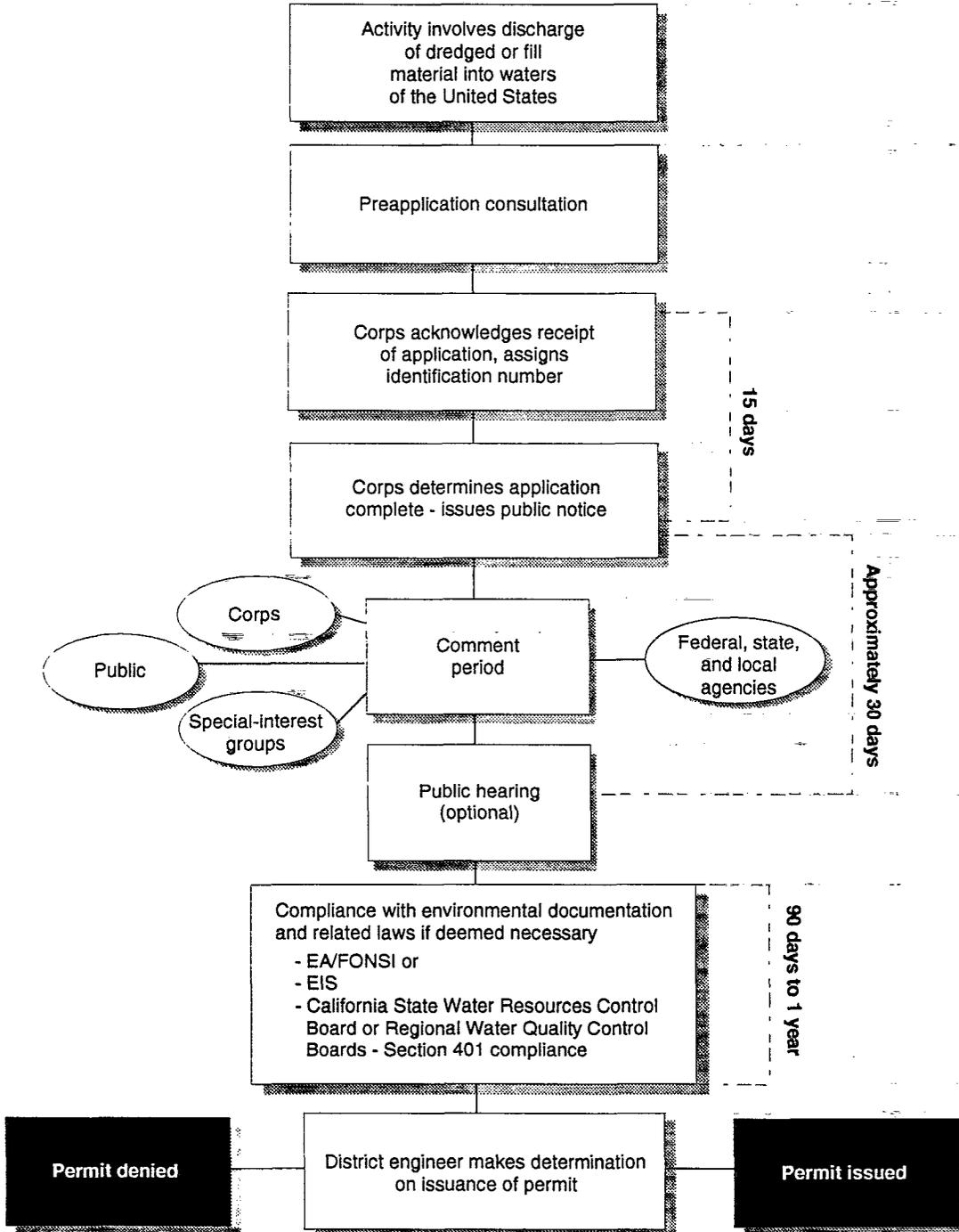
The Corps' decision to grant or deny a permit is based on consideration of the proposed action's intended use and probable impacts on resource protection and conservation, economics, wetlands, fish and wildlife values, flood hazards, navigation, water quality, and the needs and welfare of the people. The following general criteria are considered in the evaluation of each application:

- the relative public and private need for the proposed structures, actions, or work;
- consideration of whether a proposed action is dependent on being located in, or in proximity to, the aquatic environment and whether practicable alternative sites are available (permit applicants must provide sufficient information on the need to locate a proposed action in navigable waters,

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Figure 3-4. U.S. Army Corps of Engineers Standard Individual Permit ENG 4345 Process



marine, estuarine, and other wetlands and must provide data to evaluate the availability of practicable alternative sites);

- where there are unresolved conflicts regarding resource use, the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed action; and
- the extent and permanence of the beneficial and/or detrimental effects that the proposed action may have on public and private uses to which the area is suited.

As stated previously, projects involving the discharge of dredged or fill material into waters of the United States must comply with EPA Section 404(b)(1) Guidelines, which restrict discharges into special aquatic sites when there are less environmentally damaging practicable alternatives (such as discharges in uplands where no significant adverse effects on waters of the United States could occur). Reasonable and practicable mitigation of unavoidable impacts will be required and must be acceptable to concerned agencies. A permit will be granted unless the proposed action is found to be contrary to the public interest or fails to comply with EPA guidelines or other environmental law requirements.

The Corps is required to participate in the NEPA process as a lead or cooperating agency. All permit decisions of the Corps require compliance with federal laws such as ESA, the Fish and Wildlife Coordination Act, Section 401 of the Clean Water Act, and the Coastal Zone Management Act. The California State Water Resources Control Board (SWRCB), through the Regional Water Quality Control Boards (RWQCBs), issues water quality certifications pursuant to Section 401 of the Clean Water Act. (See description of the SWRCB and the

RWQCBs under "State and Local Regulatory Agencies" below.)

After the Corps deems a permit application to be complete, it prepares and circulates (for 30 days) a public notice to inform government agencies, individuals, and special interest groups of proposed project actions. If the Corps receives no objections to a proposed project action and no significant impacts on the human environment are expected, the district engineer may issue a permit within 30 to 90 days. If objections are raised, but concerns are resolved and no significant impacts are expected, a permit decision will most likely be made within 90 to 120 days and, if the Corps is the lead agency for NEPA compliance, will include preparation and processing of an EA and FONSI. However, if the proposed project action could potentially result in significant environmental effects, the Corps may require preparation and processing of an EIS, which may take a year or more, depending on project-specific issues and impacts.

Although the Corps' goal is to reach a decision within 60 days to issue or deny a permit, complex activities, issues, or legal requirements may affect the schedule. According to the Corps, most applications involving public notices are completed within 4 months.

Permit holders must follow the terms and conditions identified in the permit. Violations may result in civil and criminal court action and removal of structures and materials.

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PERMITS ISSUED UNDER SECTION 10 OF THE RIVERS AND HARBORS ACT OF 1899

Proposed actions to construct or modify structures in or affecting navigable waters of the United States require authorization under Section 10 of the Rivers and Harbors Act of 1899. Any canal or artificial waterway proposed to be connected to navigable waters or affecting navigable waters during construction or operation in a manner that alters the course, location, condition, or capacity of these waters typically requires authorization under Section 10. Proposed actions involving tunneling or boring under navigable waters also require authorization under Section 10. Section 10 and Section 404 permit processes and issuance generally occur concurrently.

AUTHORITIES

- U.S. Army Corps of Engineers, Engineering Pamphlet 1145-2-1, Regulatory Program, Applicant Information
- 33 CFR Parts 320 through 330 (regulatory programs of the Corps)
- 33 CFR Parts 323 & 328/40 CFR Part 110, et al. (Clean Water Act, 404 Regulatory Programs)
- 33 CFR Part 325 (Processing of Department of the Army permits)
- 33 CFR 328.3(a) (Defines “navigable water” and other “waters of the United States”)
- 33 CFR 328.3(b) (Defines “wetlands” in the definition of “waters of the United States”)
- 33 CFR Part 330 (Nationwide Permit Program Regulations)

- 33 CFR 330.5(b) (Nationwide Permit conditions)
- 33 CFR 330.6 (Specifies best management/ construction practices to minimize adverse impacts)
- 40 CFR Part 230 (EPA Section 404[b][1] Guidelines for specification of disposal sites for dredged or fill material)
- 33 USC 403 (Rivers and Harbors Act of 1899, including Section 10)
- 33 USC 1344 (Sections 404 and 301, Clean Water Act)
- Letter of Advice to Permit Applicants, Minimum Standards for Acceptance of Preliminary Wetland Delineations, from the Chief of Sacramento District Regulatory Section (October 1994)

U.S. FISH AND WILDLIFE SERVICE**Key Project Features for CALFED**

- Activity proposes to control or modify surface water, requiring FWCA coordination
- Activity has listed species in project area
- Activity has federal agency involvement and may affect a listed species
- Activity may result in take of a listed species

JURISDICTION AND DUTIES

The U.S. Fish and Wildlife Service (USFWS) is responsible for providing consultation and cooperation to ensure that proposed actions are implemented in compliance with the Fish and Wildlife Coordination Act (FWCA) and ESA. Under the FWCA, USFWS reviews federal projects that propose to control or modify surface water and submits recommendations to the appropriate federal agencies. USFWS consults with federal agencies pursuant to Section 7 of ESA about whether an action will jeopardize the continued existence of a listed species. If a major federal action may affect a species listed under the Section 10 of ESA, where there is no federal agency involvement, USFWS also issues permits authorizing incidental take of the species. (See the definition of "take" in the following discussion of Section 10 requirements.) Under NEPA, USFWS reviews projects that may significantly affect fish and wildlife resources.

PERMITS AND CONSULTATION

ESA recognizes the value to the nation of species in danger of or threatened with

extinction. ESA requires federal agencies to conserve these species and their habitats and ranges to the extent practicable. Section 4 of ESA provides a listing process for species considered "endangered" (in danger of becoming extinct) or "threatened" (threatened to become endangered). The Secretary of Commerce, acting through the National Marine Fisheries Service (NMFS) (see discussion later in this chapter), is involved for projects that may affect marine or anadromous fish species listed under ESA. All other species listed under ESA are under USFWS jurisdiction.

Section 7 of ESA requires all federal agencies, in consultation with the Secretaries of the Interior and Commerce (acting through USFWS and NMFS, respectively), to ensure that their actions do not jeopardize the continued existence of species listed as endangered or threatened and protected or result in the destruction or adverse modification of the critical habitat of these species. Section 9 of ESA prohibits take of a listed species. Section 9 compliance is applicable if the proposed action would result in the take of any listed threatened (if not subject to special rule) or endangered fish and wildlife species and such take is not authorized in a biological opinion issued by USFWS. Section 10 of ESA authorizes the conditions for USFWS to issue a permit for incidental take of a listed species when there is no other federal agency involved.

The procedures and steps discussed below are required to achieve compliance with Sections 7, 9, and 10 of ESA.

During informal consultation, the involved federal agency or its representative should request information from USFWS on the existence of any listed species within a proposed project area. Following receipt of this information, if a listed species could be present

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in the project area, the federal agency must prepare a biological assessment to determine whether any species listed or proposed for listing is likely to be affected by a proposed action. The biological assessment evaluates potential direct, indirect, and cumulative effects of the proposed federal action on the listed species that may be present in the project area. The biological assessment is submitted to USFWS for review, and USFWS must state whether it concurs with the findings.

If any listed species or its critical habitat may be adversely affected by a proposed project, the federal agency must request formal Section 7 consultation with the appropriate local Endangered Species Office of USFWS. The formal consultation must conclude within 90 days of submitting the request for consultation to USFWS. During consultation, the biological assessment findings are reviewed and discussions take place to modify the proposed action's features, designs, mitigation measures, and management plans to protect listed species while satisfying project objectives to the extent practicable. Within 135 days of beginning formal consultation, USFWS must prepare a Biological Opinion to determine whether the proposed action would jeopardize the continued existence of listed species or adversely modify their critical habitats. If USFWS is not satisfied that mitigation measures or alternatives are sufficient to protect a species, it may issue a "jeopardy opinion" concluding that a proposed action will jeopardize the continued existence of a species. Incidental take of listed threatened or endangered species that would otherwise be prohibited under Section 9 may be authorized with proposed conditions by USFWS in a Biological Opinion if the action would not jeopardize the continued existence of a listed species.

Section 9 of ESA makes it unlawful for any person to take individuals of a federally listed animal species without specific exemption. As defined by ESA, "take" means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct". "Harm" refers to acts that injure a listed species, including habitat modification. A "person" is "an individual, corporation, partnership, trust, association, or any other private entity; or officer, employee, agent, department, or instrumentality of the federal government, of any State or political subdivision thereof, or of any foreign government". Section 11 of ESA prescribes civil penalties of up to \$10,000 per violation and criminal penalties of up to \$20,000 or imprisonment for up to 1 year, or both, per violation for knowingly violating any provision of ESA.

Those projects with no federal agency involvement and therefore no procedure to receive an incidental take statement in a Section 7 Biological Opinion may be authorized by USFWS for the incidental take, as provided by Section 10 of ESA. USFWS may issue a Section 10(a) permit if, after public comment on the permit application and the related conservation plan, it determines that:

- 1) the taking will be incidental to otherwise legal land use activities;
- 2) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
- 3) the applicant will ensure that adequate funding for the plan and procedures to deal with unforeseen circumstances will be provided;
- 4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

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5) the additional measures required by USFWS, if any, will be met, and USFWS has received assurances that the plan will be implemented.

Statutory requirements that must be met to secure an incidental take permit are described in Section 10(a). Issuance of a Section 10(a) permit is contingent on development of a satisfactory habitat conservation plan for the affected listed species. The plan must specify:

- 1) the impact that will most likely result from the taking;
- 2) what steps the applicant will take to minimize and mitigate such impacts, and funding that will be available to implement such steps;
- 3) what alternative actions to such taking the applicant considered and the reasons that such alternatives are not selected; and
- 4) such other measures that USFWS may require as necessary or appropriate for the purpose of the plan.

All affected property owners or lessees that are a party to an approved habitat conservation plan would be authorized, on the issuance and pursuant to the terms and conditions of the Section 10(a) permit, to take the designated threatened or endangered species incidental to otherwise lawful activities. USFWS can revoke a permit issued pursuant to Section 10(a) if it finds that the permittee is not complying with the terms and conditions of the permit.

Candidate species or species proposed for listing are not afforded legal protection under Section 9, and incidental take permit applicants are not required to consider them in habitat conservation plans prepared pursuant to Section 10(a). However, applicants for a Section 10(a) permit will benefit from such consideration if any of the candidates addressed in a habitat

conservation plan are subsequently listed during the life of the permit.

WHERE TO APPLY

Applicants should contact the following USFWS Endangered Species Division office:

U.S. Fish and Wildlife Service
Endangered Species Division
2800 Cottage Way, Room 1803
Sacramento, CA 95825-1846
916/979-2725

AUTHORITIES

- 50 CFR 402-453 (USFWS Implementing Regulations)
- 16 USC 661-666c (Fish and Wildlife Coordination Act of 1934, as amended)
- 16 USC 1531-1543 (Endangered Species Act of 1973, as amended)

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NATIONAL MARINE FISHERIES SERVICE

Key Project Features for CALFED

- Activity proposes to control or modify surface water, requiring FWCA coordination
- Activity has listed marine and anadromous fish in project area
- Activity has federal agency involvement and may affect listed marine and anadromous fish
- Activity may result in take of listed marine and anadromous fish

JURISDICTION AND DUTIES

National Marine Fisheries Service (NMFS) is responsible for providing consultation and cooperation to ensure that proposed actions are implemented in compliance with FWCA and ESA. Under the FWCA, NMFS reviews federal projects that propose to control or modify surface water and submits recommendations to the appropriate federal agencies. NMFS consults with federal agencies pursuant to Section 7 of ESA about whether an action will jeopardize the continued existence of marine and anadromous fish. If a major federal action may affect a species listed under ESA, where there is no federal agency involvement, NMFS also issues permits authorizing incidental take of the species. (See the definition of "take" in the preceding discussion of Section 10 requirements.) Under NEPA, NMFS reviews projects that may significantly affect marine and anadromous fish.

PERMITS AND CONSULTATION

The preceding discussion of the responsibilities of USFWS under FWCA and ESA applies to NMFS mutually and independently.

WHERE TO APPLY

Applicants should contact the following NMFS office:

National Marine Fisheries Service
777 Sonoma Ave., Room 325
Santa Rosa, CA 95404
707/578-7513
707/575-6050

AUTHORITIES

- 50 CFR 402-453 (NMFS implementing regulations)
- 16 USC 661-666c (Fish and Wildlife Coordination Act of 1934, as amended)
- 16 USC 1531-1543 (Endangered Species Act of 1973, as amended)

NATURAL RESOURCES CONSERVATION SERVICE**Key Project Features for CALFED**

- Activity modifies or improves facilities designed, built, or managed by NRCS
- Activity occurs on waters of the United States, including wetlands, located on agricultural land
- Activity is regulated under Swampbuster, FSA, FACTA, or Farm Bill of 1996

JURISDICTION AND DUTIES

The Natural Resources Conservation Service (NRCS) is responsible for certifying and approving modifications or improvements to facilities designed, built, or managed by NRCS (e.g., flood control levees, reservoirs) and for verifying wetlands delineations in compliance with Section 404 of the Clean Water Act on agricultural lands (e.g., cultivated cropland and pastureland). Because the recently enacted Farm Bill of 1996 expanded the definition of agricultural lands to include rangeland, native pastureland, and other land used to support livestock production and tree farms, NRCS is in the process of developing and promulgating new guidelines for implementation of new Section 404 delineation requirements.

NRCS regulates actions affecting Section 404 of the Clean Water Act jurisdictional waters of the United States, including wetlands, on agricultural lands under the Wetland Conservation (also known as "Swampbuster") provision of the 1985 Food Security Act (FSA); 1990 Food, Agriculture, Conservation, and Trade Act (FACTA); and the Farm Bill of 1996.

The Swampbuster provision requires all agricultural producers to protect wetlands on the farms they own or operate if they want to be eligible for U.S. Department of Agriculture farm program benefits. NRCS defines agricultural land as land intensively used and managed for the production of food or fiber to the extent that natural vegetation has been removed and cannot be used in making a wetland determination (i.e., as to whether the area supports applicable hydrophytic vegetation). Areas that meet this definition may include cropland, hayland, pastureland, rangelands, orchards, vineyards, and areas that support wetland crops (e.g., rice, taro, watercress, cranberries).

CALFED actions that would potentially affect agricultural lands, such as temporary use, easements, or conversions, could be subject to compliance with Section 404 and/or Swampbuster provisions.

PERMITS AND CONSULTATION

Any public agency or private entity (e.g., persons, corporations) proposing implementation of CALFED actions on or requiring access across lands under NRCS jurisdiction, even if such lands are privately owned, must consult with or obtain authorization from NRCS for proposed actions, including construction of easements and rights-of-way (ROWs). Persons or entities who need to identify and delineate wetlands on farmlands also should contact NRCS. The preceding discussion for the Corps addresses the requirements of Section 404 of the Clean Water Act. Until new regulations and procedures are promulgated by NRCS, project proponents and permit applicants should contact the local Corps district and NRCS office for determination of required procedures for Section 404 permits.

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WHERE TO APPLY FOR PERMITS

NRCS maintains several dozen local field offices throughout the State that may be contacted for local site-specific projects. Contact the main NRCS office in Davis, California for a list of local field office telephone numbers.

National Resources Conservation Service
Main State Office
2121-C Second Street, Suite 102
Davis, CA 95616-5475
916/757-8200

- USDA publication, 1996 Farm Bill Conservation Provisions Summary, April 1996
- USDA Program Aid 1546, Wetlands and Agriculture: Section 404 of the Clean Water Act and Swampbuster in the Food Security Act

HOW TO APPLY FOR PERMITS

Contact the main NRCS office in Davis, California or local field offices for direction on permit requirements for specific projects.

PERMIT APPLICATION FEE

No application fees are required.

AUTHORITIES

- Food Security Act of 1985 (Swampbuster provision)
- Food, Agriculture, Conservation, and Trade Act (FACTA) of 1990
- 33 CFR Parts 323 and 328/40 CFR Part 110, et al. (Clean Water Act, 404 Regulatory Programs)
- 33 CFR Part 325 (Processing of Department of the Army permits)
- 33 USC 1344 (Sections 301 and 404, Clean Water Act)

U.S. BUREAU OF RECLAMATION**Key Project Features for CALFED**

- Activity occurs on or requires access across lands administered by Reclamation
- Activity affects operation and maintenance of Reclamation facilities

JURISDICTION AND DUTIES

As one of five principal federal CALFED agencies and as part of its responsibilities to manage Central Valley Project facilities, the U.S. Bureau of Reclamation (Reclamation) will most likely play a key role in implementing the individual components of the preferred alternative in Phase III. All public agencies and private entities proposing implementation of specific CALFED actions on or requiring access across lands administered by Reclamation must consult with and obtain authorization from Reclamation for proposed actions, including construction of easements and ROWs. Because Reclamation is responsible for operating and maintaining existing facilities that may be subject to CALFED actions, it will frequently be involved as a lead or cooperating agency in implementing proposed actions and related environmental documentation in compliance with NEPA and related laws and regulations.

PERMITS AND CONSULTATION

For implementation of Phase III of CALFED, Reclamation may be responsible for:

- planning, designing, and coordinating proposed actions;

- regulating or permitting water resources development projects in estuarine, coastal, and other environmentally sensitive areas under its jurisdiction;
- evaluating the effects of actions on federal water storage, irrigation, delivery, and distribution projects;
- constructing, operating, and maintaining works and structures for storage, diversion, and development of waters, including flood control, navigation, and river flow regulation and control;
- protecting watershed and soil conservation, controlling erosion on public lands, managing groundwater; and
- administering the sale of farm units on federal irrigation projects, surface coal mining and reclamation operations, and excess lands.

When Reclamation is involved in implementing specific CALFED actions as a lead agency or approving or permitting actions for facilities under its jurisdiction, it will determine what appropriate NEPA process and documentation will be required. Reclamation publishes and updates a National Environmental Policy Act Handbook that establishes policy and provides guidance to its personnel on NEPA and the Council on Environmental Quality's (CEQ's) regulations for implementing a sound and constructive NEPA compliance program. Reclamation's National Environmental Policy Act Handbook assists project managers in selecting and scoping the appropriate NEPA process, such as applying for Categorical Exclusions.

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AUTHORITIES

- National Environmental Policy Act Handbook, U.S. Department of the Interior, Bureau of Reclamation, 1990
- 43 USC 391 et seq. (lease of project lands for commercial recreation developments)
- 43 USC 869 (sale or lease of project lands for recreation, water management, other purposes)

U.S. COAST GUARD

Key Project Features for CALFED

- Activity occurs in navigable waters of the United States
- Activity affects marine facilities, bridges, or vessel transportation
- Activity proposes to construct or modify a bridge or causeway

JURISDICTION AND DUTIES

The U.S. Coast Guard (USCG) regulates and reviews project plans and environmental documents for certain project activities that could affect marine facilities, bridges, and vessel transportation in navigable waters of the United States. Additionally, federal law prohibits construction or modification of any bridge or causeway across the navigable waters of the United States unless authorized by USCG. USCG's permit jurisdiction covers activities involving the construction, operation, and maintenance of bridges and causeways and alteration of bridges. The agency is authorized to issue Bridge Permits by Section 9 of the Rivers and Harbors Act of 1899 and the General Bridge Act of 1946. The purpose of these acts is to preserve the public right of navigation and prevent interference with interstate and foreign commerce. A memorandum of agreement between the Corps and USCG (signed in 1973) provides for mutual coordination and consultation on proposed projects and activities in or affecting navigable waters that overlap with the Corps' jurisdiction under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act (see also Nationwide Permit 15). USCG must ensure that effects on

the environment are considered in each permit decision and must consult with federal agencies having jurisdiction over environmental or navigational impacts resulting from a proposed action.

PERMITS AND CONSULTATION

USCG normally indicates its interest in a project during the NEPA/CEQA scoping process and provides review and comment on draft and final NEPA/CEQA documents regarding a proposed action's effect on marine facilities, bridges, and vessel transportation in navigable waters of the United States. It issues permits for actions affecting bridges and causeways and participates in project planning, design, construction, and operations in consultation with project proponents. USCG published the Bridge Permit Application Guide in September 1994 to assist agencies and individuals with the USCG permit application process and to list specific requirements. A typical procedure for acquiring a USCG Bridge Permit is shown in Figure 3-5.

Project proponents considering project-specific CALFED actions affecting navigable waters must submit the project plans and environmental documentation to USCG. USCG should be notified during the NEPA, CEQA, and permit processes to ensure that USCG requirements are met. If project plans call for construction or modification of a bridge or causeway across a navigable waterway of the United States, the project proponent must submit an application for a USCG Bridge Permit. Failure to obtain a Bridge Permit before construction work begins is a federal offense punishable by civil and criminal penalties.

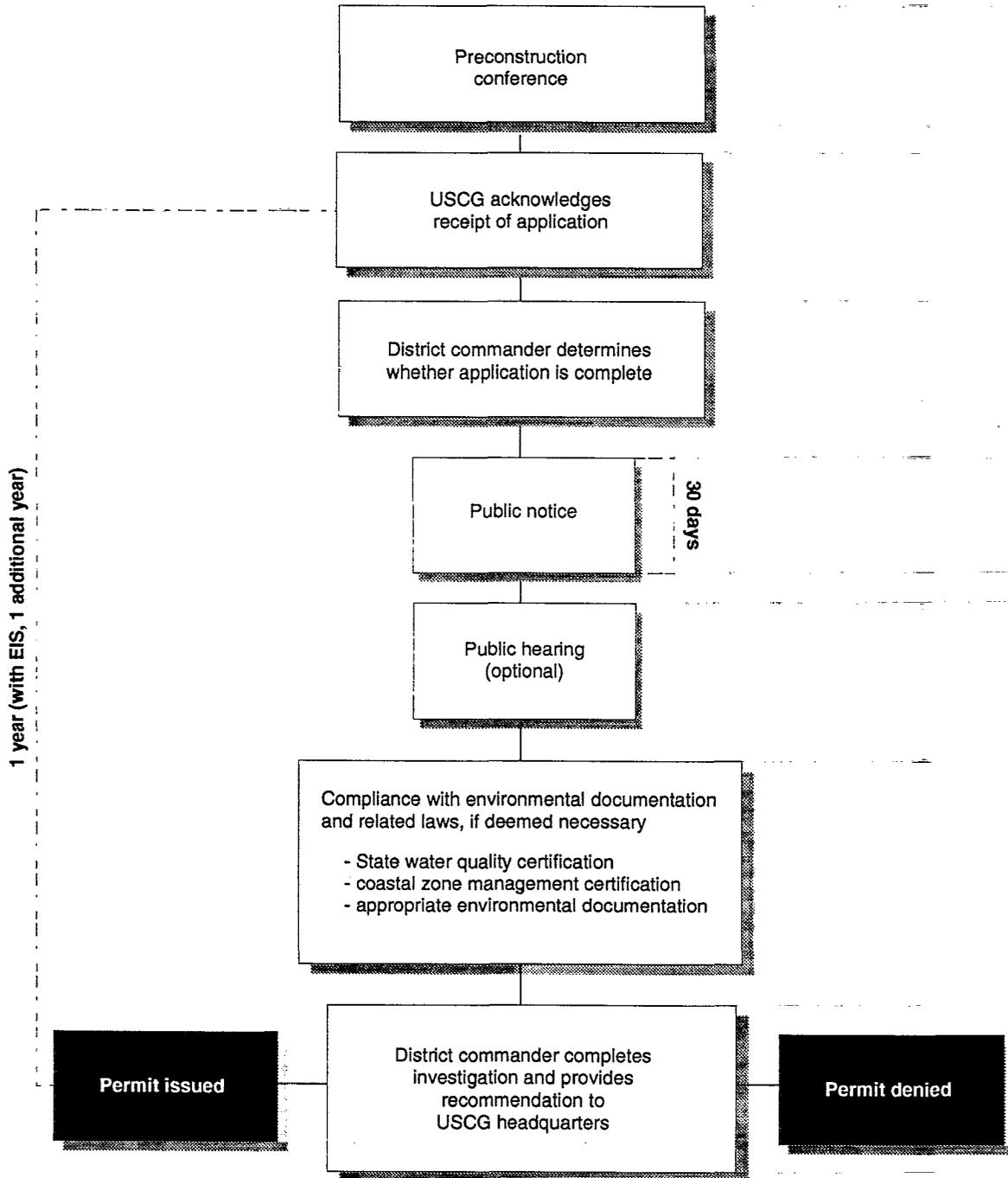
WHERE TO APPLY FOR A PERMIT

Project plans and environmental documents for USCG review for effects on marine facilities,

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Figure 3-5. U.S. Coast Guard (USCG) Bridge Permit Process



bridges, and vessel transportation in navigable waters of the United States should be submitted to the address below. Questions about specific projects for Bridge Permits should be directed to the bridge administration staff of the USCG district.

Applicants considering construction of a new bridge or modification to an existing bridge should request a Bridge Permit Application Guide.

Commander (pow-2)
Eleventh Coast Guard District Bridge Section
(oan/ob)
Building 50-6
Coast Guard Island
Alameda, CA 94501-5100
510/437-3514

HOW TO APPLY FOR A PERMIT

Application for a Bridge Permit may be in letter format. It should disclose any other related permits already received and include the following information (see USCG's permit guide for a complete list of permit application requirements):

- Identify the location, description, and purpose of the proposed project action, including the name of the waterway being affected; how many miles above the mouth of the waterway the bridge or facility is to be located; and what cities, towns, counties are nearby.
- Identify the primary legislative and construction authority for the proposed project action and affected bridge or facility (e.g., permit, charter, statement of ownership); if the proponent does not own the bridge or facility being proposed for modification or replacement, include a

signed statement from the bridge owner authorizing the modification or replacement work.

- Identify proposed horizontal and vertical clearances in the navigation span(s) measured at mean high water, 2% flow line, depth and width of the waterway, or other appropriate data.
- State whether the proposed project is believed to have a significant effect on the environment and include required NEPA documentation.
- Identify all other federal, State, and local authorizations required and the status of approval (e.g., water quality certification, coastal zone management consistency certification). To expedite processing, obtain these other approvals before applying for the USCG Bridge Permit.
- Identify in cubic yards the general composition and amount of fill, if any is required, above and below mean high water or ordinary high water. (Corps Section 404 permit requirements are discussed above.)

As an agency under the U.S. Department of Transportation, USCG may be required to prepare an evaluation of the proposed action's effect on parks and other recreational resources pursuant to Section 4(f) of the Department of Transportation Act. (Refer to the discussion for the U.S. Department of Transportation later in this chapter.)

PERMIT APPLICATION FEE

No application fees are required.

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EVALUATION AND PROCESSING OF PERMIT APPLICATION

USCG personnel are available on request to attend a preconstruction conference to discuss a proposed project and permit application, explain procedures, and answer questions about requirements. Requests for Bridge Permits are investigated by the responsible district bridge administration staff and district commanders issue final approvals or denials based on the following criteria:

- The bridge is under USCG jurisdiction.
- The application includes all necessary information.
- The proposed bridge construction, modification, or removal provides for the reasonable needs of safe navigation.
- Potential impacts of the proposed project on affected navigation and the human environment have been identified; a public notice requesting public comment has been issued to all known interested parties and persons for a 30-day public comment period; responses to this notice have been reviewed and evaluated; and a public hearing, if requested, has been held when there are substantial issues related to potential impacts of the proposed project to afford interested parties full opportunity to express their views and to develop pertinent data for evaluating the permit application.
- After the district commander's investigation, the permit request is forwarded to USCG headquarters with a case record, which includes State Water Quality (see "California State Water Resources Control Board" later in this chapter) and Coastal Zone Management

Certifications (see "San Francisco Bay Conservation and Development Commission" later in this chapter), appropriate environmental documentation, findings of fact, and the district commander's recommendation for issuance or denial of the permit.

AUTHORITIES

- 33 USC 403 (Rivers and Harbors Act of 1899, Section 9)
- 33 USC 491 et seq.; 511 et seq.; and 535 (Authorities for issuing bridge permits)

BUREAU OF LAND MANAGEMENT**Key Project Features for CALFED**

- Activity occurs on land managed by BLM

JURISDICTION AND DUTIES

The Bureau of Land Management (BLM) develops and maintains federal land use plans for public lands in accordance with the Federal Land Policy and Management Act. The act requires that the agency review and authorize applications for use permits, including the provision for adequate notice for public comment and participation in the formulation of plans for proposed actions.

PERMITS AND CONSULTATION

All public agencies and private entities proposing implementation of specific CALFED actions on or requiring access across lands administered by BLM must consult with and obtain authorization from BLM for proposed actions, including construction of easements and rights-of-way (ROWs). The project proponent must submit an application for and obtain use permits or authorization permits from BLM before an action may be undertaken. Use permits are issued for proposed actions under BLM programs for minerals, forestry, land, and grazing on lands administered by BLM.

Public lands managed by BLM are sold through a competitive bid process if they are no longer required for a specific purpose or if their sale will serve public objectives. Preference for such sales may be given to interested federal agencies, State and local governments, and adjoining landowners. When land is proposed for sale or transfer, BLM requires conformance

with its procedures for withdrawal of such lands from their designated public land management responsibilities, including preparation and review of appropriate environmental documentation in accordance with NEPA and related regulations. When acquiring land, BLM may use the power of eminent domain to secure access. Persons, interest groups, or public agencies proposing specific CALFED actions on lands managed by BLM will need a permit from BLM under either Land Program Grants and Permits or Range Program Leases.

Uses and projects requiring ROW grants or temporary use permits include access roads, utility lines, communication sites, or any other uses that involve temporary or permanent improvements on BLM lands. Any activity that involves physical disturbance to BLM land or vegetation (i.e., brush removal or test-hole drilling) requires a permit. Other long-term occupancy or use of BLM land may also be authorized by a lease. Grazing of livestock on BLM land requires a grazing lease.

WHERE TO APPLY FOR A PERMIT

Applications should be submitted to the main office at:

U.S. Department of the Interior
Bureau of Land Management
California State Office
2800 Cottage Way, Room E-2807
Sacramento, CA 95825
916/979-2800
Fax: 916/979-2807

or to district/resource area offices at:

Bakersfield District
3801 Pegasus Drive
Bakersfield, CA 93308
805/391-6000
Fax: 805/391-6040

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Folsom Resource Area
63 Natomas Street
Folsom, CA 95630
916/985-4474
Fax: 916/985-3259

California Desert District
6221 Box Spring Boulevard
Riverside, CA 92507
909/697-5200
Fax: 909/697-5299

Susanville District
2950 Riverside Drive
Susanville, CA 96130
916/257-5381
Fax: 916/257-4831

Clear Lake Resource Area
2550 North State Street
Ukiah, CA 95482
707/468-4000
Fax: 707/468-4027

Arcata Resource Area
1695 Heindon Road
Arcata, CA 95521
707/825-2300
Fax: 707/825-2301

Redding Resource Area
355 Hemsted Drive
Redding, CA 96002
916/224-2100
Fax: 916/224-2172

AUTHORITIES

- 43 CFR, entire volume
 - Parts 2200-2270 (exchange of federal lands for other property)

- Parts 2800-2900 (easements/permits for ROWs)
- Part 2912 (sales/leases of federal land to state/local agencies/nonprofit groups for recreation and other purposes)
- Part 3100 (use permits for onshore oil and gas and seismic prospecting)
- Part 3200 (use permits for geothermal resource areas)
- Parts 3400 and 3500 (use permits for leasable minerals)
- Part 3600 (use permits for salable minerals)
- Parts 3802 and 3809 and 30 CFR
- Part 228 (use permits for surface-disturbing activities)

BUREAU OF INDIAN AFFAIRS**Key Project Features for CALFED**

- Activity occurs on Native American tribal lands
- Activity affects Indian Trust Assets

JURISDICTION AND DUTIES

The Bureau of Indian Affairs (BIA) manages land use of Native American tribal lands in accordance with federal and state environmental laws and regulations. BIA also should be consulted for federal activities that could affect Indian Trust Assets.

PERMITS AND CONSULTATION**NATIVE AMERICAN TRIBAL LAND ACCESS**

Any public agencies and private entities proposing implementation of CALFED actions on or requiring access across lands administered by BIA must consult with and obtain authorization from BIA and local Native American tribes for proposed actions, including easements and ROWs. BIA exercises its full authority over lands and waters on tribal lands and gives full consideration to the potential effects of proposed actions on ecological, cultural, historic, economic, and aesthetic values. BIA and local Native American tribes also regularly participate in evaluating the potential effects of proposed projects and permits on Native American religious or cultural sites and landmarks in accordance with Section 106 of the National Historic Preservation Act, Section 4(f) of the Department of Transportation Act, and other applicable

federal and state statutes to preserve important Native American resources, rights, and values.

INDIAN TRUST ASSETS

All federal agencies have a responsibility to protect Indian Trust Assets (ITAs). ITAs are legal interests in assets held in trust by the federal government for Native American tribes or individuals. Assets may be owned property, physical assets, intangible property rights, a lease, or the right to use something. ITAs may be located both on and off Indian reservations and typically include lands, minerals, water rights, hunting and fishing rights, natural resources, money, and claims. ITAs do not include properties in which a tribe or individual has no legal interest, such as certain off-reservation sacred lands. ITAs cannot be sold, leased, or alienated or otherwise have their value reduced without approval from the United States through the BIA.

Although ITAs are sometimes addressed in the NEPA compliance process, which is triggered by federal actions, it is also necessary to deal with ITAs that could be affected by operational activities or by completed projects that do not trigger NEPA compliance. The United States has a trust responsibility to protect trust assets and rights and to take reasonable actions to protect ITAs. ITAs that could be adversely affected should be identified by the federal agency. It is important to consider potential effects on ITAs related to hunting, fishing, and water rights, even if the proposed action is not on a reservation. To identify ITAs, the following entities should be consulted: potentially affected Native American tribes or individuals, the BIA, the Solicitor's Office of the Department of the Interior, the Native American Affairs Office, and the Native American Heritage Commission. In most cases, the tribal government should be the primary

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point of contact, but the BIA should always be contacted. Additionally, a public involvement program, including consultation with interested affected individuals, organizations, agencies, and tribal governments, may be beneficial.

The Secretary of the Interior, acting through the BIA, must approve any sale, lease, impacts by right-of-way acquisition, or other effects on ITAs. Disagreements concerning impacts on ITAs are resolved using the same channels of appeal open to other groups and individuals that disagree with conclusions reached by an agency during implementation of the NEPA process.

When adverse impacts on an ITA cannot be avoided, mitigation or compensation measures should be identified so that no net loss is incurred by the Native American beneficial owners of the asset. Agreements with Native American beneficial owners concerning mitigation or compensation for adverse impacts on ITAs may require BIA or congressional approval.

WHERE TO APPLY

Inquiries should be directed to the following address:

Bureau of Indian Affairs
Sacramento Area Office
2800 Cottage Way
Sacramento, CA 95825
916/979-4691

AUTHORITIES

- 25 CFR Part 169 (ROWs over Native American lands)
 - 25 CFR Part 173 (concessions and leases on lands withdrawn or acquired for Native American irrigation projects)
 - 25 CFR Parts 211-215 and 226-227 (mining leases on Native American lands)
 - 43 CFR Part 7 (concurrence for issuance and supervision of antiquity permits on Native American lands)
 - 42 USC 1995 (protection of access to sacred sites, use and possession of sacred objects)
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- 25 CFR Parts 152 and 159-160 (sale of Native American land)
 - 25 CFR Part 162 (approval of leases and permits on Native American lands)

NATIONAL PARK SERVICE**Key Project Features for CALFED**

- Activity occurs on federal public land managed by NPS
- Activity affects river within the National Wild and Scenic Rivers System

JURISDICTION AND DUTIES

The National Park Service (NPS) maintains and regulates activities on certain federal public lands in accordance with a variety of laws including, but not limited to, the Federal Land Policy and Management Act, National Wild and Scenic Rivers Act, Land and Water Conservation Act of 1964, and Abandoned Shipwreck Act of 1987.

As addressed for the U.S. Forest Service (USFS), the National Wild and Scenic Rivers System is administered jointly by NPS and USFS and proposed actions on specific streams in the system are subject as appropriate to consultation, review of plans and environmental impact assessments, and approval by either agency.

NPS also assists states in preparing and maintaining Statewide Comprehensive Outdoor Recreation Plans under the Land and Water Conservation Act to ensure that recreation development and plans at project-specific sites are consistent with public needs, as identified in such comprehensive plans.

The listing of federal, state, and local historic properties on the National Register of Historic Places is maintained by NPS consistent with the National Historic Preservation Act and related

law (see "State Historic Preservation Officer" later in this chapter).

PERMITS AND CONSULTATION

All public agencies and private entities proposing implementation of specific CALFED actions on or requiring access across lands administered by NPS must consult with and obtain authorization from NPS for proposed actions, including establishment of easements and ROWs. Any person, interest group, or public agency proposing specific CALFED actions on lands managed by NPS, including actions affecting rivers in the National Wild and Scenic Rivers System, must contact NPS at 600 Harrison Street, Suite 600, San Francisco, CA 94107, 415/744-3876.

AUTHORITIES

- 36 CFR Parts 9 and 14 (permits, leases, easements, ROWs)
- 36 CFR Parts 60 and 63 (eligibility of properties for listing on the National Register of Historic Places)
- 36 CFR Part 62 (identification and listing on National Registry of Natural Landmarks)
- 36 CFR 297 and 43 CFR 8350
- 43 CFR, entire volume
- 43 CFR Part 7 (permits and procedures for recovery and preservation of archaeological resources)
- PL 90-542; PL 88-578, as amended
- PL 100-298
- 16 USC 1271-1287 (consultation regarding the use and effect on rivers in the National Wild and Scenic Rivers System)

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U.S. FOREST SERVICE

Key Project Features for CALFED

- Activity occurs on national forest land
- Activity affects river within the National Wild and Scenic Rivers System
- Activity is considered timber harvesting, mining, or grazing

JURISDICTION AND DUTIES

The U.S. Forest Service (USFS) regulates all federal land under the national forest system. The National Forest Management Act imposes specific requirements and limitations on activities affecting land within the national forest system.

The Wild and Scenic Rivers Act established the National Wild and Scenic Rivers System, administered jointly by USFS and NPS, to protect the environmental values of free-flowing streams from degradation resulting from effects of activities, including those associated with water resource projects. Discharges into streams, impoundments, diversions, channel alterations, and other measures can alter the stream dimensions, discharge, and velocity and thereby modify the free-flowing character of a stream, resulting in the loss or diminution of its environmental values. The power of federal agencies to condemn land for protection of eligible rivers is limited if the land is zoned by a local jurisdiction and the Wild and Scenic Rivers Act cannot affect any existing private rights or contracts without consent of the involved private party. Under the act, rivers can be designated for protection by the U.S. Congress or by a state legislative body.

Once a river is designated, the Department of the Interior develops a comprehensive management plan for protecting the river and its environs. Under the Federal Powers Act, federal agencies are prohibited from licensing any water project on or directly affecting a designated component of the National Wild and Scenic Rivers System and their authority to license or aid development on potential additions to designated areas is limited. Proposed actions on streams in the National Wild and Scenic Rivers System are subject to consultation, review of plans and impact assessments, and approval by USFS and NPS.

PERMITS AND CONSULTATION

All public agencies and private entities proposing implementation of specific CALFED actions on or requiring access across lands administered by USFS must consult with and obtain authorization from USFS for proposed actions, including use of easements and ROWs. Proposed actions will require approval of one or more use permits issued by USFS before an action is undertaken. Timber harvesting, mining, and grazing require Specific Use Permits. All other activities require Special Use Permits subject to USFS rules and regulations. Coordination with USFS is required to ensure that proposed actions, alternative plans, and permit applications are consistent with USFS purposes, programs, and forest management plans and practices. Project proponents must cooperate with USFS in developing the proposed action and alternative plans and follow required procedures for conducting environmental studies and implementing the NEPA process and documentation.

SPECIFIC USE PERMITS

Specific Use Permits are required for grazing or livestock use on national forest system lands

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and other lands under USFS control. Specific Use Permits for sale and disposal of timber and other forest products on these lands are granted if the uses are consistent with applicable land and resource management plans and environmental quality standards. Measures must also be provided for fire protection and suppression, minimizing soil erosion, ensuring favorable water flow and quality, protecting residual timber, and regenerating timber.

Proponents for project-specific actions must submit requests for permits and supporting documentation (e.g., Notice of Intent, Operating Plan) to district rangers at local USFS district offices with jurisdiction in the project area. The documentation should sufficiently describe the proposed activity; nature and duration of proposed operations; extent of effects; any significant disturbance of environmental resources; and measures to meet requirements regarding air quality, water quality, scenic values, solid wastes, fisheries and wildlife habitat, roads, and site reclamation.

SPECIAL USE PERMITS

Special Use Permits for land use and recreation on national forest system lands are issued to private parties, groups, other public agencies, public and private institutions, and private business that provide accommodations and services consistent with approved forest management plans. The kinds of activities requiring permits generally fall into one of three categories: 1) private uses, such as recreational residences, but excluding noncommercial use or occupancy for camping, picnicking, fishing, hunting, horseback riding, boating, or similar activity; 2) semipublic, noncommercial services such as fishing tournaments and other group events; and 3) commercial services provided for the benefit of the general public (i.e., ski areas).

WILD AND SCENIC RIVERS ACT CONSULTATION

Proponents of any projects that may affect rivers within the National Wild and Scenic Rivers System should contact regional offices of USFS and NPS.

WHERE TO APPLY FOR A PERMIT

The applicant should direct inquiries or permit applications to the Forest Supervisor at the appropriate USFS office. Following is a select list of offices in or near the CALFED area:

El Dorado National Forest
100 Forni Road
Placerville, CA 95667
916/622-5061

Klamath National Forest
1312 Fairlane Road
Yreka, CA 96097
916/842-6131

Lassen National Forest
55 South Sacramento Street
Susanville, CA 96130
916/257-2151

Lake Tahoe Basin Unit
870 Emerald Bay Road, #1
South Lake Tahoe, CA 96150
916/573-2600

Los Padres National Forest
6144 Calle Real
Goleta, CA 93117
805/683-6711

Mendocino National Forest
420 East Laurel Street
Willows, CA 95988
916/934-3316

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Modoc National Forest
441 North Main Street
Alturas, CA 96101
916/233-5811

Plumas National Forest
159 Lawrence Street
Quincy, CA 95971
916/283-2050

Sequoia National Forest
900 West Grand Avenue
Porterville, CA 93257-2035
209/784-1500

Shasta-Trinity National Forest
2400 Washington Avenue
Redding, CA 96001
916/246-5222

Sierra National Forest
1600 Tollhouse Road
Clovis, CA 93612
902/487-5155

Six Rivers National Forest
500 Fifth Street
Eureka, CA 95501
707/442-1721

Stanislaus National Forest
19777 Greenley Road
Sonora, CA 95370
209/532-3671

Tahoe National Forest
Coyote Street
Nevada City, CA 95959-6003
916/265-4531

AUTHORITIES

- 36 CFR Part 212.10 (easements and ROWs on USFS and other lands)
- 36 CFR Part 219 (national forest system management planning)
- 36 CFR Parts 222,223, and 228 (use permits)
- 36 CFR Parts 251.50-251.64, exclusive (Special Use Permits)
- 36 CFR Parts 251 and 261 (Special Use Permits, archaeological permits, easements, leases)
- 16 USC 1271-1287 (Wild and Scenic Rivers Act, as amended by 36 CFR Parts 297 and 8350)
- 16 USC 471 a-544p (National Forest Management Act)

U.S. DEPARTMENT OF TRANSPORTATION**Key Project Features for CALFED**

- Activity falls within federal highway right of way
- Activity affects other DOT agency facility or jurisdiction

JURISDICTION AND DUTIES

Because of its multiple responsibilities, the U.S. Department of Transportation (DOT) and its agencies (e.g., Federal Highway Administration [FHWA], Federal Railroad Administration, Federal Aviation Administration, Maritime Administration, USCG) regulate a variety of types of transportation facilities and corridors. Typically, the California Department of Transportation implements the federal compliance requirements for FHWA. The appropriate DOT agency may participate in the NEPA or CEQA process, including preparation of required documentation to ensure that proposed actions meet project objectives in compliance with applicable DOT procedures, guidance, and environmental laws and regulations.

PERMITS AND CONSULTATION

FHWA or other DOT agencies also may be involved in CALFED activities when federal funds are used for relocation, realignment, modification, replacement, or removal of DOT facilities (e.g., buildings; highways; bridges; railways; airfields; other publicly owned lands, parks, and recreation areas) or as participants in federal permit actions. In such instances, federally aided highway projects (or other DOT projects) are subject to Section 4(f) requirements of the Department of Transportation Act and the Federal-Aid Highway Act of 1968.

Section 4(f) requires DOT agencies to evaluate the effects of proposed actions on publicly owned parks; recreation areas; wildlife and waterfowl refuges; and historic sites of federal, state, or local significance in order to preserve their natural beauty and values. Federally aided highway projects (or other DOT projects) that propose to use or affect publicly owned parks, recreation areas, and wildlife and waterfowl refuges, or historic sites are subject to Section 4(f) requirements of the Department of Transportation Act. When a proposed project would affect land protected under Section 4(f), an evaluation must be prepared to ensure the land's natural beauty and values are preserved. Section 4(f) prohibits use unless there are no feasible and prudent alternatives and all possible planning to minimize harm has occurred. Appropriate analyses and coordination must be undertaken to demonstrate that these conditions are met.

Section 4(f) evaluations may be included in NEPA or CEQA documentation as a separate section or be processed independently. The level of compliance necessary under Section 4(f) will be determined on a case-by-case basis for specific CALFED projects in consultation with the State Historic Preservation Officer, California Department of Transportation, and FHWA or other responsible DOT agency.

As an alternative to individual evaluations, FHWA has adopted four nationwide programmatic Section 4(f) evaluations that may be applicable to specific CALFED activities and that reduce the amount of interagency coordination required. The four nationwide programmatic Section 4(f) evaluations cover projects that affect:

- historic bridges;

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- minor amounts of land from public parks, recreation areas, and wildlife and waterfowl refuges;
- minor amounts of lands from historic sites; and
- bikeways.

Specific criteria and conditions of programmatic nationwide Section 4(f) evaluations relate to specific project types, impacts, and mitigation measures and implementation procedures to minimize harm to Section 4(f) property.

HOW TO APPLY

Typically, the California Department of Transportation implements the federal compliance requirements for FHWA. See "California Department of Transportation" section for application information.

AUTHORITIES

- 16 USC 470 (National Historic Preservation Act of 1966, as amended; especially Section 106)
- 16 USC 469 (Archaeological and Historic Preservation Act of 1974, as amended)
- 16 USC 470 (Archaeological Resources Protection Act of 1979, as amended)
- 49 USC 303, Section 4(f) (Department of Transportation Act of 1966, as amended)
- Federal-Aid Highway Act of 1968

STATE AND LOCAL REGULATORY AGENCIES

State and local agencies that may have jurisdiction over some aspect of Phase III implementation of individual components of the preferred alternative for CALFED have established guidelines and procedures for obtaining approvals or permits and meeting legal requirements. These requirements are identified and addressed below for each agency.

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD AND REGIONAL WATER QUALITY CONTROL BOARDS

Key Project Features for CALFED

- Activity would result in a discharge into waters of the United States
- Activity involves a federal agency requiring Section 401 certification
- Activity would result in a discharge of waste affecting groundwater
- Activity would result in a discharge of waste affecting surface water
- Activity would require appropriation of water for use on nonriparian land
- Activity would require diversion of water under riparian claim

JURISDICTION AND DUTIES

The California State Water Resources Control Board (SWRCB) was established in 1967 to administer the State's water quality and water

rights programs. SWRCB, together with nine Regional Water Quality Control Boards (RWQCBs) throughout the State, also enforces water pollution control standards to protect California's rivers, lakes, and shorelines.

SWRCB and the RWQCBs are responsible for administering and enforcing the State's Porter-Cologne Water Quality Control Act and the Clean Water Act. SWRCB establishes statewide policy on numerous issues related to surface water. It does not have authority or jurisdiction over groundwater resources from a supply perspective. RWQCBs regulate most activities that could contaminate groundwater quality such as landfills, hazardous waste sites, and other land uses. There is some overlap in regulation of activities that threaten groundwater quality by other State agencies, including the California Environmental Protection Agency and Department of Health Services.

The Clean Water Act authorizes states to issue National Pollutant Discharge Elimination System (NPDES) permits for discharges to surface waters, excluding what is regulated by the Corps under Section 404 of the Clean Water Act. The SWRCB and the RWQCBs issue general and individual NPDES permits.

The nine RWQCBs enforce water quality standards established in SWRCB-approved basin plans and establish water quality objectives and beneficial uses of major rivers and streams in their jurisdiction and may review federal action compliance pursuant to Section 401 of the Clean Water Act according to SWRCB water quality standards. RWQCBs also enforce statewide policies established by SWRCB. They primarily regulate waste discharges to surface waters from wastewater

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treatment plants, industrial facilities, and other point and nonpoint sources such as urban runoff from municipal areas.

PERMITS AND CONSULTATION - SECTION 401 CERTIFICATION

Under Section 401 of the Clean Water Act, applicants for a federal license or permit to conduct activities that may result in a discharge of a pollutant into waters of the United States must obtain a certification from the state in which the discharge would originate or, if appropriate, from the interstate water pollution control agency having jurisdiction over the affected waters at the point where the discharge would originate. Therefore, all CALFED actions with federal agency involvement, including actions requiring federal agency approvals, must comply with Section 401 of the Clean Water Act and applicants must obtain certification or waiver of certification that the discharge does not violate State water quality requirements. The certification must verify that the discharge will comply with the applicable effluent limitations and water quality standards. A certification obtained for construction of a facility must also pertain to operation of the facility. SWRCB, through the RWQCBs, is responsible for issuing water quality certifications pursuant to Section 401 of the Clean Water Act.

HOW TO APPLY FOR A PERMIT

The applicant typically sends the relevant information, including project description, detail on the discharge activity, NEPA and CEQA documentation, relevant federal permit application (e.g., Section 404 permit application), and DFG Lake or Streambed Alteration Agreement to the relevant RWQCB. The RWQCB may waive certification requirements if it determines that the effects of

the discharge on State water quality standards are minimal. If certification requirements are not waived, the RWQCB may recommend that the SWRCB certify that the discharge complies with State water quality standards, either with or without imposed conditions, or may recommend that the SWRCB deny certification.

WHERE TO APPLY FOR A PERMIT

A map showing the locations of the nine RWQCBs and their mailing addresses and telephone numbers is provided in Figure 3-6.

PERMIT APPLICATION FEE

For certification or waiver of certification of State water quality standards, a minimum fee of \$500 is required. Depending on the amount of fill or dredging, this fee could reach \$10,000.

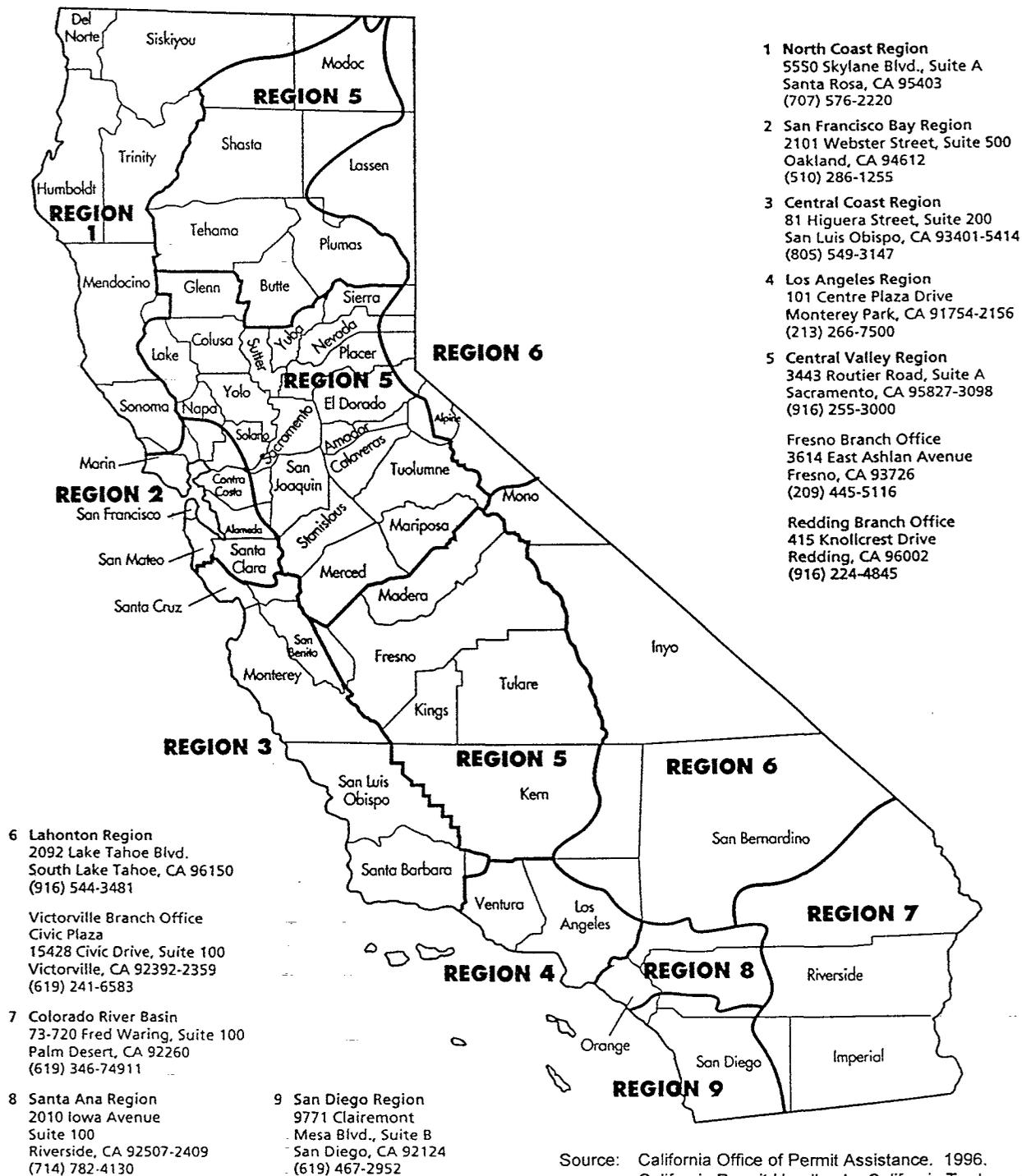
PERMITS AND CONSULTATION - WASTE DISCHARGE REQUIREMENT PERMIT

The owner or operator of any facility or activity that proposes to discharge waste that may affect groundwater quality or that may discharge waste in a diffused manner (e.g., through erosion from solid disturbance) must first obtain a Waste Discharge Requirement (WDR) Permit from the appropriate RWQCB. RWQCBs adopt WDRs to protect waters of the State for the use and enjoyment of the people of California. Activities that do not pose a threat or nuisance to water quality may be allowed a waiver of WDR permits.

Examples of the types of CALFED actions that may require WDR permits include:

- drainage from agricultural operations;
- drainage from inoperative and abandoned mines;

Figure 3-6. California State Water Quality Control Board
Regional Offices



Source: California Office of Permit Assistance. 1996. California Permit Handbook. California Trade and Commerce Agency. Sacramento, CA.

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- feedlots for cattle, swine, sheep, goats, horses, turkeys, chickens, and ducks;
- waste from construction or dredging operations;
- municipal and industrial wastes, if percolation or injection to groundwater are the disposal methods; and
- residual waste and effluent from cleanup of sites.

HOW TO APPLY FOR A PERMIT

Applicants must submit a complete Report of Waste Discharge at least 120 days before they intend to begin operation. The information provided must include:

- a description of the facility or activity, including whether the applicant proposes to increase or change an existing discharge or create a new one;
- a description of the discharge by type, quality, quantity, interval, and method of discharge;
- the source of water that contributes to or transports the wastes; and
- water flow and location map identifying all discharge points.

WHERE TO APPLY FOR A PERMIT

All applicants for WDR permits should direct their applications and any inquiries to the RWQCB for the area in which the proposed action is located (Figure 3-6).

PERMIT APPLICATION FEE

Each applicant for a WDR permit is required to submit a fee to RWQCB with the Report of Waste Discharge. After WDR permits are issued, a discharger must pay an annual fee to SWRCB. The RWQCB will specify the amount of the fee to be submitted.

PERMITS AND CONSULTATION - NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS

If a facility or activity will discharge waste (including stormwater runoff for certain industrial or construction activities) to surface water, the owner or operator must obtain an NPDES permit. SWRCB and the RWQCBs regulate point-source discharges (e.g., wastewater treatment plant discharges) and nonpoint-source discharges (e.g., urban runoff) through the NPDES permit program.

NPDES permits may be required for general construction activities and point-source discharges related to CALFED actions. NPDES permits are also required for industrial or municipal stormwater runoff; however, because CALFED actions are unlikely to involve these types of activities, they are not discussed in this handbook. Requirements for permitting of point-source discharges and construction activity are presented below.

The NPDES general permit authorizes the discharge of stormwater from construction sites. It prohibits the discharge of materials other than stormwater and all discharges that contain a hazardous substance in excess of reportable quantities established by EPA and requires preparation of a Storm Water Pollution Prevention Plan and monitoring program. The permit is required for all construction projects involving more than 5 acres or part of a

larger common plan of development or sale. Project proponents are required to submit a notice of intent and fee to the Storm Water Permit Unit of SWRCB. Many potential CALFED actions may involve the construction or demolition of facilities that require an application for an NPDES general permit.

Stormwater discharges in the Lake Tahoe Unit are regulated by a separate permit adopted by the Central Valley RWQCB, Lahontan Region and are not covered by this permit. Additionally, stormwater discharges on Native American lands will be regulated by EPA.

NPDES permits are not required for project activities that propose to discharge waste into a community sewer system. EPA does require certain industries to treat hazardous wastes before they enter a community sewer system. Applicants should contact the local sewerage agency to determine whether pretreatment of waste discharges is required for certain waste streams.

HOW TO APPLY FOR A PERMIT

The type of application form and information required depends on the specific type of discharge activity proposed. Typically, the applicant is required to submit information on the activity proposed; the type, quantity, quality, interval, and method of discharge; the surface-water receptor; and discharge points.

The RWQCB evaluates the NPDES permit application to determine whether the proposed discharge is consistent with its adopted water quality objectives, the basin plan for the area in which the project is located, and federal limitations. The RWQCB sets effluent limitations on each discharge to ensure that the discharge will not harm public water supplies, agricultural and industrial water use, wildlife

habitat, or any water-related recreational activity and that the discharge will comply with the requirements of federal and State law. The RWQCB may deny the permit if the discharge contains a harmful biological, radiological, or chemical agent or if the discharge would substantially impair the anchorage and navigability of the waterway.

An RWQCB's action of issuing an NPDES permit requires compliance with CEQA. RWQCBs rarely serve as lead agencies for CEQA compliance and, in some cases, their activities are exempt from CEQA. If the action is not exempt, the RWQCBs typically serve as a responsible agency by responding to notices of preparation of an EIR and commenting on proposed negative declarations and draft EIRs for new plants or expansions of wastewater treatment facilities and other operations that require an NPDES permit for point-source discharges.

A construction site will be considered to be covered by the NPDES general permit once a complete and accurate notice of intent has been filed and the appropriate annual fee paid. On receipt of the notice of intent and fee, the RWQCB will send each discharger a letter containing the discharger's identification number. RWQCB staff can, at their discretion, conduct field visits of sites that are covered under the permit to ensure compliance with permit conditions. As with issuance of other NPDES permits, SWRCB is not typically the lead agency for issuance of NPDES permits for stormwater discharges associated with construction activities; SWRCB will take part in the CEQA process for the land use entitlement application to the city or county.

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WHERE TO APPLY FOR A PERMIT

Applicants should direct inquiries to the RWQCB for the area in which the proposed project is located (Figure 3-6). SWRCB normally does not issue NPDES permits, but manages appeals of RWQCB decisions. An RWQCB decision can be appealed to:

California State Water Resources Control Board
901 P Street
P.O. Box 100
Sacramento, CA 95812-0100

Applicants for an NPDES general permit should request an application form from the Storm Water Permit Unit of SWRCB at the following address:

California State Water Resources Control Board
Division of Water Quality
Attn: Storm Water Permit Unit
P.O. Box 1977
Sacramento, CA 95812-1977

PERMIT APPLICATION FEE

Each applicant for an NPDES permit is required to submit a fee to the RWQCB with the permit application. A fee schedule has been developed by SWRCB and is generally proportional to the volume of discharge.

The NPDES general permit requires a \$250 fee for each construction site that discharges into a municipal, separate storm-sewer system regulated by an areawide urban stormwater permit and \$500 for all other construction sites.

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD - DIVISION OF WATER RIGHTS**Key Project Features for CALFED**

- Activity would require diversion of water

JURISDICTION AND DUTIES

The California Water Code makes SWRCB responsible for the permitting of water diversions and use throughout the State. The Division of Water Rights assists SWRCB with this function. SWRCB issues permits to appropriate water and issues change petitions to existing rights with terms to protect prior rights, Public Trust resources, and the public interest. Pursuant to the California Supreme Court decision regarding Mono Lake and other recent court decisions, water rights deliberations by the State Water Resources Board are also subject to the Public Trust doctrine.

PERMITS AND CONSULTATION

Any person or public agency proposing to divert water for use on nonriparian land or to store unappropriated surface water seasonally must first obtain a permit from SWRCB to appropriate water. The permit is required to establish the applicant's right to the water and the priority in relation to other water users. SWRCB attaches conditions to these permits to ensure that the water user prevents waste, practices water conservation, does not infringe on the rights of others, and puts the State's water resources to the fullest beneficial use in the best interest of the public. The water appropriation permitting process can be complicated and time consuming. For water

rights applications with unresolved protests, considered "controversial", a water rights hearing will be required. The typical process for acquiring a permit to appropriate water is shown in Figure 3-7.

Persons or organizations diverting water under a riparian claim or a claim of appropriative right initiated before December 14, 1914, must file a Statement of Water Diversion and Use with SWRCB. One purpose of filing the statement is to make a public record of all surface diversions not already on file with or known to SWRCB.

Some CALFED actions could include purchase of water rights, transfers of water rights from existing water rights holders, or changes in use or point of diversion. These actions would require modification of existing water rights and would trigger the SWRCB Division of Water Rights permit process.

WHERE TO APPLY FOR A PERMIT

Completed applications should be sent to:

California State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95810-2000
916/322-4503

Water users applying for statements of water diversion and use should submit SWRCB Form WR 1, "Application to Appropriate Water by Permit or Registration of Small Domestic Use Appropriation", to the address above.

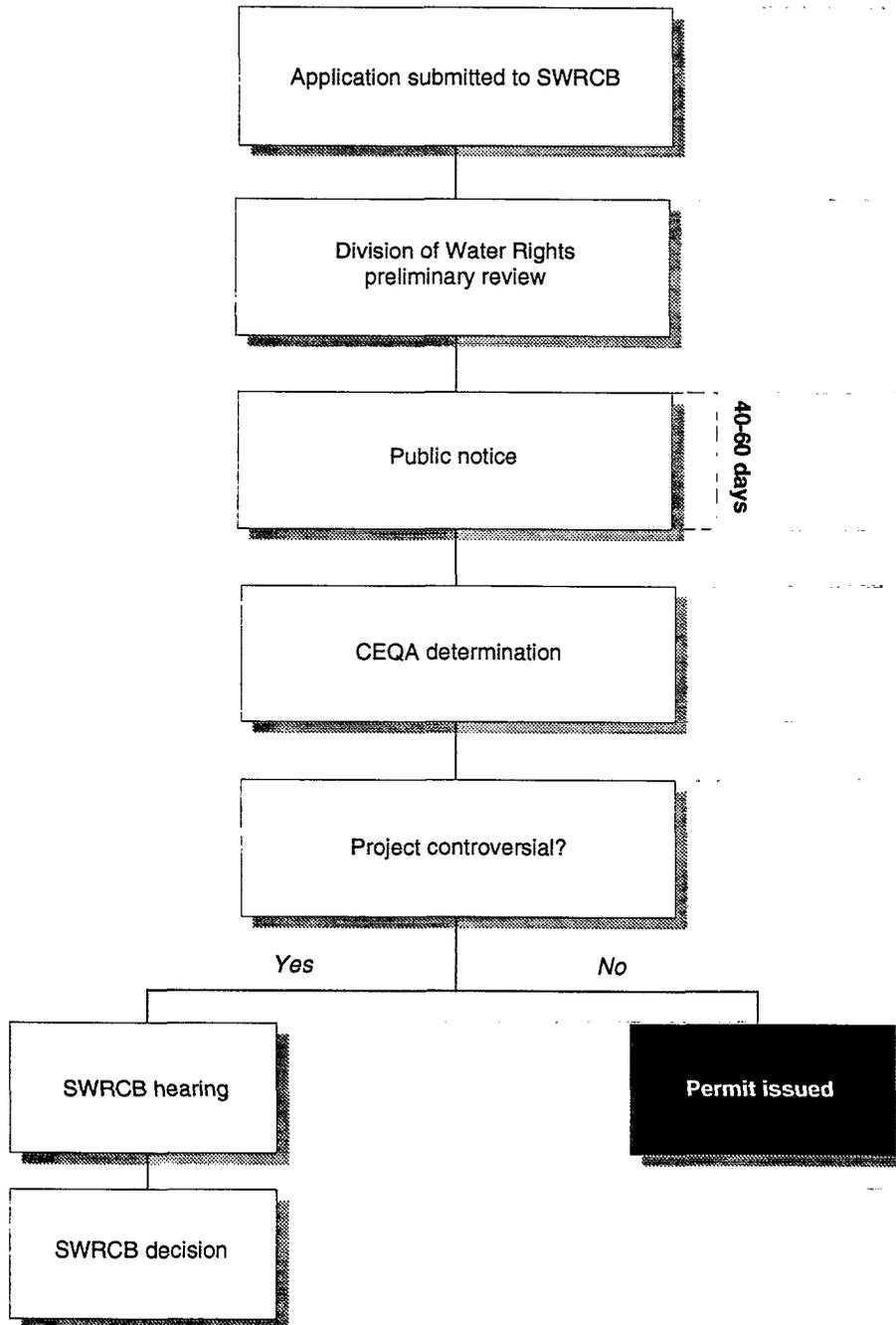
HOW TO APPLY FOR A PERMIT

Applicants should complete two copies of SWRCB Form WR 1, "Application to Appropriate Water by Permit or Registration of Small Domestic Use Appropriation", and submit

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Figure 3-7. State Water Resources Control Board
Division of Water Rights Permit to Appropriate Water



them to SWRCB. Applicants should contact SWRCB for assistance with the form, which requires the following information:

- applicant's name and address;
- source at the point of diversion, location of the point(s) of diversion and redirection;
- purpose, amount, and season of use;
- justification of amount;
- place of use;
- diversion works, completion schedule; and
- existing water right(s).

Landowners may submit separate applications for each proposed diversion. SWRCB serves as lead agency for CEQA for diversion projects to appropriate water from California's rivers and streams.

PERMIT APPLICATION FEE

A \$100 minimum filing fee for applications to appropriate water for use on nonriparian land must be submitted with the application to be applied to any additional fees required by SWRCB. Fees are based on the amount of water diverted in cubic feet per second and stored in acre-feet. An \$850 DFG Water Right filing fee must be paid to SWRCB before a water right application can be noticed. The check must be made out to DFG.

AUTHORITIES

The publications listed below are available at SWRCB offices at 901 P Street, Sacramento, California.

- California Water Code, Divisions 1 and 2
- California Administrative Code, Title 23, Chapter 3
- Appropriation of Water in California, SWRCB, July 1977
- How to File an Application to Appropriate Unappropriated Water in California
- Information Pertaining to Water Rights in California

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CALIFORNIA DEPARTMENT OF FISH AND GAME

Key Project Features for CALFED

- Activity involves a State lead agency for purposes of complying with CEQA
- Activity involves the take of a species listed under CESA
- Activity occurs within the annual high-water mark of a wash, stream, or lake
- Activity involves suction or vacuum dredging equipment

JURISDICTION AND DUTIES

California Department of Fish and Game (DFG) is required to protect and conserve the fish and wildlife resources of the State. The area of DFG's jurisdiction includes areas throughout California, including waters flowing across federal land.

Duties under the California Endangered Species Act of 1984 (CESA) require that a State lead agency, when complying with CEQA, consult DFG to ensure that its action does not jeopardize the continued existence of a species listed as endangered or threatened under CESA (Section 2090 of the Fish and Game Code). DFG also has authority under CESA to issue management authorization for activities that may affect species listed under CESA incidental to the project purpose (Section 2081 of the Fish and Game Code).

Under the California Fish and Game Code, the State and regional offices of DFG are authorized to enter into Streambed or Lake Alteration

Agreements with project proponents for activities occurring within the bed or bottom of a stream or lake, extending into the 100-year floodplain. Also, DFG is authorized to regulate the use of suction and vacuum dredging equipment to maintain a stable environment for fish and wildlife resources in California's waters.

PERMITS AND CONSULTATION

SECTION 2090 OF THE CALIFORNIA FISH AND GAME CODE

CESA requires a State agency acting as a CEQA lead agency to consult with DFG when preparing CEQA documents to ensure that any action authorized, funded, or carried out by the State lead agency is not likely to jeopardize the continued existence of any species listed under CESA as threatened or endangered or destroy or adversely modify "essential habitat" necessary to the continued existence of the species. CESA does not require DFG consultation by local lead agencies or by State agencies not acting as a CEQA lead agency, although all agencies are encouraged to consult informally about effects on State-listed species. However, CEQA requires all lead agencies to submit the CEQA document to DFG for review of a project's potential effect on the State's fish and wildlife resources (including State-listed species). Any CALFED action involving a State agency as a lead agency for purposes of complying with CEQA will require compliance with Section 2090 of the Fish and Game Code.

CESA encourages the State lead agency to consult with DFG early during preparation of a proposed negative declaration or draft EIR. Within 30 days of receiving a proposed negative declaration or within 45 days of receiving the notice of completion of a draft EIR or written request for formal consultation, DFG must make

formal written findings, called a Biological Opinion, as to whether the proposed project would jeopardize the continued existence of the State-listed species, result in the destruction or adverse modification of essential habitat, or result in the taking of a State-listed species incidental to the proposed project. The Biological Opinion may include an incidental take authorization for the state lead agency action.

If the Biological Opinion concludes that the proposed project would jeopardize the existence of State-listed species or their habitats, the State lead agency must adopt reasonable and prudent alternatives, consistent with conserving the species, that would prevent jeopardy. Such alternatives will be specified by DFG. If specific socioeconomic conditions make these alternatives infeasible, the lead agency may approve the project unless the project would most likely result in extinction of a species. Figure 3-8 summarizes the Section 2090 process to obtain a Biological Opinion.

HOW TO APPLY

A State lead agency initiates formal consultation with DFG by sending a written request to the DFG director, accompanied by the negative declaration or draft EIR on the proposed project. The State lead agency is responsible for ensuring that DFG receives the information (typically contained in the CEQA document) to adequately evaluate whether the proposed project will jeopardize any State-listed species. Required information includes a description of the project, known and potential distribution of State-listed species, analysis of possible effects on the State-listed species, analysis of alternatives to avoid or minimize effects on State-listed species, and other information relevant to DFG's assessment. Based on its

determination, the DFG written finding will be one of the following:

- the project as proposed is "not likely to jeopardize" any listed species;
- the project as proposed is "not likely to jeopardize" any listed species provided the conditions stipulated in the DFG Biological Opinion are fully implemented and adhered to;
- when new information available to DFG is insufficient to support a finding of "not likely to jeopardize", the conservative finding that the project as proposed "may jeopardize" is required;
- the project as proposed "is likely to jeopardize" one or more listed species.

WHERE TO APPLY

California Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
916/653-7664
Fax: 916/653-1856

APPLICATION FEE

The State lead agency is not required to submit a separate fee for consultation with DFG pursuant to CESA; however, all agencies must submit a fee to the State Clearinghouse for DFG review of CEQA documents. EIR projects require \$850 and negative declaration projects require \$1,250.

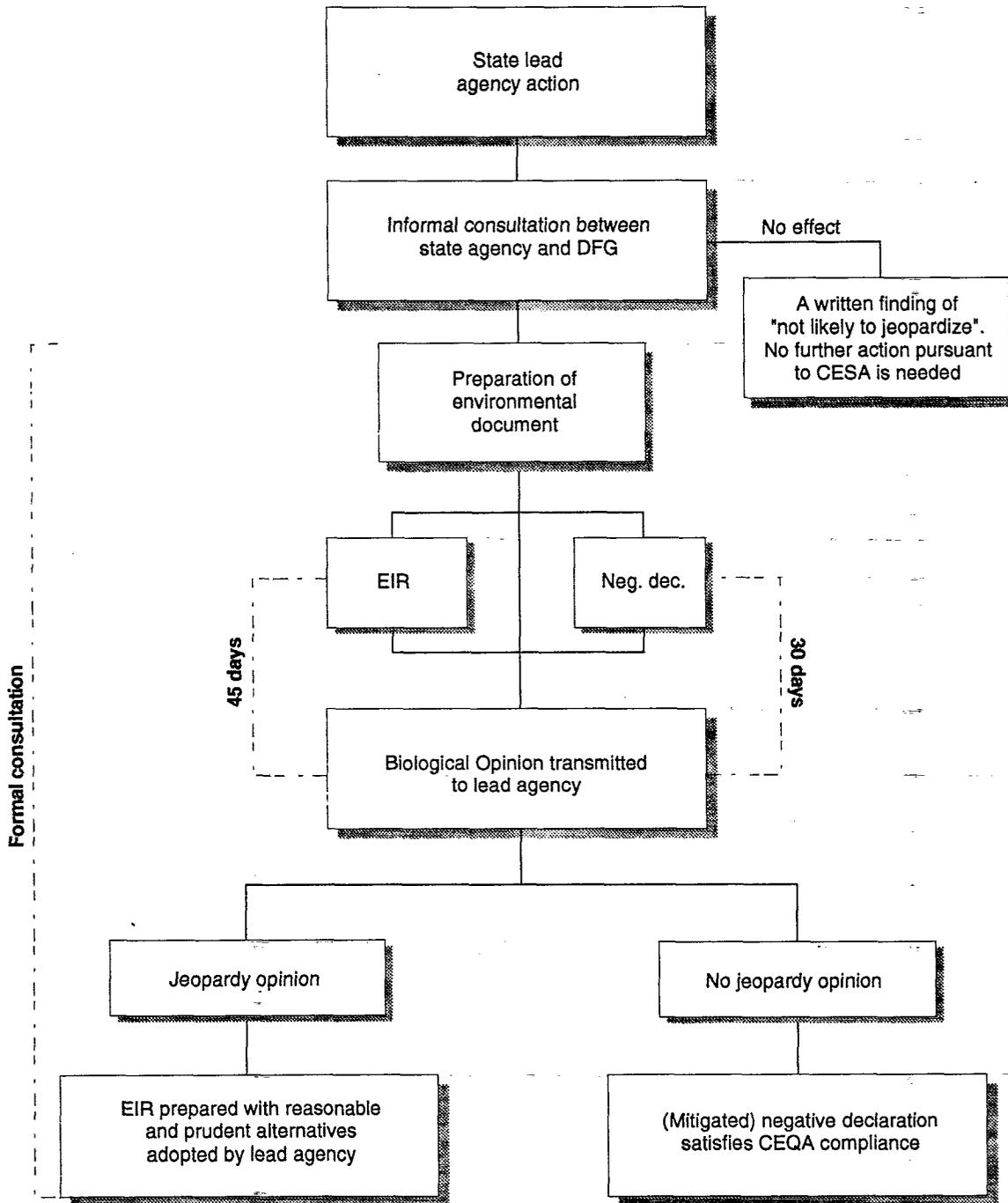
SECTION 2081 MANAGEMENT AUTHORIZATION

The current framework for California endangered species protection was established by CESA. CESA prohibits the take of plant and

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Figure 3-8. California Department of Fish and Game (DFG) Section 2090 Consultation Process



animal species designated by the California Fish and Game Commission as endangered or threatened. Take is defined by CESA to include hunting, pursuing, catching, capturing, or killing, or attempting such activity. Take includes any act that is the proximate cause of death of an individual of a listed species or any act the natural and probable consequence of which is the death of any individual of a listed species. However, the State Attorney General has determined that the CESA definition of take does not include habitat modification. The CESA take prohibition for plants is limited by the exceptions in the California Native Plant Protection Act.

No special distinction is made in CESA between State-owned property and private property. DFG may restrict the take of candidate species if notice is given to all interested parties by correspondence, newspaper notice, or press release.

Section 2081 of the California Fish and Game Code authorizes DFG to issue permits or enter into memoranda of understanding (MOUs) for individuals, public agencies, universities, zoological gardens, and scientific or educational institutions to import, take, or possess any threatened or endangered species or candidate species for "scientific, educational, or management purposes". Although not required, DFG encourages preparation of a habitat management plan specifying management actions that will be taken to provide benefits to the local population or to the species overall. DFG may issue a Section 2081 Management Authorization to authorize a take for project proponents that develop a habitat management plan acceptable to DFG. A Section 2081 Management Authorization is a take authorization for activities not connected to a State agency serving in a CEQA lead capacity (private and local government actions). The

Section 2081 Management Authorization is similar to an incidental take authorization under Section 2090. The take of individuals of a listed species is allowed if it can be demonstrated to DFG that the habitat management plan benefits the local population or the species overall.

The usual time to apply for a Section 2081 Management Authorization is during preparation of an environmental document under CEQA; however, ongoing activities that may not require CEQA compliance are not exempt from CESA requirements. Such activities include, but are not limited to, routine maintenance programs, otherwise categorically exempt activities, and preexisting activities within the habitat of a newly listed species.

A Management Authorization and a CESA MOU are combined to form a CESA MOU/MA. MAs often require mitigation or specific actions; the MOU provides the legal agreement that mitigation and the actions will be performed. The CESA MOU/MA is a legally enforceable document, signed by DFG and project proponents, guaranteeing that mitigation measures will be implemented within a specified time. A CESA MOU/MA form is available from DFG.

Any CALFED actions that could adversely affect a species listed as endangered or threatened under CESA must apply for a Section 2081 Management Authorization. This includes all individuals, public agencies, and other scientific and educational institutions. An exception is made for State agencies that consult with DFG pursuant to Section 2090 of the California Fish and Game Code and receive a CESA Biological Opinion. If a project will affect a federally listed species, the Section 2081 Management Authorization does not authorize take until the project obtains approval from the appropriate federal agency.

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HOW TO APPLY FOR A PERMIT

Lead agencies with projects that require a Section 2081 Management Authorization usually must comply with CEQA; however, DFG has determined that issuance of the authorization does not require DFG CEQA compliance. The following information will be needed on the application:

- a complete description of the project area and project impact area, including maps;
- known and potential distribution of endangered and threatened species in the project area and project impact area, based on a recent biological assessment (this should include detailed information on species distribution, habitat, and life history requirements);
- an analysis of the potential adverse impacts, including cumulative effects, of the project on all listed species affected by project activities; and
- a complete description of the agreed on mitigation or avoidance measures that will be used to offset adverse impacts.

Initial negotiations, DFG coordination, and review of draft documents will take place at the DFG regional office in consultation with the Environmental Services Division in Sacramento. Once the regional staff is in agreement with the applicant, the final draft documents will be sent to Sacramento for final review by headquarters staff and approval by the DFG director. Headquarters staff will review documents for consistency with DFG, California Fish and Game Commission, and legislative policy. Most projects receive a Section 2081 Management Authorization within 2-3 months of receipt of required information.

WHERE TO APPLY FOR A PERMIT

The initial contact with DFG should be with the regional office having jurisdiction in the city or county where the project will be constructed or implemented (Figure 3-9). DFG regional offices will provide the necessary information on requirements to obtain a Section 2081 Management Authorization and will have sample forms available.

PERMIT APPLICATION FEE

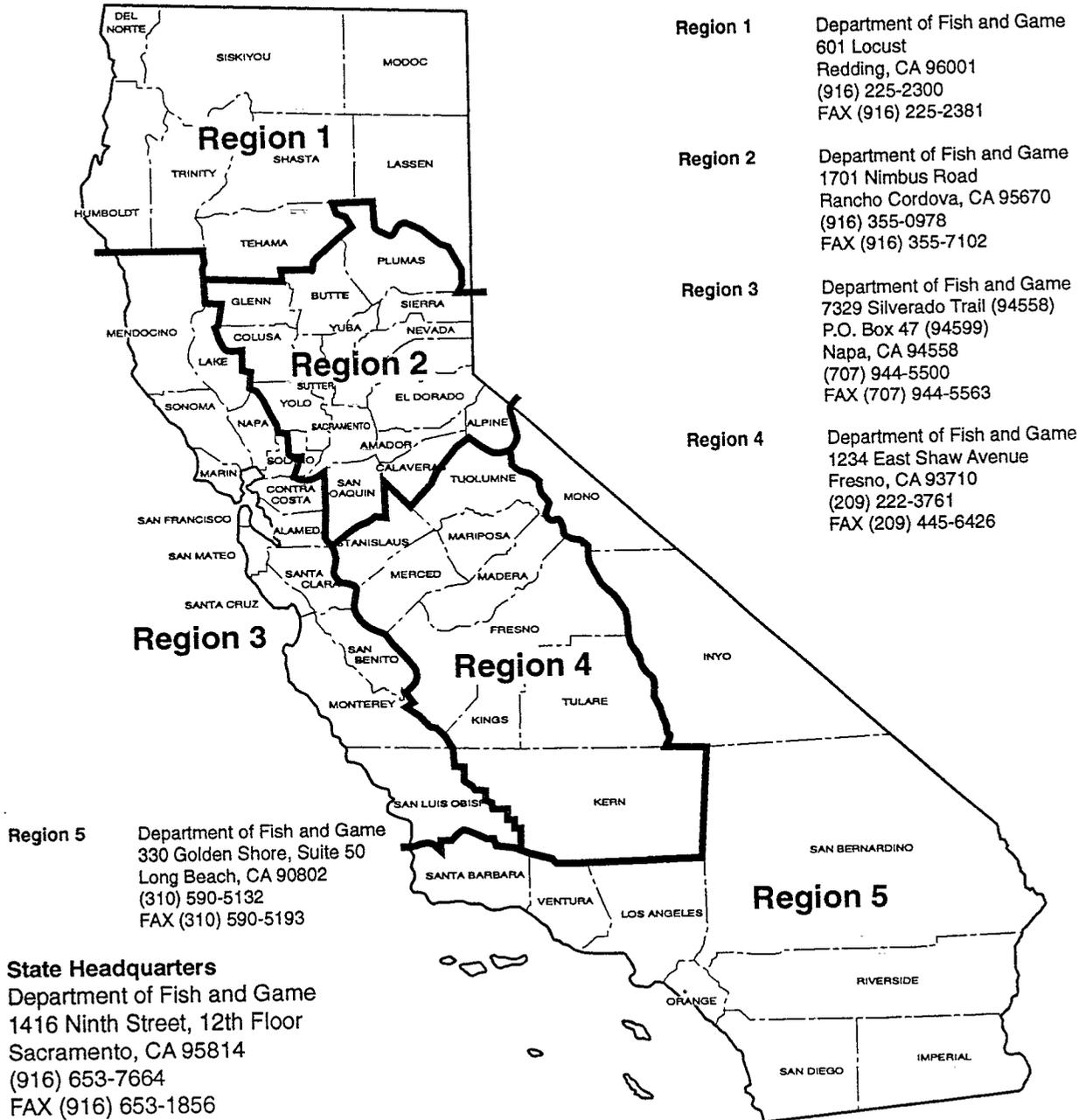
Because of the special nature of this permit, DFG has not outlined a predetermined fee schedule for issuing a Section 2081 Management Authorization. Information on fees must be obtained during the application consultation with the appropriate DFG personnel.

LAKE OR STREAMBED ALTERATION AGREEMENTS

Any person, governmental agency, or public utility proposing any activity that will divert or obstruct the natural flow or change the bed, channel, or bank of any river, stream, or lake or proposing to use any material from a streambed must first notify DFG of such proposed activity. This notification requirement applies to any work undertaken within the 100-year floodplain of a body of water or its tributaries, including intermittent streams and desert washes. As a general rule, however, it applies to any work undertaken within the annual high-water mark of a wash, stream, or lake that contains or once contained fish and wildlife or supports or once supported riparian vegetation.

Typically, public agencies requesting a Lake or Streambed Alteration Agreement will complete a Section 1601 Application, private entities will complete a Section 1603 Application, and timber harvesters will complete a Section 1603/

Figure 3-9. California Department of Fish and Game (DFG) Regional Offices



Source: California Office of Permit Assistance. 1996.
 California Permit Handbook. California Trade and
 Commerce Agency. Sacramento, CA.

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1606 Application. CALFED actions proposing ground-disturbing activities within the annual high-water mark of a wash, stream, or lake will require a Lake or Streambed Alteration Agreement.

HOW TO APPLY FOR A PERMIT

Projects that require a Lake or Streambed Alteration Agreement usually must comply with CEQA; however, DFG has determined that issuance of an agreement does not require CEQA compliance. The application must include the following information:

- a project description that includes the location of the project, the nature or description of the proposed activity, and a statement of the date to begin the activity;
- effects of the activity, including type of soil to be removed, type of equipment and amount of water to be used, effects of water use on the streambed, amount and type of material to be deposited in the stream or lake, and type and amount of vegetation affected;
- a copy of any fish, wildlife, or habitat mitigation plan already prepared for the project;
- for State-designated wild and scenic rivers, a determination of the project's consistency with the California Wild and Scenic Rivers Act by the Secretary of Resources (until the Secretary of Resources determines the project is consistent with the California Wild and Scenic Rivers Act, DFG cannot issue a valid agreement; a tentative agreement will be issued, contingent on a finding of consistency by the Secretary of Resources);

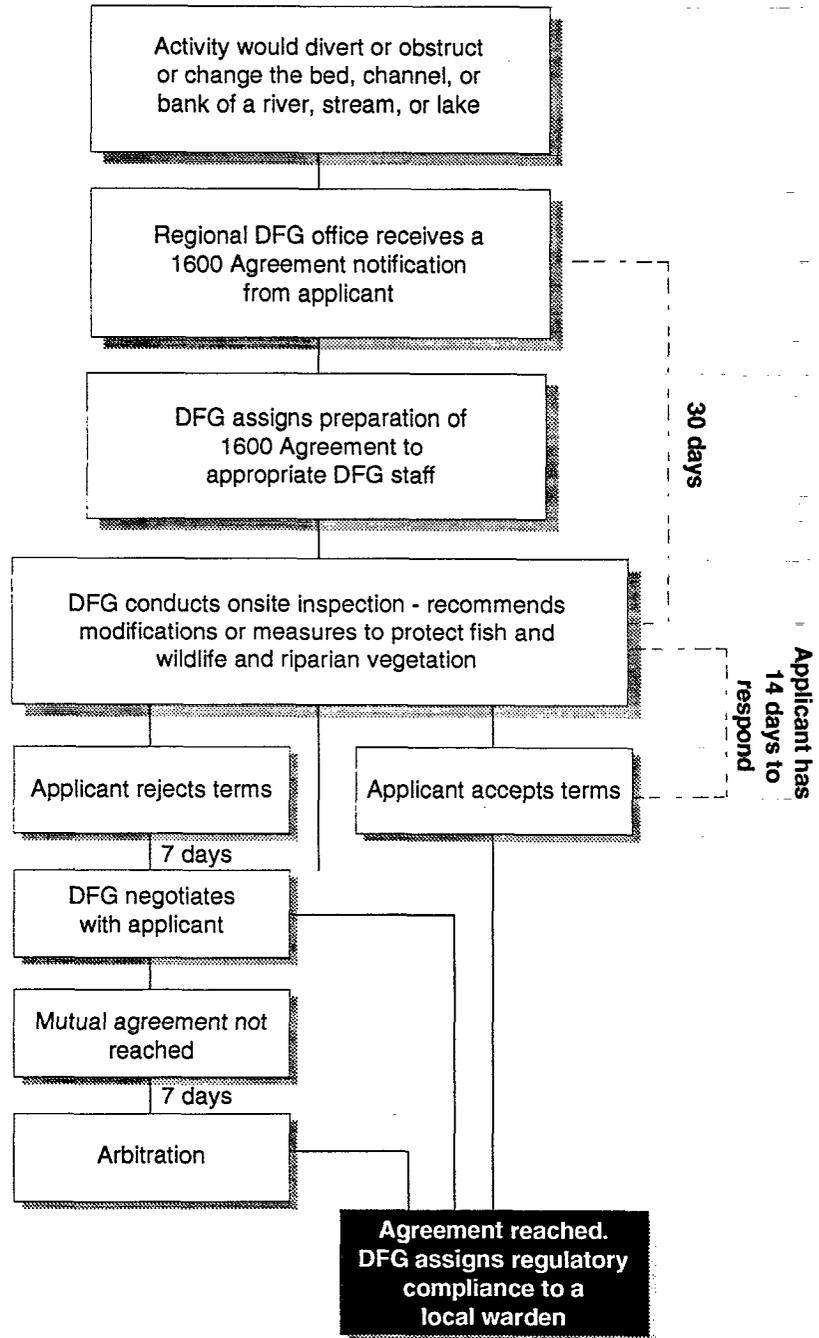
- specific plans detailing proposed modifications of the river, stream, or lake; and
- certification of compliance with CEQA (if applicable) and documented compliance with CESA (if applicable); documentation may include verification from the local California Fish and Game office or a DFG biologist that no State-listed threatened or endangered species are known to inhabit the proposed project area, or documentation from DFG that the proposed project will result in a net benefit to any affected threatened or endangered species.

DFG evaluates a proposed lake or streambed alteration based on the anticipated impact on fish and wildlife resources. The initial negotiation, DFG coordination, and review of the draft documents will be conducted at the appropriate DFG regional or division office. DFG conducts a project site inspection and provides recommendations on the proposed activity to the applicant. Once the regional DFG staff is in agreement with the applicant, final draft documents will be sent to the applicant, who has 14 days to accept or deny any modifications. Most projects receive a Lake or Streambed Alteration Agreement within 1-2 months of receipt of the required information. The permit application and review process is shown in Figure 3-10.

WHERE TO APPLY FOR A PERMIT

Applicants should direct inquiries, notifications, and applications for proposed lake or streambed alterations to the regional DFG office in the area where the proposed project is located (Figure 3-9).

Figure 3-10. Application Process for California Department of Fish and Game Lake or Streambed Alteration Agreement



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PERMIT APPLICATION FEE

All applicants must pay an application fee according to the following schedule of fees:

- Section 1601 and 1603 Applications require a minimum \$132 nonrefundable application fee, plus additional fees based on project size.
- Section 1601 routine maintenance activities from public agencies if performed under a MOU with DFG may require a reduced fee.
- Section 1603 Applications for commercial gravel operations require a \$530 fee per application.
- Section 1603/1606 Applications for timber harvest require a minimum \$530 fee per application, plus additional fees based on the number of stream encroachments.
- Project applications for public or private projects that are unusually extensive or protracted but not limited to projects that 1) involve more than one departmental administrative region or 2) involve more than 15 streams (excluding timber harvest applications) will be charged the appropriate application fee described above. If this application fee is insufficient to defer DFG's costs, DFG and the project sponsor will arrange for a billing schedule to recover DFG's additional project-related costs.

SUCTION DREDGING PERMITS

Anyone proposing to use suction or vacuum dredging equipment with an intake diameter of 12 inches or less in any river, stream, or lake designated as open for dredging must obtain a Standard Suction Dredging Permit. Proponents of projects requiring the use of dredging

equipment with an intake diameter greater than 12 inches need to apply for a Special Suction Dredging Permit. In addition, anyone proposing to use suction or vacuum dredge equipment of any size in any area designated as closed by DFG must also obtain a Special Suction Dredging Permit. DFG provides a list of open and closed waters.

CALFED actions that involve suction or vacuum dredging equipment may require a Suction Dredging Permit from DFG. Projects requiring Suction Dredging Permits usually must comply with CEQA; however, issuance of these permits does not require CEQA compliance. DFG will approve the permits based on the following criteria:

- size of the dredging equipment,
- time of year that the applicant will undertake the activity, and
- any unusual conditions that would harm fish resources.

HOW TO APPLY FOR A PERMIT

Applicants for Suction Dredging Permits typically must provide a description of the type of dredging operation, size of dredging equipment, dates and location where dredging will take place, and explanation and justification of the need to dredge.

WHERE TO APPLY FOR A PERMIT

Applicants should direct inquiries and applications for either permit to the regional DFG office in the area where the proposed project is located (Figure 3-9).

PERMIT APPLICATION FEE

Applicants must submit a \$30 fee with each application.

AUTHORITIES

- Fish and Game Code, Sections 1607 and 2050 et seq.
- Public Resources Code Sections 21080.3, 21080.4, 21080.5, or 21104.2

3

Project-Level Regulatory Compliance

STATE HISTORIC PRESERVATION OFFICER CONSULTATION UNDER SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT

Key Project Features for CALFED

- Activity involves a federal agency
- Activity occurs in an area where properties are listed or are eligible for listing on the NRHP
- Activity adversely affects properties listed or eligible for listing on the NRHP

JURISDICTION AND DUTIES

The National Historic Preservation Act (NHPA) establishes the national policy and the legal and administrative rules and procedures to protect and encourage the preservation and wise use of historic resources. NHPA authorizes the Department of the Interior to establish the National Register of Historic Places (NRHP), which is maintained by NPS. The NRHP includes a listing of properties that have been nominated and accepted as having historic, architectural, engineering, or cultural significance at the national, state, or local level. NHPA establishes the responsibilities of each State Historic Preservation Officer (SHPO) for developing a statewide plan for preservation, surveying and assessing surveys by others to identify historic properties, nominating properties to NRHP, providing technical assistance to government agencies and the public, participating in the review of federal undertakings and permit actions that affect historic properties, and other activities. NHPA also creates the Advisory Council on Historic Preservation (ACHP), an independent federal agency responsible for advising the President

and Congress of the United States on historic preservation matters and reviewing and commenting on agency actions that may affect historic properties.

PERMITS AND CONSULTATION

Section 106 of NHPA defines the purpose and requirements of the federal review process to ensure that historic properties are considered during federal project planning and execution under the administration of ACHP. The federal agency involved in a proposed project is responsible for initiating and completing the Section 106 review process. In general, Section 106 requires the federal agency to consult with SHPO regarding a proposed project's effect on properties listed, or eligible for listing, on NRHP. Other agencies may work with SHPO and ACHP throughout the process and may include other participants (e.g., federal and nonfederal agencies; Native American tribes; applicants for federal grants, licenses, or permits) when proposed actions may affect their interests or activities.

All CALFED actions undertaken by federal agencies and related federal agency permit actions will require coordination with the SHPO in accordance with applicable federal laws and guidelines to provide protection to resources of historic, cultural, and archaeological importance. If federal funds or permits are involved in a proposed action, the project must comply with requirements of Section 106 of NHPA (see discussion in Chapter 2, "National Historic Preservation Act").

HOW TO APPLY

Before consulting with the SHPO, the federal agency should review any programmatic agreements that may have been entered into by CALFED and the SHPO and ACHP. The

programmatic agreement may contain the appropriate mitigation that, if incorporated into the proposed project, may make further Section 106 compliance unnecessary. There are five basic steps in the Section 106 process (described below and shown in Figure 3-11) during which the federal agency works with SHPO to assess the potential effects of proposed actions:

Step 1. Identify/Evaluate Historic Properties.

The federal agency reviews all available information that could help determine whether there may be historic properties in the area of a proposed activity and identifies all NRHP-listed properties and those that may be eligible for listing.

As part of this process, a project proponent or permit applicant other than the federal agency may prepare a cultural resources survey for consideration and processing by the federal agency. In such cases, a report documenting the results of the survey must be submitted to the federal agency that is proposing, funding, or permitting the project to be transmitted to the SHPO.

Step 2. Assess Effects. Once historic properties have been identified and found to meet NRHP criteria, the federal agency determines whether the proposed action will affect the properties in any way. There are three possible findings:

- *No effect.* If there will be no effect of any kind on the historic properties, the agency notifies SHPO and interested parties of its determination. If SHPO does not object, the agency may proceed with the project.
- *No adverse effect.* If there could be an effect, but the effect would not be harmful to the historic property, the agency obtains SHPO concurrence and submits a determination of no adverse effect to

ACHP, or the agency can submit its determination of no adverse effect directly to ACHP for review and notify SHPO of this action. Unless ACHP objects, the agency proceeds with its project or activity.

- *Adverse effect.* If there could be a harmful effect to a historic property, the agency begins the consultation process.

The project proponent or permit applicant may also prepare a report assessing the effect of the action on the properties listed or eligible for listing on NRHP. If the survey and report are found to be adequate, the SHPO submits an approval letter to the federal agency, thereby allowing the agency to proceed with permitting or funding the project.

Typical steps for completing a cultural resources survey that would meet Section 106 requirements are as follows.

- define the area of potential effects (APE),
- notify any concerned or potentially interested Native American persons or groups,
- conduct a records search to determine if APE has already been surveyed or if there are any recorded sites in APE,
- conduct a site survey of APE if one has not already been done,
- document any artifacts that are found during the survey,
- develop recommendations for additional survey or preservation work if cultural resources are found during surveys, and

- redesign the project to avoid or minimize effects on cultural resources.

Step 3. Consultation. During this step, an effort is made to find acceptable ways to reduce the adverse effect on the historic property. The consulting parties are the agency and SHPO and may include ACHP and other interested parties (i.e., permit applicants). When the consulting parties agree on steps to reduce or avoid harm to historic property, they may sign a memorandum of agreement (MOA).

Step 4. Council Comment. Unless ACHP has already signed the MOA as a consulting party, the agency submits the MOA to ACHP for review. ACHP can accept the MOA, request changes to it, or issue written comments on the proposal.

Step 5. Proceed. If the Section 106 review process has resulted in a ACHP-accepted MOA, the agency proceeds with its proposed activity according to the terms of the MOA. After the process is complete, SHPO files the report with one of the regional information centers of the California Historical Resources File System.

Additional SHPO and ACHP coordination would be required for proposed projects and permits that involve federal property or funding under the jurisdiction of DOT or its agencies in compliance with the Section 4(f) of the Department of Transportation Act, as amended, and the Federal-Aid Highway Act of 1968. These efforts focus on identification and assessment of project-related, publicly owned park lands and recreation areas of national, state, or local significance.

WHERE TO APPLY

Office of Historic Preservation
Department of Parks and Recreation
P.O. Box 942896
Sacramento, CA 94296-001
916/653-5099
Fax: 916/653-9824

AUTHORITIES

- 36 CFR Parts 60 and 63 (National Register of Historic Places)
- 36 CFR Part 61 (procedures for approved State and local government historic preservation programs)
- 36 CFR Part 65 (national historic landmarks program)
- 36 CFR Part 800 (protection of historic properties)
- 43 CFR Part 801 (protection of archaeological resources, uniform regulations)
- 16 USC 469 (Archaeological and Historic Preservation Act of 1974, as amended)
- 16 USC 470 (National Historic Preservation Act of 1966, as amended; especially Section 106)
- 49 USC 303, Section 4(f) (Department of Transportation Act of 1966, as amended)

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Project-Level Regulatory Compliance

THE STATE LANDS COMMISSION

Key Project Features for CALFED

- Activity occurs in tideland; submerged land; beds of navigable river, stream, lake, bay, estuary, inlet, or strait; swamp land, or overflowed land
- Activity affects water-related commerce, navigation, fisheries, recreation, open space, or other public trust uses
- Activity involves use of areas under SLC jurisdiction
- Activity involves dredging in areas under SLC jurisdiction

JURISDICTION AND DUTIES

The State Lands Commission (SLC) has jurisdiction and management control over public lands received by the State on its admission to the United States in 1850 (also known as "sovereign lands"). Generally, sovereign lands include all ungranted tidelands, submerged lands, and beds of navigable rivers, streams, lakes, bays, estuaries, inlets, and straits. SLC manages sovereign lands for the benefit of all the people of the State for water-related commerce, navigation, fisheries, recreation, open space, and other recognized public trust uses. SLC's Land Management Division administers the surface uses of State-owned sovereign lands under SLC's jurisdiction. Examples of activities that would require SLC authorization include, but are not limited to, implementation of habitat management plans, installation of structures, sand and gravel extraction, and dredging or disposal of dredged materials on the State's lands.

LAND USE LEASES AND OTHER USE AUTHORIZATIONS

SLC authorization for activities such as those discussed above is most often in the form of an SLC lease; occasionally, SLC may enter into other types of agreements that authorize specific uses. Implementation of specific CALFED projects may be subject to SLC leasing requirements.

HOW TO APPLY FOR A PERMIT

Project proponents that wish to undertake activities in State-owned lands under SLC's jurisdiction should consult with SLC early in the planning process to determine whether SLC authorization will be necessary. If it is, the proponents will be provided an application form and guidance on how to complete and submit the form. The application will ask for information including, but not limited to, the following:

- a description of the State-owned land on which the project is to be located, where possible by reference to a legal description, assessor's parcel number, deed, or map;
- a project description, including proposed use, the nature and extent of proposed improvements, methods of construction, anticipated project life, and any relevant time constraints;
- evidence of the proponent's entitlement to use adjoining uplands to access the State-owned parcel; and
- environmental information including, but not limited to, a description of the environmental setting and potential environmental impacts of the proposed project.

Project-Level Regulatory Compliance

SLC staff will review project applications relative to several standards including, but not limited to:

- whether the proposed project is consistent with the trusts under which SLC holds the lands (in the case of sovereign lands, the Public Trust for water-related commerce, navigation, fisheries, recreation, and open space);
- whether the proposed land use may have a significant effect on the environment;
- whether the proposed use will be subject to rental requirements and, if so, whether the State is assured a fair return for the use of its lands; and
- whether authorization of the proposed project is in the best interests of the State.

After staff review of the project application, a lease or other authorizing agreement is prepared and presented to SLC for formal approval. The application process may take as little as 2-3 months for simple transactions, or 12 months or more for complex projects.

The permit application and review process is shown in Figure 3-12.

WHERE TO APPLY FOR A PERMIT

Applications should be sent to:

The State Lands Commission
Land Management Division
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825
916/574-1900
Fax: 916/574-1945

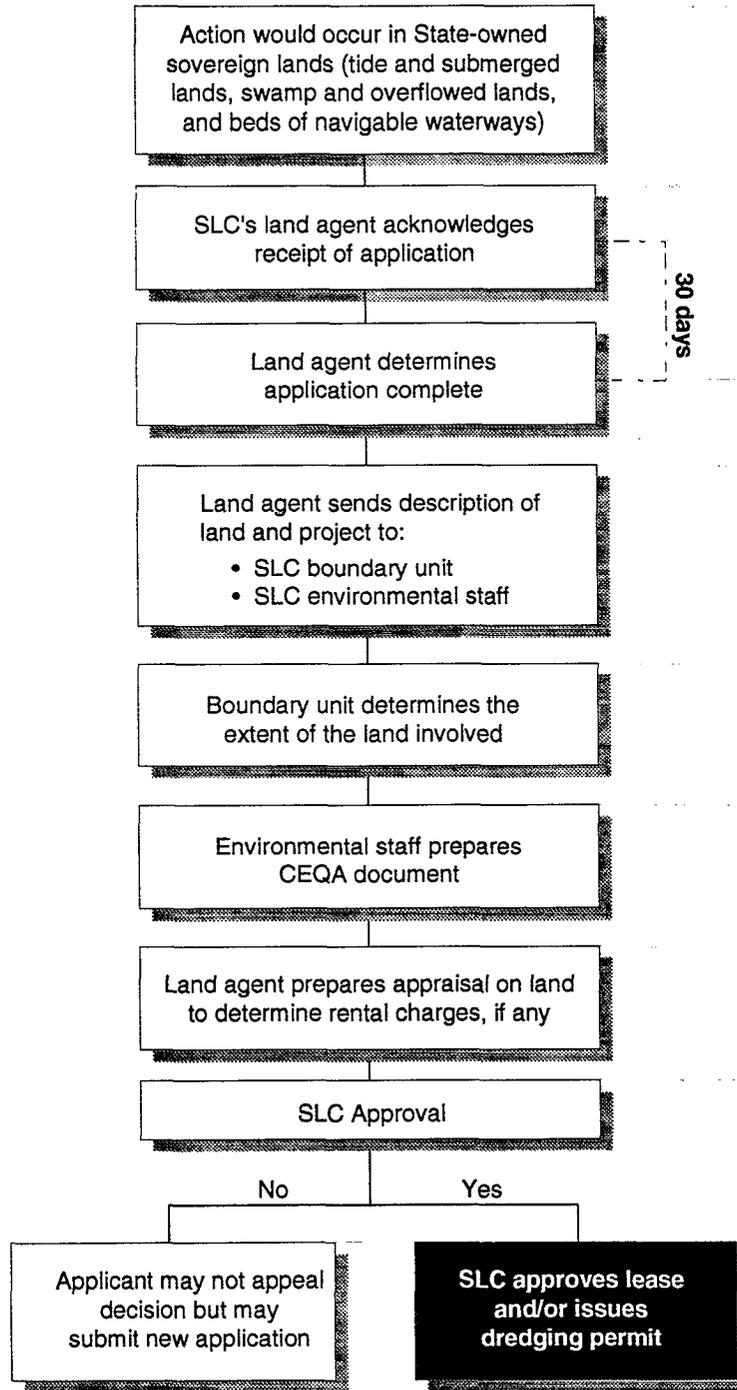
PERMIT APPLICATION FEE

The applicant will also be requested to submit a \$25 nonrefundable filing fee, and will be asked to reimburse SLC for its costs in processing the application. Application processing costs generally range from approximately \$400 for simple leases involving small parcels and projects without any possibility of environmental impact, to several thousands of dollars for complex agreements that resolve title issues and authorize large projects with significant environmental impacts.

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Project-Level Regulatory Compliance

Figure 3-12. State Lands Commission Land Use Lease and Dredging Permit Application Process



THE RECLAMATION BOARD**Key Project Features for CALFED**

- Activity affects flood control project facilities, including levees, floodways, and flood control plans

JURISDICTION AND DUTIES

The Reclamation Board is required to enforce appropriate standards for construction, maintenance, and protection of adopted flood control plans that will best protect the public from floods. The Reclamation Board has jurisdiction within the Central Valley and Lake County, including tributaries and distributaries of the Sacramento and San Joaquin Rivers and Tulare and Buena Vista basins.

The Reclamation Board may issue Encroachment Permits for proposed activities that may affect project works, as long as the applicant ensures that the activity maintains the integrity and safety of flood control project levees and floodways and is consistent with the flood control plans adopted by The Reclamation Board or California legislature. "Project works" are defined as the entirety or any component, including levees, floodways, or flood control plans, of a flood control project within the area of The Reclamation Board's jurisdiction that have been approved or adopted by The Reclamation Board or the legislature. Project works include State or federally constructed levees, bank protection, weirs, pumping plants, and any other related flood control works or ROWs. Flood control plans include project flood channels without levees and project channels with levees; any flowage areas that are part of the flood control project; areas where

there are flowage easements; and designated floodways.

PERMITS AND CONSULTATION

CALFED project-specific actions may involve work within the jurisdiction of The Reclamation Board, including placement, construction, reconstruction, removal, or abandonment of any landscaping, culvert, bridge, conduit, fence, projection, fill, embankment, building, structure, obstruction, encroachment, or works of any kind, and including the planting, excavation, or removal of vegetation and any repair or maintenance that involves cutting into the levee, wholly or in part, within any area for which there is an adopted plan of flood control. These project-specific actions must be approved by The Reclamation Board before beginning work. The project applicant should contact The Reclamation Board for a list of project levees and designated floodway areas. The locations of federal flood control project levees in the Delta are shown in Figure 3-13.

WHERE TO APPLY FOR A PERMIT

Applications should be submitted to:

The Reclamation Board
Floodway Permit Section
1416 Ninth Street
Sacramento, CA 95814
916/653-5726
Fax: 916/653-5805

HOW TO APPLY FOR A PERMIT

Before submitting an application for an Encroachment Permit to The Reclamation Board, the application must be endorsed by the agency responsible for maintaining levees within the area of the proposed work (such as a reclamation district, drainage district, flood

control district, levee district, county, or city). If the maintaining district delays or declines to endorse the application, it may be submitted to The Reclamation Board without endorsement with a written explanation as to why the application was not endorsed by the maintaining district. In addition, the application should include the following information:

- a description of the proposed work, including a statement of the dates the planned construction will be initiated and completed;
- a completed copy of The Reclamation Board's environmental assessment questionnaire and a copy of any draft and final environmental review document prepared for the project;
- complete plans and specifications showing the proposed work, including a location map showing the site of the work with relation to topographic features, a plan view of the area, and an adequate cross section through the area of the proposed work. The plans must be drawn to scale and refer to National Geodetic Vertical Datum or other known datum. The plans must also indicate any project features such as levees, channels, roads, or other structures and must show river or levee mile references. The dimensions of any proposed or existing fill, excavation, and construction activity must be given;
- additional information, such as geotechnical exploration, soil testing, hydraulic or sediment transport studies, biological surveys, environmental surveys, and other analyses, may be required at any time prior to The Reclamation Board's action on the application; and

- the names and addresses of all landowners adjacent to the property on which the project is located.

The Reclamation Board uses three general standards to evaluate applications for Encroachment Permits:

- conformance with The Reclamation Board's adopted standards for encroachments;
- conformance with any designated floodway plan for the project area; and
- the environmental effect of the action.

The Reclamation Board's regulations outline prohibited activities, acceptable construction methods, and conditions for approval of all work regulated by The Reclamation Board. The regulations also contain conditions for approval of all work in specified geographical areas with unique environmental features. The permit application and review process is shown in Figure 3-14.

PERMIT APPLICATION FEE

No application fee is required.

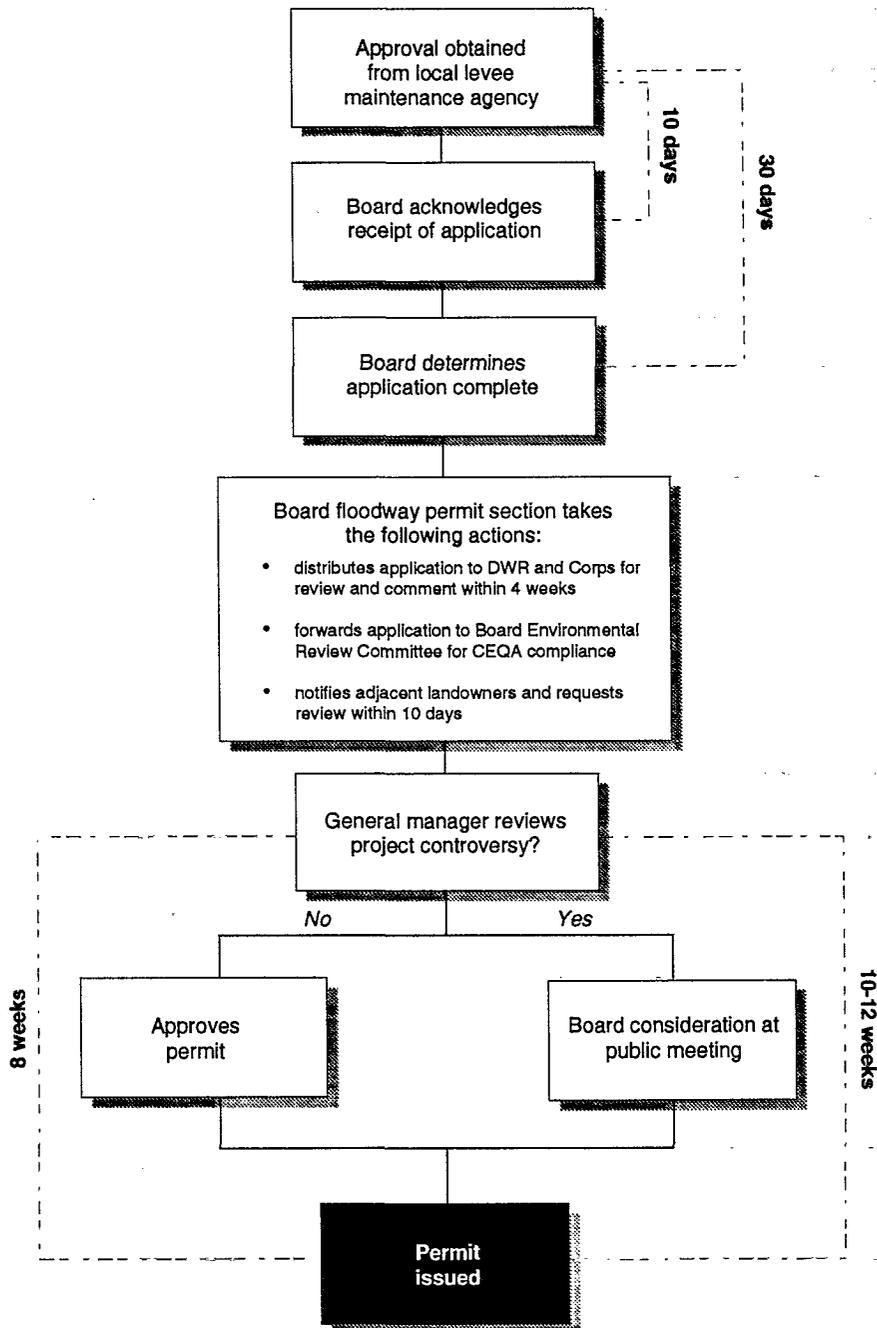
AUTHORITIES

- Section 8571, Water Code
- Sections 8534, 8608, 8611, 8710, and 8730.3, Water Code
- Section 2090, Fish and Game Code
- Sections 21080.3, 21104.2, and 21160, Public Resources Code

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Project-Level Regulatory Compliance

Figure 3-14. State Reclamation Board Encroachment Permit Application Process



CALIFORNIA DEPARTMENT OF WATER RESOURCES

Key Project Features for CALFED

- Activity proposes to construct or enlarge a dam or reservoir
- Activity proposes to repair or alter an existing dam or reservoir

JURISDICTION AND DUTIES

The California Department of Water Resources (DWR) is responsible for the State's water resources planning and water management. DWR is also the State agency that operates and maintains the State Water Project. DWR's Division of Safety of Dams (DSOD) is responsible for permitting and approval of dams and water storage reservoirs. DSOD is also responsible for water supply planning, flood forecasting and management, snow surveys, and many other water resource-related functions.

APPROVAL OF PLANS AND SPECIFICATIONS TO CONSTRUCT OR ENLARGE A DAM OR RESERVOIR AND CERTIFICATE OF APPROVAL TO STORE WATER AND TO REPAIR OR ALTER A DAM OR RESERVOIR

CALFED activities that may require this approval include construction and modification of dams, levees, artificial ponds, or other structures that are under DSOD jurisdiction. Any person who proposes to construct or enlarge a dam or reservoir must obtain written approval from DSOD for the plans and specifications. The applicant must obtain a Certificate of Approval from DSOD to impound water after the new or enlarged dam is built. DSOD has established criteria that define a dam

as an artificial barrier to impound or divert water that:

- is or will reach a height of at least 25 feet above the natural bed of the watercourse at the downstream toe of the barrier to the maximum possible water storage elevation;
- is or will reach a height of at least 25 feet above the lowest outside elevation to the maximum possible water storage elevation, if the barrier is not across a stream channel; or
- has or will have an impounding capacity of at least 50 acre-feet of water.

The following projects need not obtain approval from DWR:

- barriers with a height of 6 feet or less, regardless of impounding capacity;
- barriers of any height if the impounding capacity is 15 acre-feet or less;
- obstructions in canals used to raise, lower, or divert water;
- levees or railroad, road, or highway fills of structures;
- steel or concrete circular tanks or tanks elevated aboveground;
- barriers not across stream channels, watercourses, or natural drainage areas that are used to impound water for agricultural purposes or for sewage sludge-drying facilities; and
- barriers with a height of 15 feet or less in the channel of a stream or watercourse used

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Project-Level Regulatory Compliance

to spread water upstream for groundwater percolation.

CALFED activities that may require this approval include construction or alteration of existing dams, levees, artificial ponds, or other structures that are under DSOD jurisdiction. Anyone who proposes to alter a dam or reservoir must obtain written approval from DSOD for the plans and specifications. The applicant must obtain a revised Certificate of Approval from DSOD to alter the dam or reservoir.

Enlargement of a dam may fall under the jurisdiction of the Federal Energy Regulatory Commission if there is a power component to the enlargement. If the enlargement would inundate a substantial area, USFS or other agency may require an EIS or a joint EIR/EIS with the lead State or local agency. The permit application and review process is shown in Figure 3-15.

HOW TO APPLY FOR A PERMIT

An applicant should submit a separate application for each project using Form DWR-4, "Application for Approval of Plans and Specifications for the Repair of a Dam or Reservoir". The applicant should submit two copies of the plans and specifications for alterations or repairs to the dam and reservoir.

An applicant should submit a separate application for each project using Form DWR-3, "Application for Approval of Plans and Specifications for the Construction or Enlargement of a Dam and Reservoir". The applicant should submit two copies of the plans and specifications for the dam and reservoir showing the arrangement.

WHERE TO APPLY FOR A PERMIT

Applications should be directed to:

California Department of Water Resources
Division of Safety of Dams
P.O. Box 942836
Sacramento, CA 94236-0001
916/445-1520

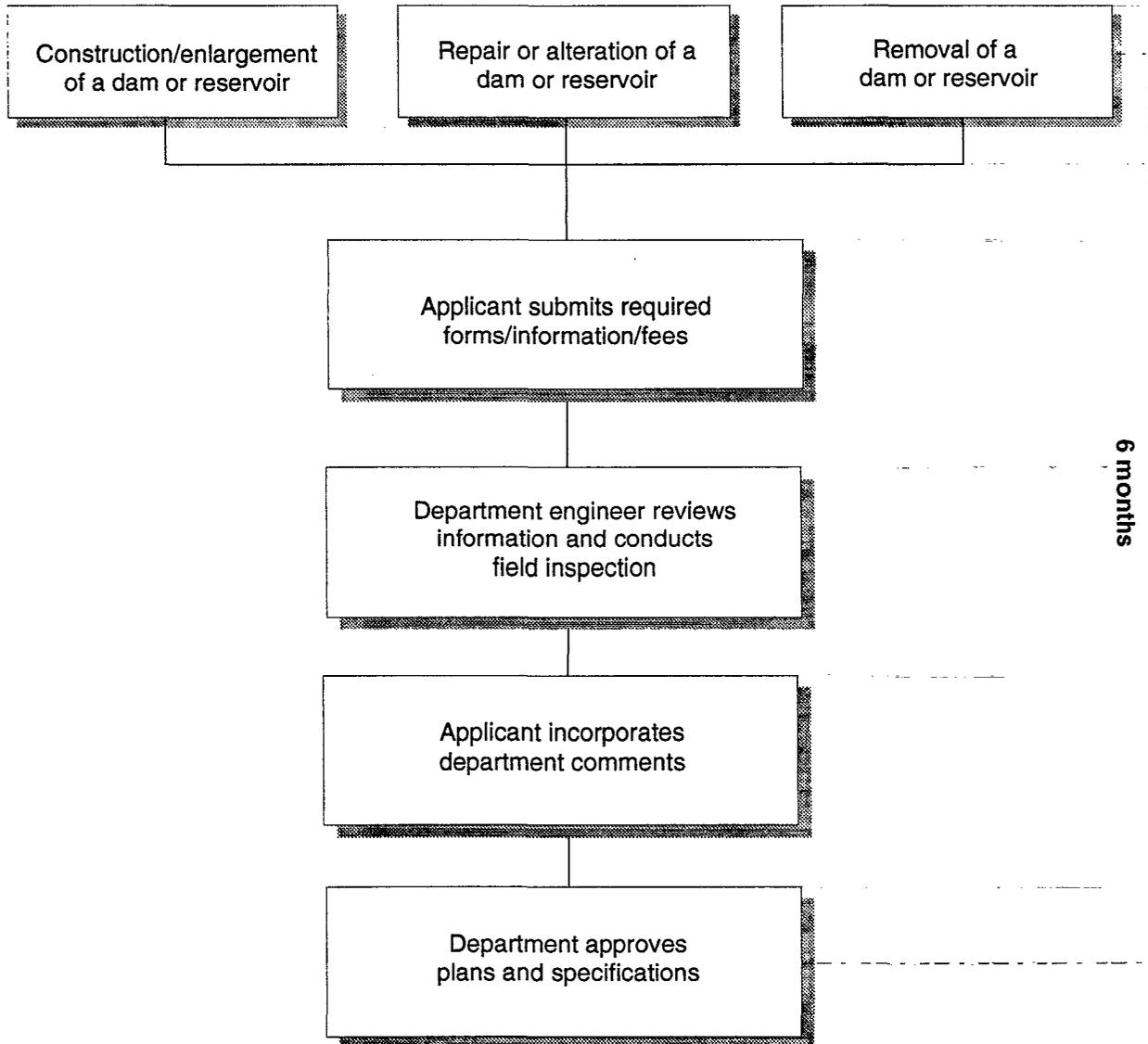
PERMIT APPLICATION FEE

DSOD charges a minimum filing fee of \$100 for dam or reservoir construction or enlargement projects; application fees vary with the estimated cost of the dam. Applicants should contact DWR to receive updated fee information. DSOD charges a fee for dam or reservoir repair or alteration only if DWR is required to be lead agency for CEQA compliance.

AUTHORITIES

- California Administrative Code, Title 23, Chapter 2
- California Water Code, Division 3, Parts 1 and 2

Figure 3-15. California Department of Water Resources
Division of Safety of Dams Certificate of Approval Process



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Project-Level Regulatory Compliance

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

Key Project Features for CALFED

- Activity involves federal agency
- Activity occurs in coastal zone
- Activity involves fill, extraction of materials from, or change in the use of water, land, or structures in BCDC jurisdiction

JURISDICTION AND DUTIES

The Coastal Zone Management Act (CZMA) requires federal agencies to preserve, protect, and, where possible, restore and enhance the resources of the coastal zone. CZMA provides for coastal states to develop coastal zone management programs, as reviewed and approved by the Secretary of Commerce through the National Oceanic and Atmospheric Administration, and requires that all federally conducted or supported activities be undertaken consistent with a state's coastal zone management program. For federal activities within or affecting the coastal zone, the federal agency must certify that the proposed activity conforms with the coastal state's program. The coastal state must notify the federal agency that it either concurs with or objects to the certification. If the state does not concur and finds that the proposed activity is inconsistent with its program, the federal agency must obtain an override from the Secretary of Commerce before commencing the action.

California has developed a coastal zone management program through the California Coastal Act of 1976. Local governments within the coastal zone are responsible for

implementing the program. The San Francisco Bay Conservation and Development Commission (BCDC) oversees the San Francisco Bay segment of the coastal zone management program, reviews federal agency actions for consistency with the San Francisco Bay segment of the coastal zone management program, and has permit jurisdiction over projects taking place at any location in the bay and within 100 feet inland from the mean high-tide line (mean high water) or 5 feet above mean sea level in marshland around San Francisco and Suisun Bays. It also has jurisdiction over projects within certain waterways up to the legally defined Sacramento-San Joaquin Delta (east of Chipps Island) that empty into the bay and within specific saltponds and managed wetlands. In addition, BCDC has direct permit authority over all activities and land uses defined in the Suisun Marsh Preservation Act, specifically projects within the "primary management area", which includes all tidal waters and marshes, seasonal marshes, managed wetlands, and lowland grasslands. Any person or public agency proposing to deposit fill; extract materials; or change the use of water, land, or structures in or around San Francisco or Suisun Bays must obtain a development permit or, in the Suisun Marsh, a marsh development permit from BCDC.

BCDC's permit jurisdiction includes San Francisco Bay; a shoreline band that extends 100 feet inland from the upland edge of the Bay; and saltponds, managed wetlands, and named waterways that empty into the Bay. BCDC's Bay jurisdiction extends geographically from a line that connects Point Bonita and Point Lobos at the entrance to the Bay and inland to include the central and south Bays, San Pablo Bay, Carquinez Strait, and Suisun Bay to a line that connects Stake Point and Simmons Point. BCDC also has jurisdiction over the Suisun Marsh. The lateral extent of BCDC's

jurisdiction reaches up to mean high water in areas that are not tidal marsh and up to 5 feet above mean sea level in areas of tidal marsh. BCDC also has direct permit authority over all activities and land uses defined in the Suisun Marsh Preservation Act within the primary management area of the Suisun Marsh, which includes all tidal waters and marshes, seasonal marshes, managed wetlands, and lowland grasslands.

PERMITS AND CONSULTATION

CZMA requires federal permit applicants to obtain certification that activities proposed within the coastal zone are consistent with state coastal zone management programs.

CALFED project-specific actions will most likely involve federal agency involvement in projects proposing to deposit fill in, extract materials from, or change the use of water, land, or structures in or around the San Francisco Bay or Suisun Bay and therefore will require compliance with CZMA. The federal agency would be required to certify that its action is consistent with California's coastal zone management program, as implemented by BCDC. The federal agency may require the project applicant to prepare a consistency analysis certifying that the proposed project-specific action is consistent with BCDC's program and submit it to BCDC for concurrence for federal agency submittal to BCDC. BCDC would either concur with or object to the certification. If BCDC objects to certification, the federal agency must obtain approval from the Secretary of Commerce before commencing the action.

For all nonfederal actions within BCDC's jurisdiction, BCDC issues Development Permits for actions within its McAteer-Petris Act jurisdiction and Marsh Development Permits for

actions within the Suisun Marsh. The following types of permits are issued, depending on the size, location, and impacts of a project:

- an Administrative Permit, which can be issued for an activity that qualifies as a minor repair or improvement;
- a Major Permit, which is issued for work that is more extensive than a minor repair or improvement; and
- a Regionwide Permit, which is issued for routine maintenance work.

Applications for both the Development Permit and Marsh Development Permit are processed in the same way. In an emergency, any of the three types of permits can be issued almost immediately if a project is needed to protect life, health, or property.

Nonfederal CALFED project-specific actions that propose to fill, extract materials from, or change the use of water, land, or structures in or around San Francisco Bay within BCDC jurisdiction must first obtain a development permit from BCDC.

HOW TO APPLY FOR A PERMIT

The following information should be included with the permit application:

- complete description of the proposed project, including volume (cubic yards) of dredging or fill required, estimated dates for beginning and ending the project, cost of the project, full description of existing and proposed uses, explanation of present and proposed public access to the Bay, and an analysis balancing the public benefits of the project with any possible public detriments such as loss of marsh or water area;

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- project location, including city, county, and assessor's parcel number;
- a discussion of the project's purpose and how it conforms to BCDC's policies in the San Francisco Bay Plan and the McAteer-Petris Act (these policies are designed to protect San Francisco Bay and to provide for Bay and shoreline development with a minimum of Bay fill) or the Suisun Marsh Preservation Act and Solano County Local Protection Program in the Suisun Marsh;
- names and addresses of adjacent property owners;
- if NEPA/CEQA applies, a copy of the NEPA/CEQA environmental document attached to the application (if the NEPA/CEQA document exceeds 5 pages, a summary must be submitted); and
- drawings illustrating the plans for the project and a map of the area on 8½- by 11-inch paper suitable for reproduction showing clearly and precisely the existing and proposed improvement, public access, and line of highest tidal action. The vicinity map should relate the project to the surrounding area, focusing on major highways, the Bay, other waterways, and important geographic features.

BCDC evaluates permit applications according to the proposed project's conformity with the McAteer-Petris Act, Suisun Marsh Preservation Act, San Francisco Bay Plan, and Solano County Local Protection Program. BCDC's permit application and review process is shown in Figure 3-16.

WHERE TO APPLY FOR A PERMIT

Applications for permits should be submitted to:

Permits
 Bay Conservation and Development
 Commission
 30 Van Ness Avenue, Room 2011
 San Francisco, CA 94102
 415/557-3686
 Fax: 415/557-3767

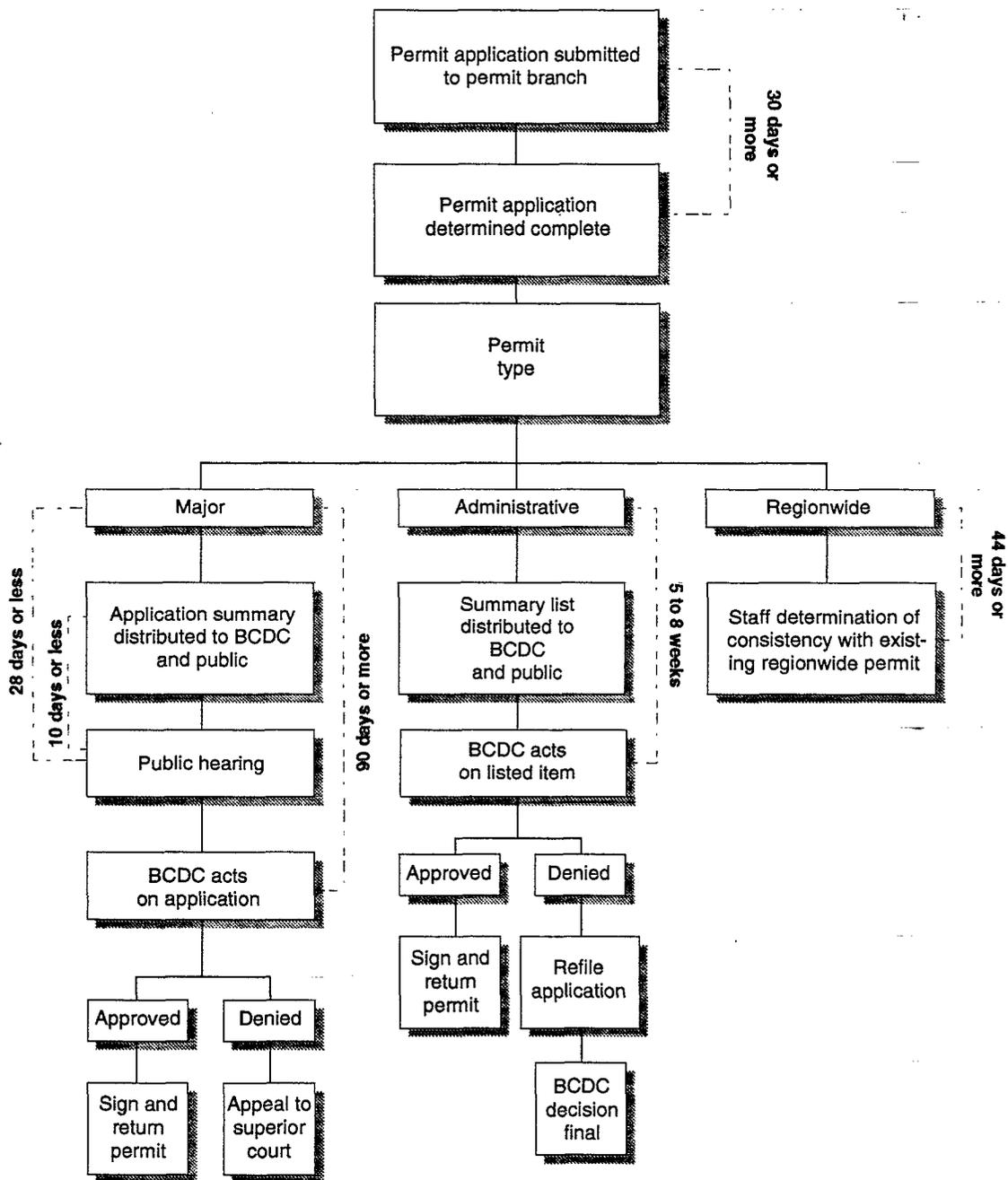
PERMIT APPLICATION FEE

The fee is based on the project's location and the total project cost. The following fee schedule indicates the most common categories of fees:

First-time extension	\$50
Nonmaterial amendment, other than first-time extension	\$100
Activity authorized under a Regionwide Permit	\$100
Minor repair or improvement with a total project cost of:	
- less than \$300,000	\$150
- \$300,000 to \$10,000,000	0.05% of total project cost
- more than \$10,000,000	\$5,000
Any other project that does not qualify as a minor repair or improvement with a total project cost of:	
- less than \$250,000	\$250
- \$250,000 to \$10,000,000	0.1% of total project cost
- more than \$10,000,000	\$10,000
Federal consistency submittal	None

Note: All fees are doubled for "after-the-fact" applications to correct violations.

Figure 3-16. San Francisco Bay Conservation and Development Commission (BCDC) Permit Application Process



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Project-Level Regulatory Compliance

If BCDC serves as the lead agency under the provisions of CEQA, an additional fee of \$300 is charged for analyzing, processing, and distributing environmental documents. Another \$500 fee is charged if an environmental assessment, referred to in 14 CCR 5, must be prepared. Fees may also be required to pay the cost of retaining consultants if BCDC staff determines that specialized information is needed to complete the required environmental analysis of a project. If an EIR must be prepared for BCDC, the cost of this work must be paid by the applicant.

AUTHORITIES

The applicant may refer to the following publications for further information on permits for development projects in the San Francisco Bay Region:

- Applying for Project Approval from BCDC, May 1990
- The San Francisco Bay Plan, BCDC, and any special area plan that has been adopted as part of the Plan for the area of the proposed project
- The McAteer-Petris Act: Government Code Sections 66600 et seq., especially Sections 66605, 66610, and 66632
- California Code of Regulations, Title 14, Division 5
- Suisun Marsh Preservation Act of 1977: Public Resources Code Section 29000 et seq.
- Solano County Local Protection Program
- Suisun Marsh Protection Plan

**CALIFORNIA DEPARTMENT OF
CONSERVATION****Key Project Features for CALFED**

- Activity occurs on land covered under Williamson Act contract
- Activity includes removal of earth materials or dredged materials

JURISDICTION AND DUTIES

The California Land Conservation Act of 1965 (commonly known as the Williamson Act) was established to provide a voluntary tax incentive program for preserving agricultural land and open space. The California Department of Conservation (CDC) provides assistance in the interpretation of the Williamson Act to local, regional, State, and federal agencies; organizations; landowners; or any other person or entity. The department also researches, publishes, and disseminates information about the policies, purposes, procedures, administration, and implementation of the Williamson Act.

The Williamson Act allows a property owner to enter into a 10-year contract with a county, which would then place restrictions on the land in exchange for tax savings. The property is taxed according to the income it is capable of generating from agriculture and other compatible uses, rather than on its full market value. Compatible uses under the Williamson Act are determined by the city or county having jurisdiction and are relative to compatible use standards defined in statute. The act identifies "compatible uses" as agricultural production, recreation, and open space and "agricultural land" as land traditionally used for agricultural production; land within a scenic highway

corridor; land devoted to recreational use; or land containing wildlife habitat, managed wetlands, or a saltpond.

The Surface Mining and Reclamation Act (SMARA) requires that mined lands be returned to a productive second use after mining and includes requirements for annual reporting, payment of an annual fee, and provision of a financial assurance to guarantee reclamation. SMARA specifically includes borrow pits and dredging in the statutory definition of mining; therefore, a reclamation plan, annual report, and financial assurance are required for any activity that uses borrow pits, dredges materials for sale, or removes other earth materials for sale. Mining activities by government agencies generally fall under SMARA.

SMARA contains specific exemptions for certain types of operations. In particular, onsite construction removal of materials is exempt from SMARA if certain criteria are met. Also, mining activities on lands owned or controlled by DWR are exempt from many of the law's requirements. To trigger the requirements of SMARA, more than 1,000 cubic yards of material must be removed, or more than 1 acre disturbed, by mining activities.

PERMITS AND CONSULTATION

CDC provides oversight for lands eligible for Williamson Act coverage and for actions to remove land under Williamson Act coverage. To obtain a Williamson Act contract for the land, the landowner must file an application with the county or city, usually with its planning department. Once eligibility of the parcel has been established, the application is processed and approved. Contracts may also be extended to compatible uses, such as those described above. Location of a parcel within an

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agricultural preserve and minimum parcel size are also considerations of eligibility.

Williamson Act coverage may be terminated in four ways: 1) nonrenewal process initiated by landowner or jurisdiction that removes contract restrictions in 9 years, 2) cancellation where the contract is actively canceled, 3) city annexation under certain conditions, and 4) eminent domain where a public agency goes through formal condemnation proceedings to acquire the land or purchases the land in lieu of eminent domain proceedings.

All agricultural acreage in California is eligible for Williamson Act coverage. CALFED actions may enable certain lands to enter into Williamson Act contracts and remove land from eligibility by, for example, creating wetlands on agricultural land not under an existing contract. An example of a CALFED action that would allow entering into a Williamson Act contract would be conversion of noncontracted agricultural land to wetlands.

CDC also oversees SMARA administration. Most SMARA duties are administered at the local government level. When an entity plans to mine an area, it must apply for a mining permit with the appropriate city or county (or, in rare cases, BCDC). The potential mine operator must also prepare a reclamation plan that must meet specific performance regulations. On approval of the permit and reclamation plan by the local jurisdiction, the potential mine operator must send a report and pay a fee to CDC. Also, a financial assurance, payable to both the local government and CDC, must be in place.

On completion of mining, the site must be reclaimed according to the approved reclamation plan. On certification by the local jurisdiction that reclamation is complete, the

financial assurance can be returned or terminated.

NOTIFICATION PROVISIONS

Public agencies must notify the Director of CDC of the possible acquisition of Williamson Act land for public improvement. Notification must occur when land enrolled in a Williamson Act contract is being considered for acquisition or is being acquired by a public agency, the original public improvement changes, or the land is not used for the public improvement for which it was acquired. The local governing body responsible for the administration of the agricultural preserve must also be notified.

Potential mine operators must apply for a mining permit and reclamation plan approval to the city or county in which the extraction operation is to take place.

FEE REQUIREMENT

Fee requirements vary widely between local jurisdictions. A reporting fee of \$500 is due to CDC within 30 days of permit approval.

WHERE TO SEND NOTICES

Director
California Department of Conservation
801 "K" Street, MS 24-01
Sacramento, CA 95814

AUTHORITIES

- California Government Code 51200-51295
- California Public Resources Code 2207 and 2710 et seq.

AIR DISTRICTS**Key Project Features for CALFED**

- Activity involves facility or equipment that may emit air pollutants
- Activity involves facility or equipment considered a stationary source (building, structure, facility, or installation)
- Activity involves proposal to operate equipment that emits pollutants from a stationary source

JURISDICTION AND DUTIES

Air districts issue permits and monitor new and modified sources of air pollution to ensure compliance with national, State, and local emissions standards and to ensure that emissions from such sources will not interfere with the attainment and maintenance of ambient air quality standards adopted by the California Air Resources Board (ARB) and EPA. The various air districts throughout the State are divided into county or regional jurisdictions.

PERMITS AND CONSULTATION - AUTHORITY TO CONSTRUCT

Certain CALFED project-specific actions may involve the construction, modification, or operation of a facility or equipment that may emit pollutants from a stationary source into the atmosphere. Before beginning any of these activities, the project applicant must first obtain an Authority to Construct from the county or regional air district (i.e., the Air Pollution Control District [APCD] or Air Quality Management District [AQMD]). EPA Part 70 regulations define a stationary source of air pollution as any building, structure, facility, or

installation that emits (or may emit) any regulated air pollutant or any of 189 hazardous air pollutants listed under Section 112(b) of the Clean Air Act Amendments of 1990.

HOW TO APPLY FOR A PERMIT

Applicants should do the following on the permit application:

- Describe the business and industrial process including the types of all material used, the products manufactured, and the wastes generated. This description should also include the type of air pollution control equipment by design, size, or its anticipated degree of control and the types of fuels to be used, their rates of use, and their sulfur and nitrogen content.
- Give a detailed description of the equipment to be used, including the size and type, for the entire unit or major part of each unit. This description should include all auxiliary equipment and the location, size, and shape of all features that may influence the production, collection, or control of air contaminants. If the equipment uses burners, the description should specify the type, size, and maximum capacity of each burner.
- Supply identification numbers of existing air district permits, if any.
- Provide the operating schedule for emission sources by hours per day, days per week, and weeks per year, including preventive maintenance schedules.

ARB and EPA have established standards based on public health considerations, known as ambient air quality standards, that govern the quality of the surrounding atmosphere.

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Emissions limits for specific types of equipment have been established to ensure that ambient standards are attained and maintained. In addition to emissions limits and ambient air quality standards, air districts have adopted what are commonly known as New Source Review Rules. Some districts regulate toxic air contaminants for which there are not ambient air quality standards to prevent endangerment to public health. Applicants may be required to provide information, risk assessments, and control methods for these pollutants in such districts. Figure 3-17 outlines the approval process for permits from California air districts.

WHERE TO APPLY FOR A PERMIT

Applicants should direct inquiries and notifications (applications) to the appropriate county or regional air district. Figure 3-18 provides the geographic boundaries of each regional air district within California.

PERMIT APPLICATION FEE

Each air district sets its own filing fees for the Authority to Construct application. Applicants should expect to pay from \$100 to \$20,000 in major metropolitan areas. Air districts also charge a permit fee, generally greater than the filing fee, based on the size of the project.

PERMITS AND CONSULTATION - PERMIT TO OPERATE

Anyone proposing to operate equipment that emits pollutants into the atmosphere from a stationary source must obtain a Permit to Operate from the APCD or AQMD for the area in which the equipment is located. The developer/applicant may apply for the permit only after obtaining an Authority to Construct from the air district and completing the construction or modification according to the

terms of the Authority to Construct. EPA Part 70 regulations define a stationary source of air pollution as any building, structure, facility, or installation that emits (or may emit) any regulated air pollutant or any of 189 hazardous air pollutants listed under section 112(b) of the Clean Air Act Amendments of 1990.

HOW TO APPLY FOR A PERMIT

Typically, projects that require a Permit to Operate will have attained CEQA compliance; however, issuance itself of a Permit to Operate does not require CEQA compliance.

Each air district uses its own application form for the Permit to Operate. In general, the air district asks the applicant to certify that the developer/applicant completed the construction according to the terms and conditions of the Authority to Construct and that the facility will meet the district's regulations.

WHERE TO APPLY FOR A PERMIT

Applicants should direct inquiries and notifications (applications) to the APCD that issued the Authority to Construct permit (Figure 3-18).

The air district evaluates applications for a Permit to Operate to determine whether the developer/applicant constructed the facility according to the conditions of the Authority to Construct. The air district also determines whether the developer/applicant will comply with the district's rules and regulations when operating the facility. A compliance source test may be required. If required, the test must be conducted by the district or by an approved independent source-testing consultant. The permit application and review process is shown in Figure 3-19.

Figure 3-17. Air Districts' Authority to Construct

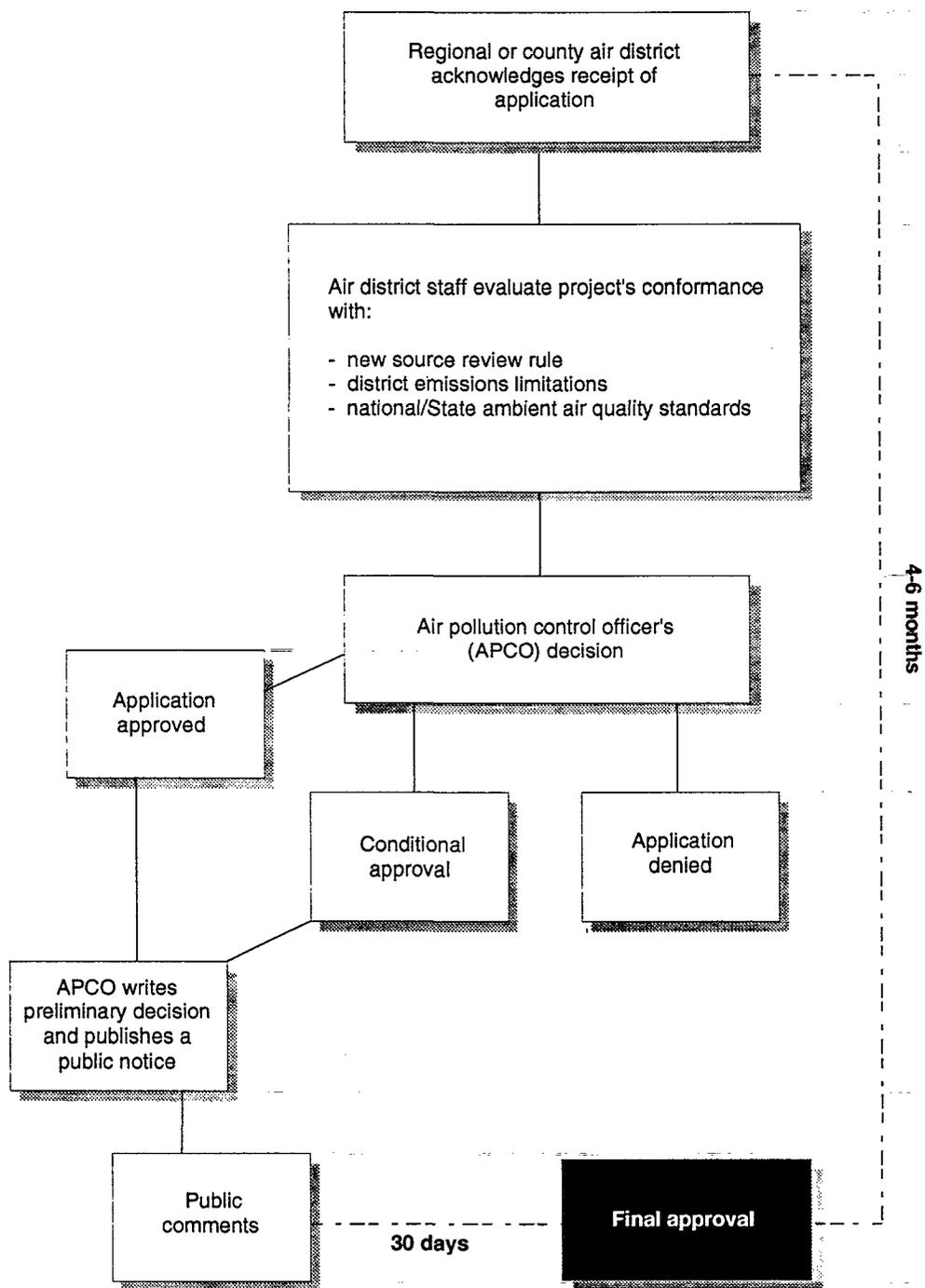
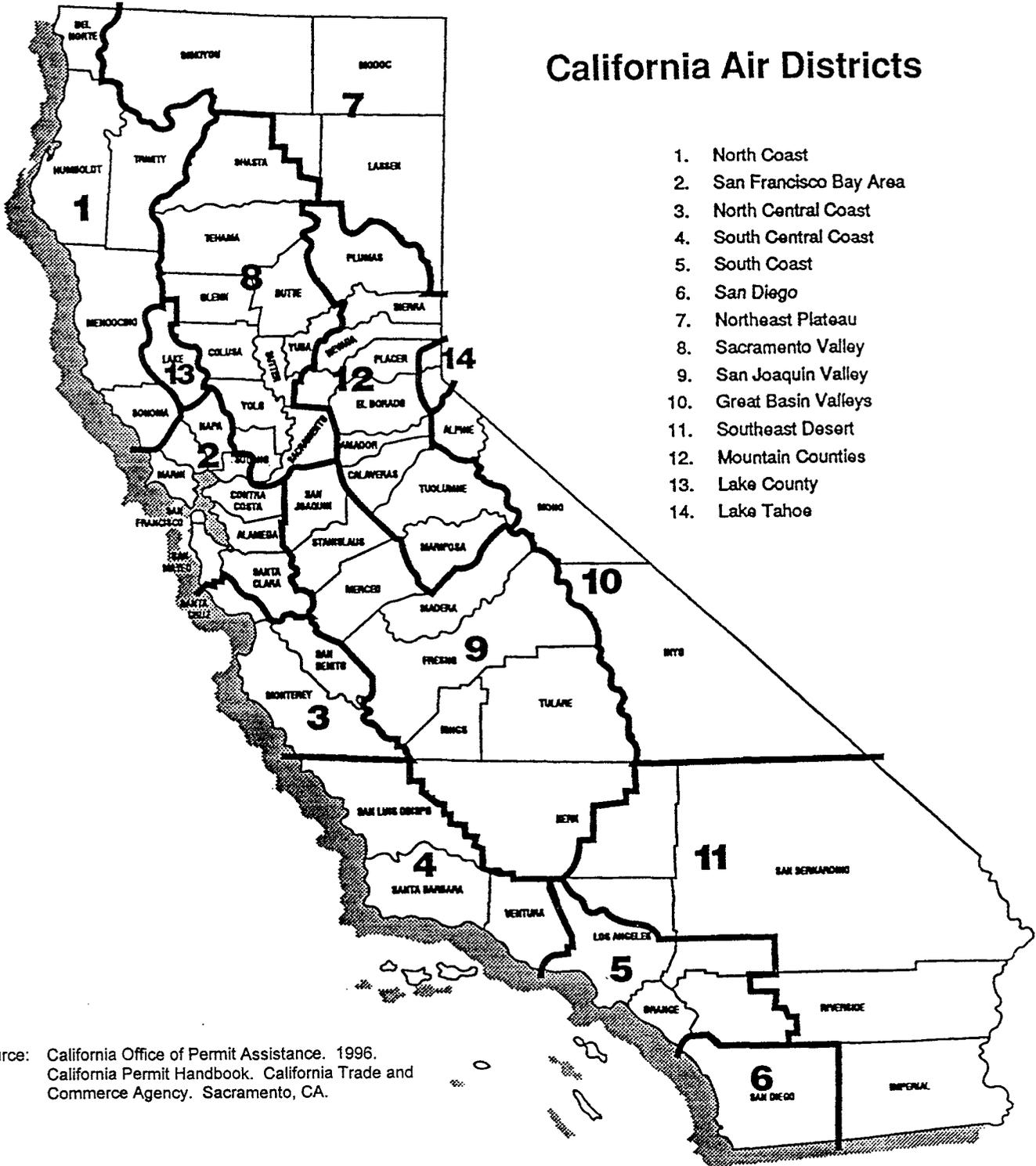
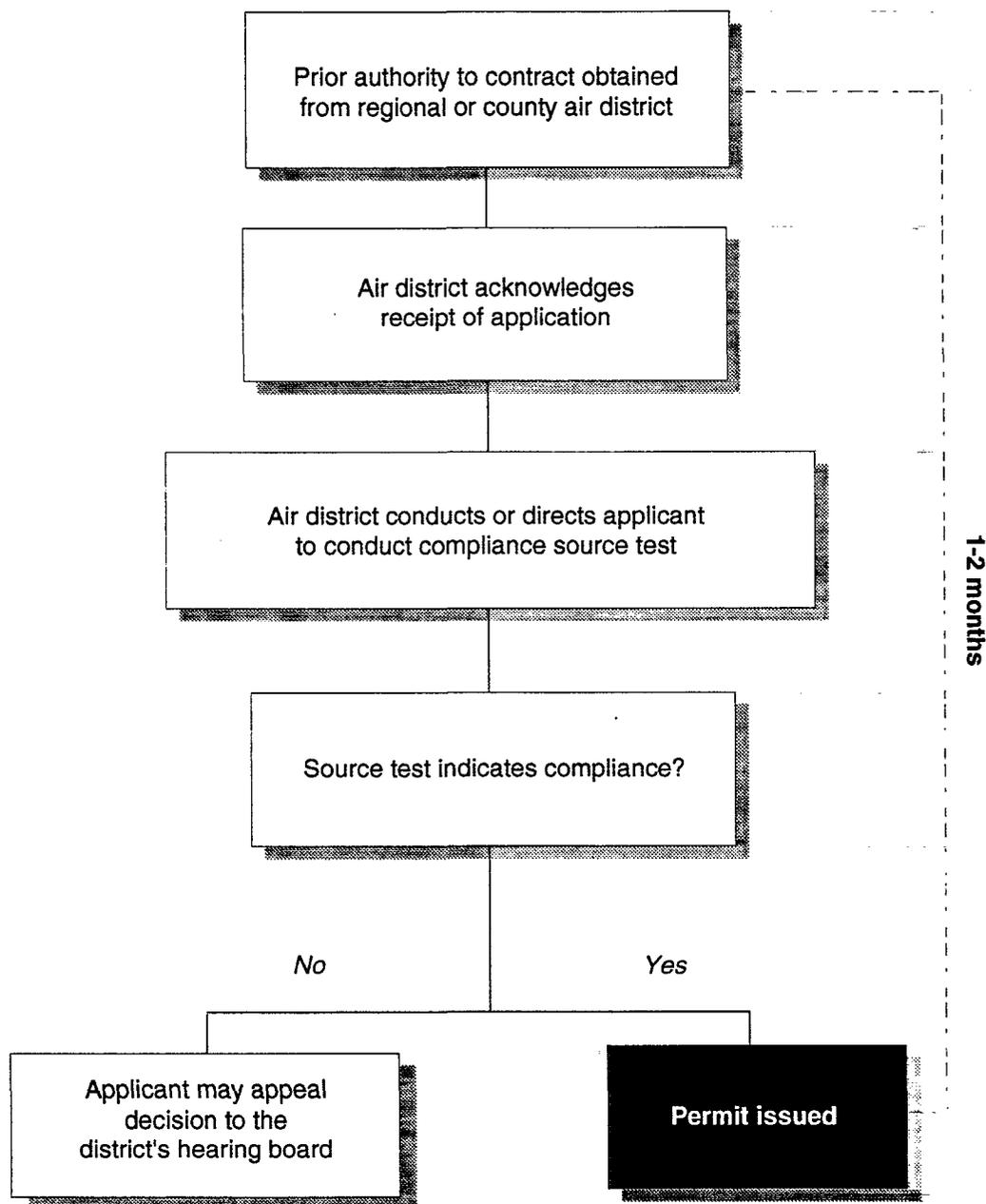


Figure 3-18. Geographical Boundaries Illustrating County Organization within Each Air District



Source: California Office of Permit Assistance. 1996. California Permit Handbook. California Trade and Commerce Agency. Sacramento, CA.

Figure 3-19. Air Districts Permit to Operate



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PERMIT APPLICATION FEE

Each air district uses its own Permit to Operate fee schedule. The air district will generally charge the applicant a permit fee equal to that paid for the Authority to Construct, not including the initial filing fee. If the air district must collect samples to analyze the emissions from any source, it will charge the applicant a fee to cover its expenses. Fees range from \$100 to \$10,000 in major metropolitan areas.

AUTHORITIES

- 40 CFR Part 50 et seq.
- 42 USC 7401-7642

**CALIFORNIA DEPARTMENT OF
TRANSPORTATION****Key Project Features for CALFED**

- Activity would be located within ROW of State-owned roadway

JURISDICTION AND DUTIES

The California Department of Transportation (Caltrans) is responsible for planning, designing, constructing, operating, and maintaining State-owned roadways. Caltrans issues permits for projects affecting areas within the ROWs of State-owned roadways. Caltrans issues permits to encroach on land within its jurisdiction to ensure that the proposed encroachment is compatible with the primary uses of the State highway system, ensure the safety of both the permittee and the highway user, and protect the State's investment in the highway facility.

PERMITS AND CONSULTATION

Proponents of CALFED actions proposed within, under, or over the State highway ROW (e.g., rerouting and protecting infrastructure; opening or excavating a State highway for any purpose; constructing and maintaining road approaches or connections to or grading within the ROW on any State highway; or placing, changing, or renewing an encroachment) are required to obtain an Encroachment Permit. Work in the ROW that costs more than \$300,000 will require a Highway Improvement Agreement or a Cooperative Agreement from Caltrans in addition to an Encroachment Permit. (The permit application and review process for an Encroachment Permit is shown in Figure 3-20.)

An encroachment requiring permanent access or maintenance in freeway or expressway ROWs can be considered for a permit only if the following restrictions are met:

- the encroachment is related to a public facility or utility dedicated to public use;
- alternative locations for the encroachment are inordinately difficult or unreasonably costly;
- the encroachment is as near as possible to the outer boundary of the ROW; and
- the encroachment is approved by the Chief, Office of Project Planning and Design in Caltrans and possibly FHWA when federal facilities or funds are also affected.

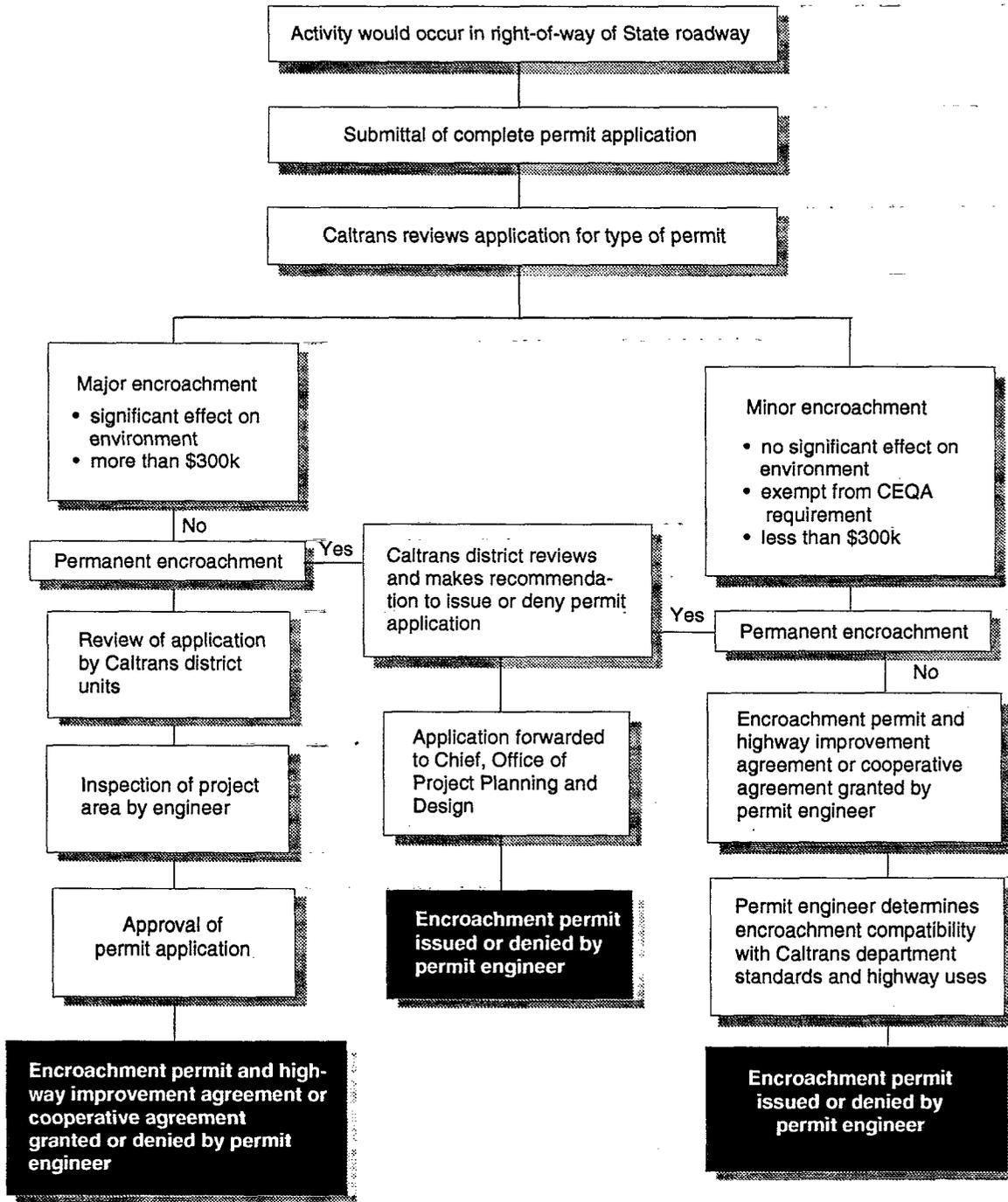
HOW TO APPLY FOR A PERMIT

A complete description and detailed plans of the proposed work and existing facilities within the State highway ROW, including an estimate of the cost of work within the ROW and a full description of the route and method by which the facility owner will gain ingress and egress to the encroaching facility for maintenance purposes must be provided.

Caltrans evaluates the permit application to determine:

- how the encroachment may disrupt traffic or result in potential hazards to other highway users;
- how the encroachment may impair the design, construction, operation, maintenance, or integrity of the highway;

Figure 3-20. California Department of Transportation Encroachment Permit Process



- how the project proponent will restore the highway to its original conditions, including landscaping and drainage; and
- how the proposed encroachment will affect the aesthetics of the highway.

Permit applications are processed differently, depending on the type of encroachment. If the proposed encroachment is minor and will have no significant effect on the environment or is exempt from the requirements of CEQA, a Caltrans permit engineer will review the application to determine whether the encroachment is compatible with other highway uses and conforms to Caltrans standards.

If the proposed encroachment is major (e.g., requiring access to a subdivision or a transmission line), the permit engineer inspects the project area. Other Caltrans district units (e.g., Traffic, Design, and Environmental) may review the application to determine the proposed encroachment's effect on use of the State highway and on the environment. If these units find the encroachment acceptable, the permit engineer issues the permit. Time to complete this process varies, depending on the complexity of the project.

For proposed encroachments requiring permanent access or maintenance in freeway or expressway ROWs, the Caltrans district reviews the application and recommends approval or denial of the application. If approval is recommended, the permit engineer will forward it to the Chief, Office of Project Planning and Design, who generally follows the recommendation and returns the application to the permit engineer, who issues the permit. Permits are seldom granted unless special circumstances require them.

WHERE TO APPLY FOR A PERMIT

Project proponents should direct inquiries and permit applications to the local Caltrans district office or telephone Caltrans' Sacramento Headquarters at 916/654-4961 for the location of the local Caltrans district office. Project proponents should complete Caltrans' Standard for Encroachment Permit Application, which can be obtained from district offices.

PERMIT APPLICATION FEE

Caltrans' fee varies according to the amount of effort required to review and inspect the proposed Encroachment Permit work. The fee is based on an hourly charge, which is subject to change as necessary to cover expenses. The fee is estimated at the time the application is submitted, and a deposit is required of all applicants (except public agencies and utilities) before further processing. Public agencies are exempt from fees, and public utilities are billed for fees at a later date.

Caltrans also may require the applicant to submit a Caltrans Encroachment Permit Performance Bond. If a bond is required, Caltrans will determine the amount. Caltrans normally will not require a bond from public agencies or public utilities.

AUTHORITIES

- California Streets and Highways Code Sections 660-734

LOCAL REGULATORY COMPLIANCE

Cities and counties in California have adopted local zoning ordinances and general plans that set policy on how land development will occur within their respective jurisdictions. Approvals and entitlements at the city or county level are required for many development activities. Although requirements will be similar in most cases, each jurisdiction is likely to have some unique requirements. An overview for each type of approval or entitlement is provided below. CEQA compliance may be required for grading and building permits if they are discretionary and is normally required for approvals and entitlements.

GRADING PERMITS

Grading permits are required for earthmoving activities. City or county public works departments require permits for cut-and-fill activities that exceed minimum thresholds set by local grading ordinances. Grading permits can be obtained from the public works department of the city or county in which the project site is located. An example of a CALFED action that may necessitate a grading permit would be restoration of wetlands from land currently under agricultural production. Generally, the project proponent should provide grading plans that describe existing conditions and the proposed work. Cities or counties will most likely require a project proponent to submit information about the property's location, utility easements, topography, soils, existing structures, waterways, and other details. Some jurisdictions may also require the project proponent to submit environmental information on a questionnaire or checklist.

Grading plans are reviewed for consistency with improvement standards and compliance with local grading ordinances. Fees for plan checking and grading permits vary from jurisdiction to jurisdiction. Depending on the magnitude of the project and the adopted procedures of the jurisdiction where the project would occur, environmental review may be required before a permit is issued.

Review of grading plans may also lead to other permit requirements. For example, some jurisdictions have tree ordinances that require permits for removal of trees. If grading would result in removal of trees of a protected size or species (e.g., native oaks), a tree permit may be required. Demolition permits may be required if existing structures would be removed during grading. Requirements for demolition permits vary.

BUILDING PERMITS

Building permits are typically required when a project applicant proposes to erect a structure or significantly modify or renovate an existing structure. Applications should be submitted to the public works or building department in the city or county where the structure will be located. The project applicant will be required to provide multiple copies of building plans showing all aspects of the proposed construction. Examples of CALFED actions that may necessitate applying for a building permit would be the construction of a commercial fish hatchery or desalination facility.

Building permits are evaluated based on compliance with the Uniform Building Code. Building permits are also reviewed by the planning or community development

department for consistency with zoning requirements and any special conditions and provisions attached to the property in question. Once a permit is issued, the structure is inspected during phases of construction by a city or county inspector. The inspector certifies the structure for occupancy once construction has been completed and all requirements have been met. Building departments charge a fee for plan checking, permit issuance, and building inspection that is often based on a sliding scale linked to the value of the proposed structure. Review of building plans may also lead to other permit requirements (see discussion under "Grading Permits").

SPECIAL OR CONDITIONAL USE PERMITS

Special or conditional use permits are often required when a project applicant proposes a use of a property for which it is not designated. Local zoning ordinances typically identify land uses that are permitted in specific land use zones and those that require a use permit. An example of a CALFED action that may necessitate applying for a special or conditional use permit would be the construction of a community/nature center on land zoned for open space/floodway. City or county planning or community development departments or agencies typically process applications for special and conditional use permits.

Applications for use permits, which are available from city or county planning or community development departments, should describe the permitting process and requirements. Typical information that would be required would be a description of the project, a description of the project site and the surrounding area, and an assessor's parcel number for the land.

Application fees are variable and may be fixed or based on the complexity of the project. The city or county may also require environmental information, depending on the jurisdiction and the nature of the project. Additional fees may be required for other environmental documentation requirements.

The use permit application will be compared with adopted development standards and policies that apply to the proposed use or the project site. Consistency with the general plan is one requirement. The city or county typically places specific conditions on the permit related to project design or operation.

Use permits are administrative actions that are considered and approved by an administrative zoning body, such as a planning commission, or a designated officer, such as a zoning administrator. The use permit application is considered at a public hearing and may be denied or approved. The decision of a public hearing body may be appealed.

SUBDIVISION MAP APPROVAL

The State Subdivision Map Act provides the legal basis for local governments to regulate land divisions in California for the purposes of sale, lease, or financing. Local plans and ordinances provide criteria for lot sizes, subdivision design, and the types of improvements that are required. An example of a CALFED action that may necessitate approval of a subdivision map would be the purchase of a portion of acreage from a larger parcel for a CALFED facility. Applications for subdivision maps can be submitted to the city or county planning or community development department for processing.

The city or county planning or community development department can provide detailed

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instructions for processing a subdivision map application. Typical information required would be detailed project information, a description of the site location, a description of applicable general plan and zoning designations, and property owner information. An applicant may also be required to submit environmental information.

Application fees vary among jurisdictions. A flat fee may be charged for processing subdivision map applications or the fee may vary, depending on the complexity of the project. Additional fees may also be charged for environmental review and documentation.

Cities or counties evaluate proposed subdivision maps to determine whether the map is consistent with the general plan and zoning ordinances. The projects are reviewed to ensure compliance with community standards for streets, parks, drainages, and other services provided by the city or county. The city or county reviews a tentative map for consistency with local ordinances and may negotiate improvements with the project applicant. The project proponent must submit a final map showing approved lots, improvements, and certificates. If the map complies with the approved tentative map, the city or county can approve it and the project applicant can record the final map as a prerequisite for selling the parcels. The procedures for processing tentative maps vary among jurisdictions. Decisions to deny or approve a subdivision map may be appealed.

SPECIFIC PLAN

A specific plan may be used by a landowner or a group of landowners to plan for development of an area. A specific plan includes a land use scheme, development standards, and details on supporting infrastructure and public facilities financing. A specific plan can be prepared by

landowners or the city or county. An example of a CALFED action that may necessitate preparation of a specific plan would be the retirement of land in agricultural production and the conversion of the acreage to low-density housing, a golf course, and a wildlife preserve. Applications for specific plans can be submitted to the city or county planning or community development department for processing.

The information required from the project proponent depends on whether the city or county or the project proponent is preparing the specific plan. If a developer submits the plan, the plan must contain:

- text and diagrams that show the distribution, location, and extent of proposed land uses;
- all public and private facilities needed to support the proposed land uses;
- a program of implementation measures and financing necessary to carry out the project; and
- a statement of the specific plan's relationship to the general plan.

Application fees vary among jurisdictions. Required fees are proportional to the actual costs of preparing, adopting, or amending the specific plan. Additional fees may also be charged for environmental review and documentation.

Specific plans are evaluated for consistency with the general plan. A specific plan would be subject to public hearings before the city or county planning commission and the city council or board of supervisors. A specific plan can be adopted either by ordinance or by resolution. Decisions of the governing bodies to deny or approve the plan can be appealed.

ZONING ORDINANCE AMENDMENT

A zoning ordinance amendment is typically required if the proposed use of the land is not permitted conditionally or by right in the land use zone in which the property is located. An example of a CALFED proposed action that may necessitate applying for a zoning ordinance amendment would be the conversion of undeveloped real estate property, zoned "high-density residential", to a wetland. Applications for a zoning ordinance amendment can be submitted to the city or county planning or community development department for processing.

The information required by different cities or counties usually includes current and proposed land uses, a description of the project site and vicinity, the assessor's parcel number for the property, and environmental information. Application fees vary among jurisdictions, depending on the complexity of the project. A flat fee may be charged for processing zoning ordinance amendments. Additional fees may be charged for environmental review and documentation.

Proposed zoning amendments are reviewed for consistency with the general plan and for adverse impacts on neighboring land uses and the environment. The proposal is generally heard by a planning commission, which submits a recommendation to the city council or board of supervisors. During the governing body's public hearings, the proposal can be approved, denied, or modified. If the governing body modifies the proposal, the project is reconsidered by the planning commission.

LOCAL GENERAL PLAN AMENDMENT

General plans for cities and counties set forth policies to guide local land development.

General plans typically include a map of allowable uses and major public works and transportation facilities. A project proponent would need a general plan amendment if a proposed project would be inconsistent with the plan, and an amendment must be approved before development can proceed. An example of a CALFED action that may necessitate a general plan amendment would be conversion of land designated as heavy industry to open space to create a wetland. Applications for a general plan amendment can be submitted to the city or county planning or community development department for processing. The types of information required by cities or counties is somewhat variable (see discussion under "Zoning Ordinance Amendment").

When an application for a general plan amendment is submitted, the city or county schedules a public hearing before the planning commission. The planning department reports to the commission on project issues such as compliance with general plan policies and potential community impacts. Appropriate environmental documentation is prepared. After the planning commission considers the project, a recommendation is made to the city council or board of supervisors. The governing body conducts a public hearing and approves, denies, or modifies the proposed amendment. If the amendment is modified, it must be referred back to the planning commission for reconsideration.

AUTHORITIES

- Government Code Section 66410 et seq.

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