

**DETAILED DESCRIPTION OF BIOLOGY AND WETLANDS
REGULATORY REQUIREMENTS**

APPENDIX 3.15-B**DETAILED DESCRIPTION OF BIOLOGY AND WETLANDS
REGULATORY REQUIREMENTS****FEDERAL REGULATIONS****National Environmental Policy Act (42 U.S.C. 4321 *et seq.*)**

The National Environmental Policy Act (NEPA) declares a continuing federal policy "... to use all practicable means and measures ... to create and maintain conditions under which [human] and nature can exist in productive harmony, and fulfill the social, economic and other requirements of present and future generations." NEPA directs a "... systematic, interdisciplinary approach ..." to planning and decision making and requires environmental statements for "... major federal actions significantly affecting the quality of the human environment." Implementing regulations by the Council of Environmental Quality (CEQ; 40 C.F.R. Parts 1500–1508) require federal agencies to identify and assess reasonable alternatives to proposed actions that will restore and enhance the quality of the human environment and avoid or minimize adverse environmental impacts.

Endangered Species Act (16 U.S.C. 1531–1543)

The Federal Endangered Species Act (FESA) and subsequent amendments provide guidance for the conservation of endangered and threatened species and the ecosystems on which they depend.

Section 7 of the FESA requires federal agencies, in consultation with and with the assistance of, the Secretary of the Interior or the Secretary of Commerce, as appropriate, to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of threatened or endangered species or result in the destruction or adverse modifications of critical habitat for these species. The U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) share responsibilities for administering the FESA.

Section 9 of the FESA lists those actions that are prohibited under the FESA. The "take" of a species listed in accordance with the Act is prohibited. A take is defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct of any listed species."

There are two processes whereby take is allowed when it is incidental to an otherwise legal activity. Section 10 of the FESA provides a means whereby a nonfederal action with a potential to result in the take of a listed species could be allowed under an incidental take permit. Application procedures are found at 50 C.F.R. Parts 13 and 17 for species under the jurisdiction of USFWS, and 50 C.F.R. Parts 217, 220, and 222 for species under the jurisdiction of NOAA Fisheries.

An incidental take permit is required when non-federal activities would potentially result in the take of a threatened or endangered species. Section 10(a)(2)(A) of the FESA requires an applicant for an incidental take permit to submit a "conservation plan" that specifies, among other things, the impacts that are likely to result from the taking and the measures the permit applicant will undertake to minimize and mitigate such impacts. A conservation plan under the FESA has come to be known as a "habitat conservation plan" (HCP). The purpose of the HCP process is to ensure the adequate minimizing and mitigation of the effects of authorized incidental take. There are many HCPs throughout California. Proposed projects must consider impacts within any HCP/MSHCP planning areas and the potential for participation in such plans as a part of the mitigation planning effort at the project-level of analysis.

Migratory Bird Treaty Act (16 U.S.C. 703-11)

The Migratory Bird Treaty Act (MBTA) with Canada, Mexico, and Japan makes it unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, or kill migratory birds. The law applies to the removal of nests occupied by migratory birds during the breeding season.

Clean Water Act (33 U.S.C. 1251-1376)

The Clean Water Act (CWA) provides guidance for the restoration and maintenance of the chemical, physical, and biological integrity of the nation's waters.

Section 401 of the CWA requires that an applicant for a federal license or permit that allows activities resulting in a discharge to waters of the U.S. obtain a state certification that the discharge complies with other provisions of the CWA. The California Regional Water Quality Control Board (RWQCB) administers the certification program within California.

Section 402 of the CWA establishes a permitting system for the discharge of any pollutant (except dredged or fill materials) into the waters of the U.S., which requires National Pollutant Discharge Elimination System (NPDES) permits.

Section 404 of the CWA establishes a permit program, administered by the U.S. Army Corps of Engineers (USACE), regulating discharge of dredged or fill materials into waters of the U.S., including wetlands. Implementing regulations by the USACE are found at 33 C.F.R. Parts 320–330. Guidelines for implementation are referred to as the Section 404(b)(1) Guidelines that were developed by the U.S. Environmental Protection Agency (EPA) in conjunction with USACE (40 C.F.R. Part 230). The Guidelines allow the discharge of fill materials into the aquatic system only if there is no practicable alternative that would have less adverse impacts.

Section 10 of the Rivers and Harbors Act (33 U.S.C. 401 *et seq.*)

Section 10 of the Rivers and Harbors Act, administered by USACE, requires permits in navigable waters of the U.S. for all structures such as riprap and activities such as dredging. Navigable waters are defined as those subject to the ebb and flow of the tide and susceptible to use in their natural condition or by reasonable improvements as means of interstate transport or foreign commerce. USACE grants or denies permits based on the effects of navigation. Most activities covered under this act are also covered under Section 404 of the CWA.

Fish and Wildlife Coordination Act (16 U.S.C. 661–666)

This act applies to federal projects where the waters of any stream or other body of water are impounded, diverted, deepened, or otherwise modified. Project proponents are required to consult with USFWS and the California Department of Fish and Game (CDFG). These agencies prepare reports and recommendations that document project effects on wildlife and identify measures that may be adopted to prevent loss or damage to plant and animal resources. Provisions of this act are implemented through the NEPA and Section 404 permit processes.

Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*)

The Coastal Zone Management Program (CZMP) is authorized by the Coastal Zone Management Act of 1972 and administered at the federal level by the Coastal Programs Division (CPD) within the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management (OCRM). The CPD is responsible for advancing national coastal management objectives and maintaining and strengthening state and territorial coastal management capabilities. It supports states through financial assistance, mediation, technical services and information, and participation in priority state, regional, and

local forums. The CZMP leaves day-to-day management decisions at the state level in the 34 states and territories with federally approved coastal management programs, including California (California Coastal Commission and San Francisco Bay Conservation and Development Commission). Wetlands found in the "coastal zone" are regulated under this act.

Executive Order 11990, Protection of Wetlands (May 24, 1977)

This Executive Order (EO) establishes a national policy to avoid adverse impacts on wetlands whenever there is a practicable alternative. On projects with federal actions or approvals, impacts on wetlands must be identified in the environmental document. Alternatives that avoid wetlands must be considered. If wetland impacts cannot be avoided, then all practicable measures to minimize harm to those wetlands must be included and documented in the final environmental document for the proposed project.

Executive Order 13112, Invasive Species (February 3, 1999)

This EO calls on Executive Branch agencies to work to prevent and control the introduction and spread of invasive species. Nonnative flora and fauna can cause substantial change to ecosystems, upset the ecological balance, and have the potential to cause economic harm. Highway corridors provide opportunities for the movement of invasive species through the landscape.

STATE LAWS AND REGULATIONS

California Environmental Quality Act (Public Resources Code 21000 *et seq.*)

The California Environmental Quality Act (CEQA) establishes state policy to prevent significant, avoidable damage to the environment by requiring changes in projects through the use of feasible alternatives or mitigation measures. CEQA applies to actions directly undertaken by state lead agencies. Regulations for implementation are found in the state CEQA Guidelines (Title 14 C.C.R. § 15000 *et seq.*) published by the California Resources Agency.

California Endangered Species Act (Fish and Game Code 2050 *et seq.*)

The California Endangered Species Act (CESA) establishes the policy of the state to conserve, protect, restore, and enhance threatened or endangered species and their habitats. CESA mandates that state agencies should not approve projects that would jeopardize the continued existence of threatened or endangered species if reasonable and prudent alternatives are available that would avoid jeopardy. There are no state agency consultation procedures under CESA. For projects that affect both state- and federally listed species, compliance with FESA will satisfy CESA, if CDFG determines that the federal incidental take authorization is consistent with CESA under Fish and Game Code Section 2080.1. For projects that result in a take of a state-only listed species, the lead agency may apply for a take permit under Section 2081(b).

Native Plant Protection Act (Fish and Game Code 1900–1913)

California's Native Plant Protection Act (NPPA), passed in 1977, requires all state agencies to use their authority to carry out programs to conserve endangered and rare native plants. Provisions of the NPPA prohibit the taking of listed plants from the wild and require notification of CDFG at least 10 days in advance of any change in land use which would adversely impact listed plants. This allows CDFG to salvage listed plant species that would otherwise be destroyed.

Streambed alterations (Fish and Game Code 1601–1603)

Under these sections of the Fish and Game Code, a lead agency must notify CDFG prior to implementing a project that would divert, obstruct, or change the natural flow, bed, channel, or bank of any river,

stream, or lake. Preliminary notification and project review will generally occur during the environmental process. When an existing fish or wildlife resource may be substantially adversely affected, CDFG is required to propose reasonable project changes to protect the resource. These modifications are formalized in a Streambed Alteration Agreement that becomes part of the plans, specifications, and bid documents for the project.

California Coastal Act (Public Resources Code 30000 *et seq.*)

The California Coastal Act of 1976 (CCA) made the California Coastal Commission, established by the voters in 1972, permanent. The Coastal Act includes specific policies (see Division 20 of the Public Resources Code) relating to terrestrial and marine habitat protection, visual resources, landform alteration, water quality, transportation, development design, and public works. These policies constitute the statutory standards applied to planning and regulatory decisions pursuant to the Coastal Act.

LOCAL PROVISIONS

Significant Ecological Areas

Los Angeles County defines and delineates significant ecological areas (SEAs) in conjunction with the Land Use and Open Space Elements of the county general plan. An area qualifies for recognition as an SEA if the area

- exists as habitat for endangered, threatened, or sensitive plant or animal species;
- represents biotic communities, vegetative associations, or habitat of plant or animal species that are either one-of-a-kind, or are restricted in distribution on a regional basis;
- represents biotic communities, vegetative associations, or habitat of plant or animal species that are either one-of-a-kind, or are restricted in distribution in Los Angeles County;
- is habitat that at some point in the life cycle of a species or group of species, serves as a concentrated breeding, feeding, resting, or migrating grounds, and is limited in availability;
- represents biotic resources that are of scientific interest because they are either an extreme in physical/geographical limitations, or they represent an unusual variation in a population or community;
- is important as game species habitat or as fisheries;
- would provide for the preservation of relatively undisturbed examples of the natural biotic communities in Los Angeles County; and/or
- is a special area, worthy of inclusion, but does not fit any of the above criteria.

The objectives are to preserve biological diversity and ensure future sustainability of biological diversity. To this end, the program seeks to identify areas that possess examples of biotic resources that cumulatively represent biological diversity and consolidate these areas into larger interconnected SEAs. There are over 60 designated SEAs in Los Angeles County. There are an additional 12 proposed SEAs totaling 442,983 acres in unincorporated Los Angeles County, which expand and interconnect existing SEAs. The Los Angeles General Plan Land Use Element sets forth SEA design compatibility criteria for proposed development within a designated SEA.

The City of Santa Clarita encompasses parts of the Santa Clara River SEA and the Valley Oaks Savanna SEA. The Santa Susana Mountains, San Francisquito Canyon, and Lyon Canyon SEAs are also located within the Santa Clarita Valley, but do not occur within the City boundary. According to the City of Santa Clarita General Plan Significant Ecological Area Overlay, specific environmental studies must be performed

to assess the potential for damage or destruction prior to approval of any plans for development in an area identified within a SEA overlay.

The City of Palmdale has designated SEA Overlays on the general plan land use map at Big Rock Wash, Little Rock Wash, Ritter Ridge, Portal Ridge, and Alpine Butte. The City of Palmdale general plan states that development permitted in these areas must consider significant environmental resources and preserve environmental resources to the extent feasible.

Tree Protection/Preservation Ordinances

Los Angeles County Ordinance 153,478 applies to all unincorporated areas of Los Angeles County. Cities within the county may have adopted the county ordinance or another stricter ordinance. Under the county ordinance, a person shall not cut, destroy, remove, relocate, inflict damage, or encroach into the protected zone of oak trees of a certain size.

Under the Native Desert Vegetation Ordinance (City of Palmdale Ordinance No. 952), the City of Palmdale may require the preservation of significant stands of these trees through the use of the specific plan process or its equivalent, and through design review processes on individual projects.

Several of the counties in the Bay Area to Merced region, most notably Santa Clara County, have an oak tree protection ordinance. These ordinances generally require that oak trees, especially valley oak, blue oak, and coast live oak, be individually inventoried and mapped. Mitigation for oak tree loss typically consists of replacement plantings.