

ENVIRONMENTAL REGULATIONS AND PERMIT REQUIREMENTS

Many biological, cultural and other environmental resources in California are protected by Federal and State laws and regulations. During the project planning and pre-implementation process, surveys and other assessments may be needed to determine site sensitivities and compliance measures to minimize environmental impacts or effects on protected resources. Key environmental regulatory requirements and permits applicable to potential public recreation facilities are discussed below.

FEDERAL

Federal Endangered Species Act (ESA)

Pursuant to the federal Endangered Species Act (ESA), the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) have authority over projects that may result in take of a federally listed species. Under the ESA, the definition of "take" is to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." USFWS has also interpreted the definition of "harm" to include significant habitat modification that could result in take. If a project has a reasonable likelihood that it would result in take of a federally listed species, either one of two take approvals is required: an incidental take permit, under Section 10(a) of the ESA (if no other federal action is involved), or a federal interagency consultation and Biological Opinion, under Section 7 of the ESA (if another federal approval is needed).

The recreation facilities improvements and recreation activities discussed in this report have the potential to affect federally listed threatened or endangered, and candidate or proposed species.

Federal Emergency Management Agency (FEMA)

Per the Federal Emergency Management Agency (FEMA) regulations, counties are mandated to have ordinances regulating construction of buildings within the 100-year flood zone, which pose restrictions on potential facilities and require special consideration for construction of permanent structures such as restroom or office facilities.

National Environmental Policy Act (NEPA)

NEPA applies whenever a federal agency proposes an action, grants a permit, or agrees to fund or otherwise authorize any other entity to undertake an action (i.e., a "major federal action") that could possibly affect environmental resources.

Some of the recreation facilities improvements and recreation activities discussed in this report will have a very small effect on the environment (e.g. construction of a new boat ramp) and may qualify for a categorical exemption under NEPA. In other instances (e.g.

construction of a new campground), the environmental impacts may be significant and an EIS may need to be prepared, as explained below.

Categorical Exemption

There are certain actions that do not individually or cumulatively have a significant effect on the environment. For these actions, neither an environmental assessment nor an environmental impact statement is required.

Environmental Assessment/Finding of No Significant Impact

If a project is not exempt from NEPA, then an Environmental Assessment (EA) is prepared to determine whether or not the project would significantly affect the human environment. An EA is a concise, focused document that includes the project need, feasible alternatives, environmental impacts of the proposed project and all alternatives, and a list of agencies and persons consulted.

If the project is found to have no significant effect on the environment, then a Finding of No Significant Impact (FONSI) shall be prepared.

Another option is to prepare a mitigated FONSI in which any potential significant effects can be reduced to less than significant levels. While it can be faster and less expensive than preparing an Environmental Impact Statement (EIS), it requires (unlike an EIS) that all potentially significant impacts be eliminated.

Environmental Impact Statement

If the proposed project is identified in the EA as significantly affecting the human environment, then an EIS should be prepared (unless a mitigated FONSI will be prepared). A Notice of Intent must be published in the Federal Register when the federal agency decides to prepare an EIS. Public scoping meetings should then be held to obtain public and agency input regarding the scope of issues to be addressed in an environmental review. Then the EIS is prepared.

Migratory Bird Act (MBTA)

The Migratory Bird Treaty Act (MBTA), first enacted in 1918, implements domestically a series of treaties between the United States and Great Britain (on behalf of Canada), Mexico, Japan, and the former U.S.S.R., which provide for international migratory bird protection, and authorizes the Secretary of the Interior to regulate the taking of migratory birds. The MBTA provides that it shall be unlawful, except as permitted by regulations, "to pursue, take, or kill...any migratory bird, or any part, nest or egg of any such bird, included in the terms of conventions" with certain other countries (16 U.S. Code [USC] 703). The current list of species protected by the MBTA contains several hundred species and essentially includes all native birds. Section 3513 of the California Fish and Game Code provides for adoption of the MBTA's provisions. Although neither the MBTA nor this state

code offers statutory or regulatory mechanisms for obtaining an incidental take permit for the loss of nongame migratory birds, a Section 10(a) permit issued under the ESA may constitute a special purpose permit for the take of a listed species that is also covered by the MBTA. Sometimes CDFG and USFWS seek measures that demonstrate avoidance of loss of MBTA-covered species. USFWS and CDFG have discretion whether or not to pursue an MBTA action, if some migratory birds would be lost, but have decided not to pursue action when agencies demonstrate that all reasonable loss avoidance measures have been incorporated into a project.

Section 404 of the Clean Water Act (CWA)

Section 404 of the Clean Water Act (CWA) establishes a requirement to obtain a permit from USACE prior to initiating any activity that involves any discharge of dredged or fill material into "waters of the United States," including wetlands. Waters of the United States include navigable waters of the United States, interstate waters, all other waters where the use or degradation or destruction of the waters could affect interstate or foreign commerce, tributaries to any of these waters, and wetlands that meet any of these criteria or that are adjacent to any of these waters or their tributaries. Wetlands are defined as those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Jurisdictional wetlands must meet three wetland delineation criteria: hydrophytic vegetation, hydric soil types, and wetland hydrology. Many surface waters and wetlands in California meet the criteria for waters of the United States, including intermittent streams and seasonal lakes and wetlands.

Pursuant to Section 404 of the CWA, the U.S. Army Corps of Engineers (USACE) regulates and issues permits for activities that involve the discharge of dredged or fill materials into waters of the United States. In addition, under Section 10 of the Rivers and Harbors Act, USACE issues permits for structures and/or work in or affecting navigable waters of the United States. Fills of less than ½ acre of non-tidal waters of the United States for residential, commercial, or institutional development projects can generally be authorized under the USACE's nationwide permit (NWP) program, provided the project satisfies the terms and conditions of the particular NWP. Fills that do not qualify for a NWP require an individual permit.

There are several nationwide permits that will likely apply to the project activities along the Sacramento River. Many of the recreation facilities improvements and recreation activities discussed in this report have the potential to result in fill or discharges to wetlands and other waters of the U.S. If that is the case, the activities need to be covered under one or more of the nationwide permits or an application for an individual permit should be prepared and sent to the USACE. In order for an activity to be authorized by a nationwide permit, the activity must comply with the requirements stated in the nationwide permit as well as the General Conditions. Several nationwide permits are listed and described briefly below.

NWP 3, Maintenance

This nationwide permit may allow repair, rehabilitation, or replacement to any previously authorized, currently serviceable structure or fill provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification and provided the adverse environmental effects resulting from such actions are minimal.

NWP 19, Minor Dredging

Dredging of no more than 25 cubic yards below the ordinary high water mark within a navigable water of the U.S. may be authorized under this nationwide permit. This NWP cannot be used if a wetland, submerged vegetation, or anadromous fish spawning area may be destroyed or disturbed during the activity. In addition, the connection of canals or other artificial waterways to navigable waters cannot be dredged under this NWP.

NWP 27, Stream and Wetland Restoration Activities

Activities authorized by this NWP include, but are not limited to: the removal of accumulated sediments; the enhancement, restoration, or creation of riffle and pool stream structures; modifications of the stream bed and/or banks to restore or create stream meanders; activities needed to reestablish vegetation; mechanized land clearing to remove non-native invasive, exotic or nuisance vegetation; and other related activities.

NWP 28, Modifications of Existing Marinas

This NWP authorizes reconfiguration of existing docking facilities within an authorized marina area. No dredging, additional slips, dock spaces, or expansion of any kind within waters of the U.S. is authorized by this NWP.

NWP 35, Maintenance Dredging of Existing Basins

Excavation and removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less, provided the dredged material is disposed of at an upland site and proper sediment controls are used.

NWP 36, Boat Ramps

This nationwide permit allows the construction of boat ramps as long as the activities associated with their construction are covered by this permit. The boat ramp project must meet these criteria:

Discharge of suitable material into a water of the U.S. does not exceed 50 cubic yards.

- The boat ramp does not exceed 20 feet in width.

- The base material is crushed stone, gravel or other suitable material.
- The excavation is limited to that which is necessary and all excavated material is moved to upland areas.
- No material is placed in special aquatic sites, including wetlands.
- No notification to the USACE is required. Dredging to provide access to the boat ramp is not covered under this nationwide permit, but may be covered under NWP 19.

NWP 42, Recreational Facilities

This nationwide permit allows discharges of dredged or fill material into non-tidal waters of the U.S. for the construction or expansion of recreational facilities. No notification is required as long as the discharge does not cause the loss of greater than 300 linear feet of a streambed. All other criteria for this particular NWP must be met.

Examples of activities covered under this nationwide permit include hiking trails, bike paths, horse paths, nature centers, and campgrounds.

Section 106, National Historic Preservation Act (NHPA)

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to evaluate the effects of federal undertakings on historical, archaeological, and cultural resources.

Before federal funds are approved for a particular project or prior to the issuance of any license, the effect of the project on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register shall be evaluated.

The recreation facilities improvements and recreation activities discussed in this report have the potential to impact previously documented and unknown prehistoric and historic cultural resources.

STATE

California Endangered Species Act (CESA)

Pursuant to the California Endangered Species Act (CESA) and Section 2081 of the Fish and Game Code, an incidental take permit from the California Department of Fish and Game (CDFG) is required for projects that could result in the take of a state-listed Threatened or Endangered species. Under CESA, "take" is defined as an activity that would directly or indirectly kill an individual of a species, but the definition does not include "harm" or "harass," as the federal act does. As a result, the threshold for a take under the CESA is higher than that under the ESA.

The recreation facilities improvements and recreation activities discussed in this report have the potential to affect state listed threatened or endangered species.

Section 401 of the Clean Water Act (CWA)

Section 401(a)(1) of the Clean Water Act (CWA) specifies that any applicant for a Federal license or permit to conduct any activity, including but not limited to the construction or operation of facilities that may result in any discharge into navigable waters, shall provide the federal licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable water at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of the Clean Water Act. Succinctly, this means that in California, the Regional Board must certify that the project will comply with water quality standards (defined below). In some instances, the need for certification may be waived if the action is shown to have minimal water quality effects.

Some of the recreation facilities improvements and recreation activities discussed in this report have the potential to affect water quality. In these instances, it may be necessary to obtain a Water Quality Certification from the Regional Water Quality Control Board.

California Environmental Quality Act (CEQA)

CEQA applies to all discretionary actions proposed to be carried out or approved by California public agencies, including state, regional, county, and local city agencies unless an exemption applies.

Some of the recreation facilities improvements and recreation activities discussed in this report have a very small effect on the environment (e.g. construction of a new boat ramp) and may qualify for a categorical exemption or negative declaration under CEQA. In other instances (e.g. construction of a new campground), the environmental impacts may be significant and a mitigated Negative Declaration or EIR may need to be prepared.

Categorical Exemption

An exemption may apply to a certain activity specified in the State CEQA Guidelines, if there is no possibility that the activity may have a significant effect on the environment.

Initial Study/Negative Declaration

If the project is not exempt from CEQA, then the lead agency will conduct an Initial Study to determine whether a Negative Declaration or an Environmental Impact Report should be prepared. A Negative Declaration should be prepared if the lead agency determines that there is no substantial evidence that significant impacts may occur as a result of the project. A mitigated Negative Declaration may be prepared in those instances where all potentially significant impacts can be mitigated, as long as the mitigation is incorporated into the project

and presented as part of the document before its public release. After mitigation, it must be clear that no significant effects would occur.

Environmental Impact Report

If the lead agency determines that the Initial Study showed that substantial evidence supports a fair argument that significant impacts may occur, an Environmental Impact Report (EIR) must be prepared. An EIR is intended to provide a full, public disclosure of the potentially significant impacts of the proposed project. The document must also specify any reasonable mitigation measures that can reduce or eliminate the impacts of the proposed project. Public notices, a minimum public review period and a public hearing on the EIR is required prior any project approval

California Fish and Game Code §3503.5 - Protection of Raptors

Section 3503.5 of the Fish and Game Code states that it is unlawful to take, possess, or destroy any raptors (i.e., species in the orders Falconiformes and Strigiformes), including their nests or eggs. Violations include destruction of active raptor nests as a result of tree removal and disturbance to nesting pairs by nearby human activity that causes nest abandonment and reproductive failure.

The recreation facilities improvements and recreation activities discussed in this report have the potential to affect various types of raptors.

Streambed Alteration Agreement

All diversions, obstructions, or changes to the natural flow or bed, channel, or bank of any river, stream or lake in California that supports wildlife resources and/or riparian vegetation are subject to regulation by CDFG, pursuant to §1600 through §1603 of the California Fish and Game Code. Under §1601 for public projects and §1603 for projects proposed by nonpublic entities, it is unlawful for any person to substantially divert or obstruct the natural flow or substantially change the bed, channel or bank of any river, stream or lake designated by CDFG, or use any material from the streambeds, without first notifying CDFG of such activity. Authorization from CDFG would be in the form of a Streambed Alteration Agreement.

Some recreation improvement activities (e.g. construction of a new marina) proposed at various locations along the Sacramento River have the potential to affect the bed, channel or bank of the river, and/or associated wildlife resources and riparian vegetation. In these instances, a Streambed Alteration Agreement should be obtained from DFG. If it is unclear whether or not the proposed activity will affect areas under the jurisdiction of DFG, an application for a Streambed Alteration Agreement should be sent to DFG.

Reclamation Board Encroachment Permit

A Reclamation Board encroachment permit is required for projects or uses which encroach into rivers, waterways, and floodways within and adjacent to federal and State authorized flood control projects and within designated floodways adopted by the Board. The Board has jurisdiction over project levees, the waterward area between levees, within 10 feet of the landward levee toe, within 30 feet of the top of banks of unleveed project channels, and within designated floodways adopted by the Board. Activities outside of these limits which could adversely affect the flood control project are also under Board jurisdiction. In a designated floodway, the Reclamation Board has a zero-foot tolerance level for impacts. Project and use impacts (e.g., to agriculture, etc.) may result from increases in flood frequency and depth within a season or between years.

Some recreation improvement activities (e.g., construction of new buildings, new marina) proposed at various locations along the Sacramento River have some potential to affect the hydrology of the floodway. The Reclamation Board should be consulted to determine if an encroachment permit is required. If required, the application will need to include a CEQA analysis, along with the project description, plans and specifications for the proposed project. A hydrological analysis may be needed, and endorsement by the reclamation, levee, or flood control district is required (or a written explanation why it was not endorsed).

LOCAL LAWS AND ORDINANCES

City and county zoning and subdivision ordinances impose restrictions on the use of land, conversion to other uses, splitting of parcels, or other restrictions. These regulations are applicable to private property developments but the activities of the state and federal government are not regulated by local plans and policies because local agencies are subordinate to state and federal agencies.

If compliance with local regulations is necessary, permits required may include grading permits and building permits. In addition, projects may be required to comply with the local general plan and local ordinances (e.g. tree ordinance). If the project is inconsistent with the general plan, an amendment will be needed before the project can proceed. Each local jurisdiction has authority to adopt its own regulations that are suited to the needs of that jurisdiction; therefore, regulations vary from one city or county to another. The city or county with jurisdiction for a particular project should be consulted to determine what regulations might apply.