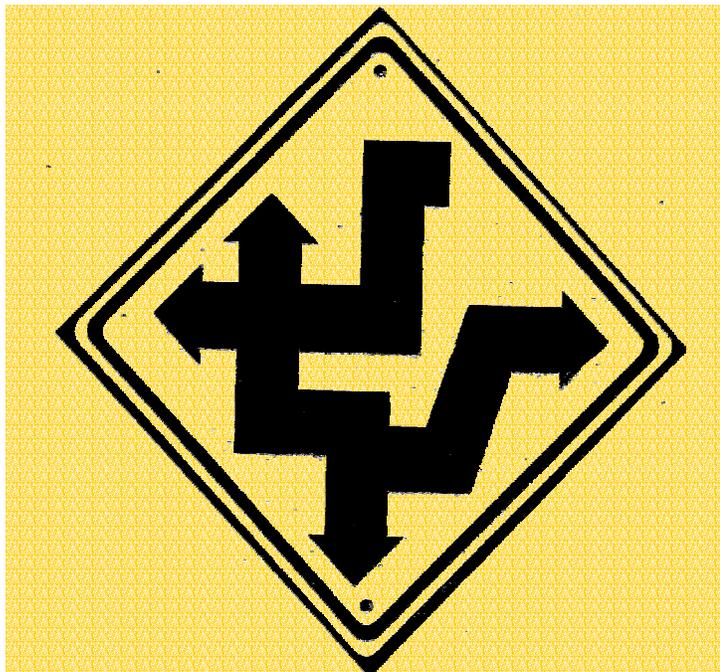


# CHAPTER 2

## FOLLOWING THE RULES

Getting a project done these days – even a routine road maintenance project – can require obtaining a permit, or several permits. A permit is how laws and rules are applied. These laws and rules are intended to help protect the environment. This chapter gives background information about the “who, why, what, when, and where” of the environmental permit process. Staff needs to follow these rules to help protect water quality and stream habitat, to minimize project delays, and to prevent legal and financial penalties to the county.



The management staff of the County DPW/ DOT will normally be the ones obtaining the permits, and they will usually have to deal with the details - the “how” of getting permits - described in Appendix A.

- 2-A**                      **WHO sets the Rules: The Agencies**
- 2-B**                      **WHY the Rules are Made:  
The Laws & Regulations**
- 2-C**                      **WHAT is Required: The Permits**
- 2-D**                      **WHEN Permits Happen**
- 2-E**                      **WHERE to Find Help**
- Appendix A:**        **HOW to Get Permits**

## 2-A WHO SETS THE RULES: THE AGENCIES

### **MOST COMMON PLAYERS IN PERMIT PROCESS For Road Maintenance Projects**

The following state and federal agencies are the most common players in setting the rules for projects that could potentially affect water quality, stream habitat, or salmon and steelhead. For county road maintenance projects, it is important to know who they are and why they're significant players. Getting to know the abbreviations or acronyms for the agencies will also be helpful in permit discussions.

- **California Dept. of Fish and Game (DFG)**
  - ◆ Responsible agency for the public trust resources of fish and wildlife in California
  - ◆ Regulates activities potentially resulting in alteration of streambeds or diversion of a stream's natural flow, as per the Fish and Game Code
  - ◆ Protects species listed under the California Endangered Species Act (CESA).
  - ◆ Commenting agency (not permit-issuing) for federal and state permits under the Clean Water Act, Coastal Act and for regulations under California Environmental Quality Act (CEQA)
  - ◆ Website: [//www.dfg.ca.gov](http://www.dfg.ca.gov)
  
- **California Regional Water Quality Control Board (RWQCB), North Coast Region**
  - ◆ Responsible agency for water quality implementation at the regional level of the State Porter-Cologne Water Quality Control Act and the federal Clean Water Act.
  - ◆ Regulates activities which may potentially discharge pollutants into watercourses or storm water drainage systems
  - ◆ Issues permits under the Clean Water Act, such as the Sect. 401 certification (or waiver) required for a US Army Corps of Engineers permit under Sect. 404 (see below), and Waste Discharge Requirements under the State Porter-Cologne Act.
  - ◆ Website: [//www.swrcb.ca.gov/rwqcb1](http://www.swrcb.ca.gov/rwqcb1)
  
- **California Coastal Commission** (coastal counties only)
  - ◆ Responsible for administering the California Coastal Act and the federally approved California Coastal Management Program of the Coastal Zone Management Act (CZMA)
  - ◆ Regulatory jurisdiction within the coastal zone extends up to five miles inland from the mean high tide line. Permit jurisdiction for proposed projects within the immediate ocean or bay shoreline (tidelands, submerged lands, and public trust lands)
  - ◆ Counties and cities implement Coastal Act policies through their adopted Local Coastal Plans (LCPs) certified by the Commission; permits usually issued by local planning agency.
  - ◆ Coordinates with local and state commenting agencies
  - ◆ Website: [//www.coastal.ca.gov/web](http://www.coastal.ca.gov/web)

## 2-A WHO SETS THE RULES: THE AGENCIES

- **U.S. Army Corps of Engineers (COE)**
  - ◆ Major agency responsible for regulation of Sect. 404 under the federal Clean Water Act, which includes “waters of the U.S.” and almost all wetlands. Jurisdiction essentially includes all bodies of surface water in California.
  - ◆ Coordinates with federal consulting agencies and DFG (under the Fish & Wildlife Coordination Act) for its permit process
  - ◆ Initiates consultation with NMFS and USFWS under the Endangered Species Act
  - ◆ Website: [//www.spn.usace.army.mil/regulatory/](http://www.spn.usace.army.mil/regulatory/)
  
- **National Marine Fisheries Service (NMFS)**
  - ◆ Responsible agency for almost all marine species, including protection of salmon and steelhead listed as threatened or endangered under the federal Endangered Species Act, and their designated critical habitat; also implements Essential Fish Habitat (EFH) under the Magnuson-Stevens Fishery Conservation and Management Act;
  - ◆ Issues Incidental Take Permits under Section 10 of the Endangered Species Act for non-federal projects involving a “take” of federally listed species (“take” includes harassment that disrupts behavior patterns and habitat modification that kills or injures the species), indirect take associated with otherwise lawfully authorized activities, and directed take for research and monitoring.
  - ◆ Conducts ESA Section 7 consultation for any activity funded, carried out or permitted by a federal agency that might jeopardize the continued existence of a listed salmon or steelhead species or adversely affect their critical habitat.
  - ◆ Commenting agency (not permit-issuing) for federal Clean Water Act permits (Sect. 404), and for any project with federal involvement (permits, funding, assistance, etc.) due to Fish and Wildlife Coordination Act requirement.
  - ◆ Websites: SW Region - [//www.swr.nmfs.noaa.gov](http://www.swr.nmfs.noaa.gov); NW Region - [//www.nwr.noaa.gov](http://www.nwr.noaa.gov)
  
- **U.S. Fish and Wildlife Service (USFWS)**
  - ◆ Responsible agency for protection of terrestrial and non-marine (non-salmon) aquatic species listed as threatened or endangered under the federal Endangered Species Act
  - ◆ Commenting agency (not permit-issuing) for federal Clean Water Act permits (Sect. 404) and for any project with federal involvement (permits, funding, assistance, etc.) due to Fish and Wildlife Coordination Act requirement.
  - ◆ Issues Incidental Take Permits under Section 10 of the Endangered Species Act for non-federal projects involving a “take” of federally listed species (“take” includes harassment that disrupts behavior patterns and habitat modification that kills or injures the species).
  - ◆ Conducts ESA Section 7 consultation for any activity funded, carried out or permitted by a federal agency that might jeopardize the continued existence of a listed non-salmon species or adversely affect their critical habitat.

## 2-A WHO SETS THE RULES: THE AGENCIES

- ◆ Website: [//www.ccfwo.r1.fws.gov/](http://www.ccfwo.r1.fws.gov/)

### LESS COMMON PLAYERS IN PERMIT PROCESS For Road Maintenance Projects

Only in limited instances do the following agencies require permits or get involved in the permit process for county road maintenance projects:

- **County / City Planning Department and/or Public Works Department**
  - ◆ Responsible for permits to be issued under ordinances, such as Grading Ordinance, Tree Protection, Surface Mining and Reclamation, and encroachment.
- **California Dept. of Conservation**
  - ◆ Office of Mine Reclamation implements reporting, compliance, and reclamation requirements of the Surface Mining and Reclamation Act (SMARA) for rock and gravel mines and quarries
  - ◆ Website: [//www.consrv.ca.gov/omr/](http://www.consrv.ca.gov/omr/)
- **State Lands Commission (SLC)**
  - ◆ Authorizes leases for use of the state's tide and submerged lands and beds of historically navigable rivers, including sites for bridge supports
  - ◆ Website: [//www.slc.ca.gov/](http://www.slc.ca.gov/)
- **State Water Resources Control Board (SWRCB)**
  - ◆ Delegates most federal and state water quality permit and enforcement activity to its 9 Regional Water Quality Control Boards (RWQCB)
  - ◆ Adopted statewide General Permit for Storm Water Discharges, issued by SWRCB and enforced by the RWQCBs.
  - ◆ Website: [//www.swrcb.ca.gov/](http://www.swrcb.ca.gov/)
- **U.S. Environmental Protection Agency (EPA)**
  - ◆ Delegates most federal water quality permit and enforcement activity to the State
  - ◆ Reserves compliance authority for runoff ("nonpoint source") pollution unless delegated to the State (delegated to RWQCB in California)
  - ◆ Shares responsibility with RWQCB for developing Total Maximum Daily Load (TMDL) allocation for pollutants for listed North Coast streams; gives final approval authority for each proposed TMDL.
  - ◆ Website: [//www.epa.gov/ow](http://www.epa.gov/ow)
- **Federal Highway Administration (FHWA)**
  - ◆ Funds many road and bridge rehabilitation projects and emergency repairs on Forest Highways, including STIP & HBRR.

## 2-A WHO SETS THE RULES: THE AGENCIES

- ◆ Federal funding triggers environmental review under the National Environmental Policy Act (NEPA), Endangered Species Act (Section 7 Consultation), and Historic Preservation Act (Section 106 consultation).
- ◆ Website: [//www.fhwa.dot.gov](http://www.fhwa.dot.gov)
  
- **U.S Forest Service (USFS)**
  - ◆ Requires an easement, encroachment, right-of-way or Special Use Permit on repairs to Forest Highways (local roads through National Forests) if working outside of the transportation easement.
  - ◆ Administers projects under the Emergency Relief for Federally Owned Roads (ERFO).
  - ◆ USFS involvement triggers NEPA, ESA Section 7, National Historic Preservation Act Section 106, and other requirements, depending on the Forest Plan or other land management plan.
  - ◆ Assesses and determines in writing that a project (such as rip-rapping) will not adversely affect a Wild and Scenic River designation.
  - ◆ Website: [//www.r5.fs.fed.us/](http://www.r5.fs.fed.us/)
  
- **Bureau of Land Management (BLM)**
  - ◆ May own road right-of-way or adjacent land needed for road project staging and construction.
  - ◆ BLM involvement triggers NEPA, ESA Section 7, National Historic Preservation Act Section 106, and other requirements, depending on the Forest Plan or other land management plan.
  - ◆ For road project near a National Wild & Scenic River, see USFS above.
  - ◆ Website: [//www.ca.blm.gov/caso](http://www.ca.blm.gov/caso)
  
- **State Historic Preservation Office (SHPO)**
  - ◆ Consults with federal agencies regarding the significance of historic and archaeological resources in the projects Area of Potential Effect for projects outside the County's right-of-way, with federal involvement.
  - ◆ Website: [//ohp.parks.ca.gov](http://ohp.parks.ca.gov)
  
- ⇒ **Underground Service Alert (USA)**
  - ◆ Not an agency, this non-profit service helps locate underground facilities before excavation or drilling projects are begun
  - ◆ Requires at least 2 working days notice before digging once excavation limits are marked.
  - ◆ (800) 642-2444

## 2-B WHY THE RULES ARE MADE: THE LAWS & REGULATIONS

Laws are acts of legislation passed by the legislative branch of government: Congress, the State Legislature, or the County Boards of Supervisors. Regulations are developed by the executive branch's agencies assigned to administering the implementation of the laws. Although distinct, the terms "laws" and "regulations" are often combined to describe the rules that must be followed to avoid breaking the law.

### **FEDERAL LAWS & REGULATIONS**

#### **ENDANGERED SPECIES ACT (ESA)**

- Act provides a program for the conservation of endangered and threatened species and provides for the conservation of designated critical habitat of listed species. Federal agencies have a duty to insure no "jeopardy" to the continued existence of listed species and a duty to insure no destruction or adverse modification of critical habitat for the listed species.
- Defines "take" of a species: "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" with respect to federally listed species under ESA. Includes modifying the habitat of a listed species in such a way that interferes with essential behavioral patterns including breeding, feeding, or sheltering.
- **ESA Section 4** – Determination of Endangered & Threatened Species and designation of critical habitat, which requires development of a recovery plan. For threatened species, allows certain exceptions to "take" by special rule under Section 4(d), such as for ODOT's routine road maintenance practices.
- **ESA Section 7** – Interagency Cooperation. Requires federal agencies, in consultation with NMFS and USFWS, to ensure these duties are complied with, and requires a Biological Assessment (BA) if one or more listed species may be present in the project action area. This section applies to federally-funded and federally-permitted projects.
  - NMFS and/or USFWS must prepare a Biological Opinion (BO) within 135 days of beginning formal consultation after Biological Assessment (BA) is completed; consultation begins after a completed initiation package has been submitted and accepted by the agencies. "Reasonable and prudent" mitigation measures must be agreed upon before project can proceed.
- **ESA Section 9** – Prohibited Acts. Provides guidance regarding activities determined to result in "take".
- **ESA Section 10** – Exceptions - applies to those projects with no federal involvement. Provides guidance on the issuance of "incidental take" permits when potential "take" of listed species, which requires development of a satisfactory Habitat Conservation Plan (HCP) for the species. Also deals with direct take associated with authorized monitoring and research activities.

#### **CLEAN WATER ACT (CWA)**

- The nation's primary water quality protection law authorizing the Environmental Protection Agency (EPA) to restrict pollution discharges.

## 2-B WHY THE RULES ARE MADE: THE LAWS & REGULATIONS

- Certain sections require permits, based on regulations promulgated by the EPA and the State Water Resources Control Board (SWRCB):
  - **Section 401** – Requires that anyone discharging dredge or fill material into a surface water of the U.S. must not violate the State’s water quality standards (tied to Section 404 federal process below). “Water Quality Certification” permitting carried out by the SWRCB, enforcement by RWQCB. The RWQCB may waive the State’s right to regulate if the proposed project will not violate water quality standards.
  - **Section 402** – Prohibits the discharge of all pollution unless permitted; Provides for permits for discharges of storm water from: (a) construction activity >1 acre of soil disturbance; (b) certain industrial activities including mining and vehicle maintenance (such as County Road Maintenance Yards); and c) municipal facilities, including roads. Phase II permits by 3/03. Notice of Intent (NOI) to SWRCB; permitting by RWQCB.
- **Section 404** - Regulates the discharge of dredged or fill material into “waters of the United States”, including wetlands (tied to Sect. 401 State process above). Permitting carried out by US Army Corps of Engineers (COE).
  - **“Waters of the U.S.”** - In nontidal waters, jurisdiction extends:
    - a) to the ordinary high water mark in the absence of adjacent wetlands.
    - b) beyond the ordinary high water mark to the limit of the adjacent wetlands, when present.
    - c) to the limit of the wetland when only wetlands exist.
  - **“Ordinary High Water Mark”** – “That line on the shore established by the fluctuations of water and indicated by physical characteristics such as [a] clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding area.” [33 CFR 328.3(e)]
  - See Figure 2-1 for scope of COE jurisdiction under Section 404 & Figure 2-2 for examples of activities requiring a permit.

### FISH AND WILDLIFE COORDINATION ACT

- Requires all federal agencies to consult with USFWS, NMFS and DFG for activities that “affect, control, or modify waters of any stream or other bodies of water.” These agencies review applications for Clean Water Act Sect. 404 permits and provide comments to the Corps about the environmental impacts of the proposed project.
- Gives USFWS & NMFS an expanded responsibility for review of federal projects (including those with federal permits or funding) that includes concerns about general plant and wildlife species that may not be addressed by the Endangered Species Act, particularly a project’s secondary effects.

## 2-B WHY THE RULES ARE MADE: THE LAWS & REGULATIONS

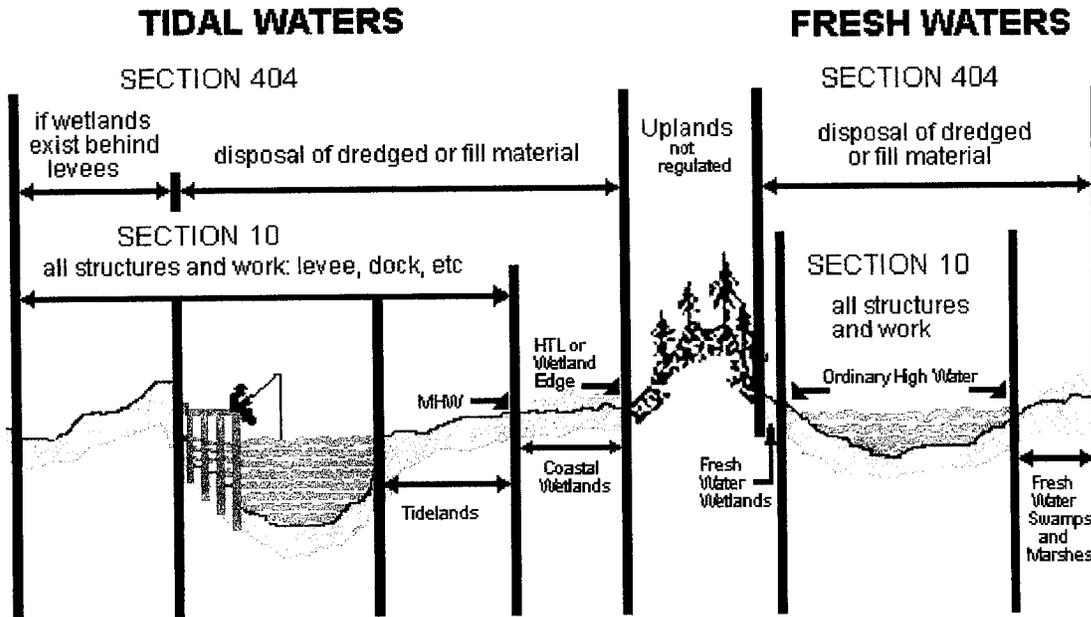


Figure 2-1. Scope of Corps of Engineers (COE) regulatory jurisdiction Clean Water Act, Section 404 and Rivers and Harbors Act, Section 10

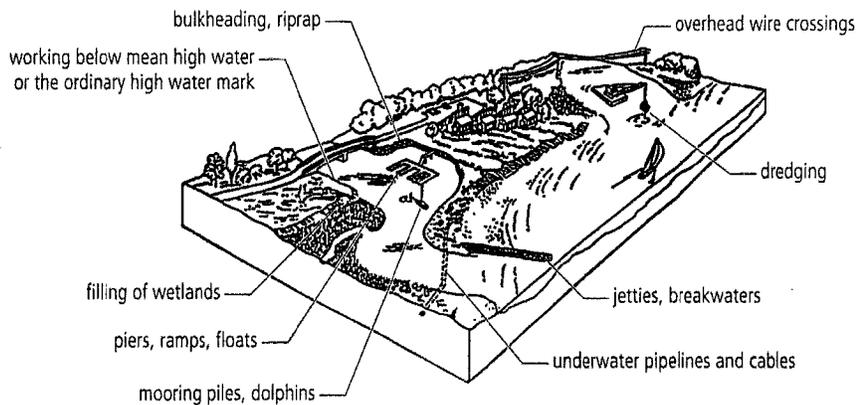


Figure 2-2. Examples of activities requiring a COE permit under CWA Section 404 and River and Harbors Act, Section 10

## 2-B WHY THE RULES ARE MADE: THE LAWS & REGULATIONS

### **COASTAL ZONE MANAGEMENT ACT (CZMA)**

- Implemented through the State by the Coastal Commission and the County or City Local Coastal Plan (LCP).
- Requires that Clean Water Act Section 404 general permit must comply with CZMA.

### **NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)**

- Requires federal agency decision-makers to document and consider the environmental implications of their actions, including the issuance of permits, funding, and rights-of-entry.

### **RIVERS AND HARBORS ACT OF 1899 - Section 10**

- Prohibits the unauthorized obstruction or alteration of any navigable waters of the U.S. without a permit from the Corps of Engineers (COE).
- Jurisdiction is limited to those activities affecting the “navigable waters of the U.S.” See Figures 2-1 and 2-2.
- Original regulatory authority has been superseded by Section 404 of the Clean Water Act to a great extent.

### **NATIONAL HISTORIC PRESERVATION ACT OF 1966 – Section 106**

- Requires federal agencies to review projects for impacts to historic and archeological resources.
- Requires projects with federal involvement to determine the significance of cultural resources with the Area of Potential Effect.
- Requires consultation and concurrence with the State Office of Historic Preservation (SHPO).

### **NATIONAL WILD & SCENIC RIVERS ACT**

- Protects free-flowing rivers or river segments designated within the National Wild & Scenic River System from development of water projects by the federal government: Eel, Klamath, Smith and Trinity Rivers are included in the North Coast region.
- River-managing agencies seek to avoid adverse effects on water quality and “outstandingly remarkable” values near a ½ mile river corridor on designated and recommended rivers
- Clean Water Act’s 404 Nationwide Permit process requires federal land-managing agencies to assess and determine in writing that a project (such as road rip-rapping) will not adversely affect the wild and scenic river designation.
- See Appendix A for a list of which federal agency is responsible for various segments of the designated rivers in our region.
- Website: [//www.nps.gov/rivers](http://www.nps.gov/rivers)

## 2-B WHY THE RULES ARE MADE: THE LAWS & REGULATIONS

### STATE LAWS & REGULATIONS

#### **CALIFORNIA FISH AND GAME CODE**

##### **Sections 1600-1607 - “Lake and Streambed Alteration Agreement Process”**

- Public agencies must comply under Section 1601 of code
- Requires notification to DFG for any project that will impact a river, stream or lake; measures to prevent substantial adverse affect on fish or wildlife are developed with applicant in an Agreement.
- Agreement is technically not a “permit” but a “mutual agreement” between DFG and project proponent.
- Projects must also (since 5/1/99) be reviewed under the California Environmental Quality Act (CEQA), which extends the time and cost (to some degree) of obtaining a final agreement with DFG.
- No pre-notification is required for emergency projects by a public agency to maintain, repair or restore an existing highway, within the existing right-of-way, within one year of damage; notification required within 14 days of beginning work.
- Jurisdictional limit is usually marked by DFG – in practice - to be at the top of the stream or lake bank or at the outer edge of the riparian vegetation, whichever is wider. However, the broad definition in F&G Code Section 1601 gives DFG great flexibility in deciding what constitutes a stream – sometimes to the 100-year flood plain.

##### **Section 5650 – Water Pollution**

- Prohibits anyone from depositing, permitting to pass into, or place where it can pass into the waters of this state most pollutants, including any petroleum, acid, asphalt, bitumen, or residuary product of petroleum; ...or any substance or material “deleterious to fish, plant life, or bird life.”
- Does not apply to pollution discharged under a permit from RWQCB or SWRCB.

#### **PORTER-COLOGNE WATER QUALITY CONTROL ACT**

- Regulates both point (pipe) and nonpoint (runoff) sources of water pollution in California
- Precedes and supplements the federal Clean Water Act
- Administered by the State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Boards (RWQCB)

#### **CALIFORNIA ENDANGERED SPECIES ACT (CESA)**

- Prohibits the “take” of plant and animal species designated by the California Fish and Game Commission as either endangered or threatened. Seeks to ensure that action is not likely to destroy or adversely modify “essential habitat” necessary to the continued existence of the species. [Fish & Game Code Sections 2080-2081]

## 2-B WHY THE RULES ARE MADE: THE LAWS & REGULATIONS

- “Take” includes hunting, pursuing, catching, capturing, killing, or attempting such activity, but does not now include indirect mortality resulting from habitat modification (due to change by recent legislation).
- Section 2080 states no further state authorization needed if a federal ESA’s Section 10 Incidental Take Permit has been obtained. Section 2081 authorizes incidental take permits by DFG, under certain conditions (see adopted regulations for procedure).
- (Sect. 2090, state agency consultation requirement, was repealed effective 1/1/99.)
- When a species is also listed under the Federal ESA, DFG must participate in the federal consultation to the greatest extent practicable and adopt the federal Biological Opinion as its Biological Opinion, wherever possible.
- Website: [www.dfg.ca.gov/hcpb/ceqacesa/cesa/cesa.html](http://www.dfg.ca.gov/hcpb/ceqacesa/cesa/cesa.html)

### **SURFACE MINING AND RECLAMATION ACT (SMARA)**

- Requires local government to adopt and implement ordinances regulating upland surface mines and instream gravel mining and to require Reclamation Plans for each mining site obtaining a local use permit.
- Reclamation plans overseen in an advisory capacity by the Calif. Dept. of Conservation, Office of Mine Reclamation.
- Caltrans reviews reclamation plans for mines in the 100-year floodplain, or within 1 mile upstream or downstream of a Caltrans bridge.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

- Requires state, regional, and local agencies to assess the significant environmental effects of proposed projects and to circulate these assessments to other agencies and the public for comment before making decisions on the proposed projects.
- Exempts most road maintenance actions through the use of a Categorical Exemption (“CE” or “Cat Ex”), when no potential for significant environmental impact exists. Cat Ex examples include:
  - Class 1 (Existing Facilities): Includes maintenance of existing public facilities, such as road grading for purpose of public safety; rehabilitation of damaged facilities to meet current standards of public health and safety; maintenance of stream channels (clearing of debris) to protect fish and wildlife resources;
  - Class 2 : Replacement or Reconstruction of existing facilities involving negligible or no expansion of capacity
  - Class 4 (Minor Alterations to Land): Minor alterations (excluding removal of healthy, mature scenic trees), such as grading on slope <10% not in waterway, wetland, or geologic hazard area; filling of earth into previously excavated land.
- Other actions (or group of actions) should achieve CEQA compliance through completion of an Initial Study supporting a Negative Declaration (“Neg Dec”), a Mitigated Negative Declaration (“Mit. Neg Dec”), or an Environmental Impact Report (EIR).

## 2-B WHY THE RULES ARE MADE: THE LAWS & REGULATIONS

- Issuance of Local and State permits, such as DFG's 1601 agreement or a County Use Permit, also must comply with CEQA procedural requirements.

### **CALIFORNIA COASTAL ACT**

- Sets policy for land use within the coastal zone and assigns decision-making and administration to the Coastal Commission
- Implemented at the local level primarily through County or City Local Coastal Plans (LCP) and local agencies, once LCPs are approved by the Coastal Commission.
- No coastal development permit is required for repair and maintenance of existing public roads, including resurfacing, ditch cleaning, and slide removal. A permit is required for excavation or disposal of fill outside of the roadway prism. (Section 30610)

### **LOCAL LAWS & REGULATIONS**

#### **COUNTY GRADING ORDINANCE**

- Grading permits can be required under County Ordinance for private and or public earthmoving activities that exceed a minimum volume. Local public works departments are usually in charge of the permit process.
- Trees within a protected designation may require a tree permit if removal is part of the grading project.

#### **COUNTY SURFACE MINING & RECLAMATION ORDINANCE**

- Required of counties by the State Surface Mining and Reclamation Act (SMARA)
- Regulates through the conditional use or use permit process the opening, operation, and closing of mining sites, including rock quarries, gravel pits, and instream gravel mining.
- Requires site Reclamation Plan be prepared, reviewed by Calif. Dept. of Conservation - Office of Mine Reclamation, attached with financial assurances, and adopted by local governing body.

#### **COUNTY TREE ORDINANCE**

- May require tree removal permit to remove any trees designated as protected (such as by species, size, or location) under local ordinance.

#### **COUNTY GENERAL PLAN**

- Establishes land use designations, standards, and policies, which may address erosion control, water quality protections, riparian set-backs, and other habitat-related issues.
- Local Coastal Plans (LCPs) must comply with the California Coastal Act.

## 2-B WHY THE RULES ARE MADE: THE LAWS & REGULATIONS

- Adopted as an element of the General Plan and provide special standards and policies for activities within the coastal zone (extending up to five miles inland from the mean high tide line).
- Clean Water Act Section 404 general permit must comply with Coastal Zone Management Act (CZMA), which is implemented through the State by the Coastal Commission and the County or City LCP.

### **COUNTY FLOODPLAIN ORDINANCE**

- Limits activities and permanent structures within designated floodplain area.
- Usually requires “floodproofing” of structures or facilities located within floodplain area (100 year flood event)

### **COUNTY PESTICIDE ORDINANCE**

- Restricts use of pesticides and herbicides.
- Prohibits, in some counties, the use of herbicides by county departments and employees for vegetation control on county land or projects.

## 2-C WHAT IS REQUIRED: THE PERMITS

Permits are needed from different agencies for many types of project and purposes. To help you find out what permit is required, from which agency, and for what types of projects, three tables are provided below. You can look up the permit by agency name, by permit name, or by project type.

Once you have a permit, you need to know what is important about its contents. A checklist of important categories to look for in each permit is provided. Compliance with the rules is essential – penalties and fines for the county and individuals can be stiff!

**Table 2-1. TYPES OF PERMITS – BY AGENCY**

| AGENCY                                   | PERMIT   | WHAT TYPES OF PROJECTS  |
|--|--|---|
| <b>Federal</b>                           |  |   |
| U.S. Army<br>Corps of Engineers (COE)    | CWA Section 404 Permit   | Projects that will deposit dredged or fill material into “waters of the U.S.”, including wetlands   |
|  | <ul style="list-style-type: none"> <li>Individual Permit</li> </ul>  | All activities not covered by General Permit (see below)  |
|  | <ul style="list-style-type: none"> <li>General -Nationwide Permit (NWP)</li> </ul><br>NWPs related to road maintenance | Categories of activities with minimal impacts on aquatic resources:<br><br>#3 – Maintenance<br>#7 – Outfall Structures and Maintenance<br>#12 – Utility Line Activities<br>#13 – Bank Stabilization<br>#14 – Linear Transportation Crossings<br>#23 – Approved Categorical Exclusions<br>#27 – Stream & wetland restoration<br>#33 – Temporary Construction, Access, and Dewatering<br>#41 – Reshaping existing drainage ditches<br>#43 - Storm Water Management Facilities |
|  | <ul style="list-style-type: none"> <li>Regional General Permit (RGP) 1 – San Francisco District</li> </ul>             | Only for fish passage/ sediment reduction projects at water crossings in the San Francisco District   |
| National Marine Fisheries Service (NMFS) | ESA Section 4(d) rules<br>ESA Sect. 7 Consultation to COE 404 permit, or other federal agency<br>ESA Section 10        | When project involves work in a stream with listed salmon or steelhead species.   |
| Fish and Wildlife Service (USFWS)        | ESA Sect. 7 Consultation to COE 404 permit or other federal agency<br>ESA Section 10                                   | When project could jeopardize an endangered or threatened species (non-salmonid) or result in adverse impact to its critical habitat  |

## 2-C WHAT IS REQUIRED: THE PERMITS

| AGENCY  | PERMIT   | WHAT TYPES OF PROJECTS  |
|---|--|---|
| <b>State</b>  |  |   |
| Dept. of Fish & Game (DFG)  | Fish & Game Code Sect. 1601 Streambed Alteration Agreement | Instream projects / culverts / stream crossings / fish screens/ water & stream diversions / bank stabilization/ bridges / riparian plant removal  |
|   | CESA Section 2081 Incidental Take Permit                   | For projects likely to cause the death of a species listed as threatened or endangered under CESA   |
| State Water Resources Control Board (SWRCB) / Regional Water Quality Control Bd. (RWQCB) – North Coast Region | CWA Section 401 – Water Quality Certification              | Same as 404 (Corps) – 401 needed whenever 404 required. If no 404 required (isolated wetlands), may need waste discharge requirements or waiver under Porter-Cologne Act. File Notice of Intent (NOI) with RWQCB. |
|   | CWA Section 402 – Storm Water Permit                       | Construction projects that cover > 1 acre of soil disturbance; industrial activities including mining and vehicle maintenance   |
| State Lands Commission (SLC)  | Land use lease   | Installation of structures or disposal of dredged material on beds of navigable streams, bays and estuaries.  |
| Lead Agency   | CEQA compliance (not a permit)                             | State permit-issuing agencies must comply with CEQA process during permit process   |
| <b>Local – County / City</b>  |  |   |
| Planning Dept.  | Use or Conditional Use permit                              | Rock quarries / gravel extraction   |
| Public Works Dept.  | Grading permit   | Soil disturbance > X cu. yds. (depending on county grading ordinance)   |
| Lead Agency   | CEQA compliance (not a permit)                             | Permit-issuing agency must comply with CEQA process during permit process   |

**Table 2-2. TYPES OF PERMITS – BY PERMIT NAME**

| PERMIT<br>Informal / Formal Name                                | AGENCY  | PURPOSE  |
|---|---|--|
| “401” / CWA Section 401 – Water Quality Certification or Waiver | SWRCB / Regional Water Quality Control Bd. (RWQCB) – North Coast Region | Same as 404, but for up to 5 years and multiple projects.                                |
| “402” or “SWP” / CWA Section 402 – Storm Water Permit           |   | Storm water runoff – minimize impacts  |
| “404” / CWA Section 404 Permit                                  | U.S. Army Corps of Engineers (COE)                                      | Protection of wetlands and waters of the U.S. from discharge of dredged or fill material |
| • Individual permit   |   | Regulate specific activities on an individual basis                                      |

## 2-C WHAT IS REQUIRED: THE PERMITS

| PERMIT<br>Informal / Formal Name   | AGENCY  | PURPOSE  |
|--|---|--|
| <ul style="list-style-type: none"> <li>General – Nationwide Permit “NWP”</li> </ul>  |   | Regulate specific categories of activities, usually with minimal impacts on aquatic resources, on a national basis |
| <ul style="list-style-type: none"> <li>“RGP” or Regional General Permit</li> </ul>   |   | Regulate specific categories of activities, usually with minimal impacts on aquatic resources, on a regional basis |
| <ul style="list-style-type: none"> <li>Section 4(d) ESA Rule</li> <li>Section 7 Consultation /</li> <li>Section 10 HCP / “take” for monitoring &amp; research</li> </ul> | National Marine Fisheries Service (NMFS)            | Protect federally-listed anadromous fish species (salmon & steelhead) & habitat                                    |
|  | U.S. Fish & Wildlife Service (USFWS)                | Protect other federally- listed species & their habitat  |
| “1601” / Fish & Game Code Sect. 1601 Streambed Alteration Agreement  | Calif. Dept. of Fish & Game (DFG)                   | Ensure no net loss of stream habitat values or acreage   |
| “2081” / Fish & Game Code Sect. CESA Incidental Take Permit  |   | Protect State-listed animal and plant species & habitat  |
| CEQA compliance (not a permit)   | Lead Agency = Implementing or Permit-issuing agency | Assess the significant environmental effects of proposed projects.   |
| Use permit or Conditional Use Permit   | County or City Planning Dept.                       | Ensure compliance with General Plan & ordinances   |
| Local Coastal permit   | County or City Planning Dept.                       | Ensure wetland impacts are avoided or minimized in the coastal zone  |
| Grading permit   | County or City Public Works Dept.                   | Minimize or avoid erosion and sedimentation  |

### Are These Permits Always Required?

The need for permits and CEQA compliance can depend on the size and location of a project and the methods being used for the project. Site-specific conditions are important to consider. For more specific information on the permits which may be needed for each project or BMP, see the list under “Permits” at the end of each category in Chapters 3 through 9.

## 2-C WHAT IS REQUIRED: THE PERMITS

**Table 2-3. PERMITS - BY GENERAL PROJECT TYPE  
For Routine Road Maintenance**

| <b>General Road Maintenance Project Category<sup>1</sup></b> | <b>General Environmental Concerns about Activity</b>  | <b>Permits or Approval that <u>may</u> be required<sup>2</sup></b>  |
|--|---|---|
| Streambank erosion control                                   | <ul style="list-style-type: none"> <li>• Sediment discharge to stream</li> <li>• Riparian plant impact</li> </ul>   | <ul style="list-style-type: none"> <li>• 404 CWA permit – NWP #13 or RGP #1</li> <li>• 401 CWA permit</li> <li>• NMFS consultation</li> <li>• 1601 DFG agreement</li> </ul>   |
| Ditch maintenance  | <ul style="list-style-type: none"> <li>• Sediment discharge to stream from ditch</li> <li>• Aquatic habitat removal</li> </ul>  | <ul style="list-style-type: none"> <li>• 404 CWA permit <u>if</u> “water of the US” – NWP #41 for reshaping</li> <li>• 401 CWA if 404 needed</li> <li>• 1601 DFG agreement</li> </ul>   |
| Culvert maintenance & replacement                            | <ul style="list-style-type: none"> <li>• Sediment or debris discharge into stream</li> <li>• Fish stranding or blockage to migration</li> </ul>   | <ul style="list-style-type: none"> <li>• 1601 DFG agreement</li> <li>• 404 CWA – NWP #14 or RGP #1</li> <li>• 401 CWA</li> <li>• Culvert size approval by NMFS for streams with listed salmon/ steelhead</li> </ul>   |
| Vegetation management  | <ul style="list-style-type: none"> <li>• Loss of riparian plants</li> <li>• Create erosion risk</li> </ul>  | <ul style="list-style-type: none"> <li>• County Tree Ordinance</li> <li>• 1601 DFG if working within riparian zone</li> <li>• County Pesticide Ordinance</li> <li>• Special use permit if trees located on federal land</li> </ul>  |
| Spoil disposal   | <ul style="list-style-type: none"> <li>• Sediment and debris discharge to stream</li> <li>• Harms slope stability of site</li> <li>• Filling wetlands</li> </ul>                                  | <ul style="list-style-type: none"> <li>• County conditional use permit / coastal permit</li> <li>• County grading permit</li> <li>• Special use permit if on federal land</li> <li>• 404 CWA if wetlands or floodplain involved</li> <li>• 401 CWA if 404 needed</li> </ul>                                     |
| Maintenance yard management                                  | <ul style="list-style-type: none"> <li>• Stormwater runoff of stored materials to streams</li> <li>• Spills of hazardous materials</li> <li>• Contamination of groundwater &amp; soils</li> </ul> | <ul style="list-style-type: none"> <li>• 402 CWA Stormwater Plan &amp; General Industrial Stormwater Permit</li> <li>• County Pesticide Ord.</li> <li>• Compliance with County Spill Plan</li> <li>• CWA Waste Discharge Permit for petroleum discharge to septic system or for oil/water separators</li> </ul> |
| Bridge maintenance   | <ul style="list-style-type: none"> <li>• Discharge of bridge materials into stream</li> <li>• Damage to riparian area</li> <li>• Harm to bats &amp; swallows</li> </ul>                           | <ul style="list-style-type: none"> <li>• CWA Waste discharge permit for lead-based paint discharge</li> <li>• DFG &amp; USFWS notification</li> <li>• 404 CWA permit for instream work</li> </ul>   |

## 2-C WHAT IS REQUIRED: THE PERMITS

| General Road Maintenance Project Category <sup>1</sup> | General Environmental Concerns about Activity  | Permits or Approval that <u>may</u> be required <sup>2</sup>  |
|--|--|---|
|  |  | <ul style="list-style-type: none"> <li>• 401 CWA permit for instream work</li> <li>• 1601 DFG agreement for instream work</li> </ul>  |
| Emergency maintenance                                  | <ul style="list-style-type: none"> <li>• Discharge of sediment and debris into stream system</li> <li>• Stream habitat damage due to heavy equipment instream or in riparian zone</li> </ul> | <ul style="list-style-type: none"> <li>• 1601 DFG post-project notification</li> <li>• 404 CWA pre-project notification</li> <li>• 401 CWA post-project notification</li> <li>• Hazardous spill notification process to checklist agencies</li> </ul> |

*1/ Specific project types are listed in each section, Chapters 3 through 9.*

*2/ Site-specific conditions that may or may not require the permit for a specific project are described in more detail under each section of manual, Chapters 3 through 9.*

## 2-C WHAT IS REQUIRED: THE PERMITS

### Categories of Permit Conditions

The following checklist includes most of the categories of requirements, conditions, mitigations, and limits often placed on a permit:

- ❑ **Project Description and Purpose**— Scope of proposed action
- ❑ **Timing of Project Actions** – Limits to season, month, time of day, particularly **Limited Operating Periods** (LOPs) which can restrict action during special periods for sensitive animals (e.g., spawning, nesting)
- ❑ **Project Location** – Map or description of project site
- ❑ **Mitigations** included in the original Project Description – Practices proposed by the applicant (County) to minimize or avoid environmental impacts
- ❑ **Revised or Additional Mitigations** – Other practices required by the permitting agency ) to minimize or avoid environmental impacts
- ❑ **Monitoring Requirements** – Records that must be kept and data that must be collected during and after the project
- ❑ **Endangered or Threatened Species** – List of those known or possible at the site
- ❑ **Site Inspections** – Who and when an agency representative may need to be on-site during the project and his/her right to be there
- ❑ **Emergency Actions** – Clarifies which emergency actions can begin without prior notification or permit; agency must still be notified after action has begun.
- ❑ **Duration of Permit** – Beginning and Ending Date of permit's active status
- ❑ **Penalties for Violation** of Permit Conditions – Potential fines and jail sentence
- ❑ **Biological Assessment (BA)** – As required by federal Endangered Species Act
- ❑ **Alternatives Analysis** - Alternative actions to the original proposal

### Compliance with the Rules On-the-Ground and In-the-Stream

**BEFORE** performing a Routine Maintenance Project, be sure of the following:

- ✓ All necessary permits / agreements / consultations are completed for this project
- ✓ The final permit paperwork is available in the Project file
- ✓ Review with all the road crew involved the specific conditions listed on the permits (see Permit Conditions above) *and make sure they understand the requirements.*
- ✓ Post Final permits on site, if required. DFG 1601 Agreements must be available on site.
- ✓ Notify permit-issuing agencies prior to beginning the project.

## 2-C WHAT IS REQUIRED: THE PERMITS

### Consequences of Not Complying with Permit Requirements

If permits are not complied with, or the necessary permits are not obtained, the penalties to the County (with liability including the responsible individual) for unpermitted activity can be quite strong:

1. **Regional Water Quality Control Board (RWQCB)** enforcement of violations to the Clean Water Act, the Porter-Cologne Act, and the Basin Plan can involve the following actions:
  - a) Administrative Civil Liabilities, with fines at \$10 per gallon of spill (\$673 /cu yd., or \$6,730 per 10 yd. dump truck) of liquid or sediment.
  - b) Cleanup and Abatement Order – with fines for non-compliance
  - c) Time Schedule Order – with fines for non-compliance with deadlines
  - d) Cease and Desist Order – subject to fines
  - e) Fines < \$50,000 can be issued by the Executive Officer or Board; larger fines can be decided by the Board.
  
2. **California Dept. of Fish and Game (CDFG)** can issue fines and penalties for violations of the **Fish & Game Code** (see Section 12000-):
  - a) Most violations are misdemeanors.
  - b) Punishment is a fine <\$1,000, imprisonment in the county jail for not more than six months, or both fine and imprisonment.
  - c) Violation of pollution prohibitions under F& G Code Section 5650 punishable by civil penalty of not more than \$25,000 for each violation; imprisonment in the county jail for not more than one year, or both fine and imprisonment. Person is also liable for all actual damages and for reasonable costs incurred in cleaning up the deleterious substance or material.
  - d) Punishment for a second or subsequent violation of Section 1601 on the same project or streambed alteration agreement, or any violation of the State Endangered Species Act (CESA), is a fine of <\$5,000 or imprisonment in the county jail for a period not to exceed one year, or both.
  
3. **Federal Endangered Species Act (ESA)** violations are assessed by the NMFS Director (SW Region) or the USFWS Director (Western Region) and may involve the following penalties:
  - a) Civil penalty of up to \$25,000 per violation against any person who knowingly violates any provision of the ESA or any regulation issued to implement the taking and no damage/destruction provisions of Section 9.
  - b) Criminal penalties of up to \$50,000 (total) and/or one year's imprisonment for knowing violations of the act or regulations.
  - c) Penalties are most often assessed against private individuals and entities for section 9 violations.
  - d) Citizens may bring suit to enforce the act when compliance is not followed.
  
4. **Clean Water Act Section 404** violations are similar to the RWQCB actions above. Both the Corps (COE) and the EPA have independent enforcement authority.:
  - a) Administrative penalties for EPA involve:

## 2-C WHAT IS REQUIRED: THE PERMITS

- i) Class I violations – for less serious unpermitted activities, carry a maximum of \$10,000 per violation, with a total maximum of \$25,000;
  - ii) Class II violations – for more serious unpermitted activities, carry a maximum of \$10,000 per day for each day during which the violation continues, with a total maximum of \$125,000.
- b) Corps' enforcement has a maximum of \$25,000 per day for both classes.
  - c) Negligent violations carry misdemeanor sanctions, including penalties of \$2,500 to \$25,000 per day and imprisonment of up to one year.
  - d) Knowing violations carry felony sanctions, including penalties of \$5,000 to \$50,000 per day and imprisonment of up to three years.

# 2-D WHEN PERMITS HAPPEN

## TIME REQUIRED FOR PERMITS

Since the time for obtaining necessary permits can be lengthy and delay the start of road maintenance projects, it is very important to begin the permit process as soon as possible and to start the clock ticking on each of the permits that will or may be needed. Table 2-4 lists the estimated time required for most permits. Some permit time schedules are established by statute (\*), while other time periods are set at the discretion of the agency. Timing can also be delayed by complex projects, incomplete application materials, insufficient staffing for permit reviews, and “surprise” issues during inspection of the proposed project site. Note that the clock usually does not start ticking until the agency formally deems the application to be “complete”.

**Table 2-4. Estimated Time Required for Permits, by Permit Name**

| PERMIT /<br>Other Requirement   | AGENCY   | TIME REQUIRED<br>Minimum / Maximum  |
|---|--|---|
| 401 CWA – Water Quality Certification or Waiver (from discharge requirements) | RWQCB – Regional Water Quality Control Board   | 30 days to determine if application is “complete”;<br>60 days from complete application               |
| 402 CWA – General Storm Water Permit  | RWQCB / SWRCB  | Valid on receipt of complete Notice of Intent (NOI)<br>(30 days)                                      |
| 404 CWA – Individual  | COE –<br>US Army<br>Corps of Engineers   | 60-90 days / 2 years + (?)  |
| 404 CWA – General / Nationwide  |  | 30 days to determine if application complete;<br>45 days from “complete” application                  |
| 404 CWA – General / Regional (RGP)  |  | Same as Nationwide  |
| Section 4(d) rule take limitation   | NMFS -<br>National Marine<br>Fisheries Service / or<br><br>US Fish & Wildlife Service<br>(USFWS) | No time limit   |
| Section 7 ESA<br>- Informal Consultation                                      |  | 30 days to get species list + 180 days max. for Biological Assessment (BA) +<br>30 days to accept BA* |
| Section 7 ESA<br>- Formal Consultation  |  | 135 days max. for Biological Opinion, after acceptance of BA<br>* (unless agreement to extend)        |
| Section 10 ESA<br>- Habitat Conservation Plan<br>- Incidental Take Permit     |  | No time limit   |
| 1601 – F&G Streambed Alteration Agreement                                     |  | 45 days* / 65 days*   |
| 2081 – CESA<br>- Incidental Take Permit                                       | DFG –<br>Calif. Dept. of Fish and Game   | 120 days *  |
| Use Permit  | County / City  | 45-90 days  |
| Grading Permit  | County / City  | varies  |

\* Time limit set by statute

## 2-E WHERE TO FIND HELP

### HELPFUL REFERENCES

- Bass, R., Herson, A., and K. Bogdan. 1999. CEQA Deskbook: A step-by-step guide on how to comply with the California Environmental Quality Act. (2<sup>nd</sup> edition) Solano Press Books, Pt. Arena, CA. [(707)884-4508]
- California Dept. of Fish and Game. 2000. Lake & streambed alteration agreement process. Sacramento. 153 p. [ [//www.dfg.ca.gov/1600/1600.html](http://www.dfg.ca.gov/1600/1600.html) ]
- Cylinder, P.D., Bogdan, K.M., Davis, E.M., and A. I. Herson. 1995. Wetlands regulation: A complete guide to Federal and California programs. Solano Press Books, Pt. Arena, CA. 363 p. [(707)884-4508]
- Jones & Stokes Associates, Inc. 1997. Handbook of regulatory compliance for the Anadromous Fish Restoration Program. Sacramento, CA. Prepared for U.S. Fish and Wildlife Service, Stockton, CA. [(209)946-6400]
- Mueller, T.L. 1996. Guide to federal and California endangered species laws. Planning and Conservation League Foundation. Sacramento. [(916) 444-8726 ]
- National Marine Fisheries Service. Endangered Species Act – Section 7 and Section 10 handbooks. [[//www.nwr.noaa.gov/](http://www.nwr.noaa.gov/)]
- Oregon Association of Clean Water Agencies. 2000. Endangered Species Act assessment manual. Prepared by CH2MHill. [(503)236-6722, or [//www.oracwa.org](http://www.oracwa.org) ]
- U.S. Fish and Wildlife Service. “Habitat Conservation Plans and the Incidental Take Permitting Process.” [[//endangered.fws.gov/hcp/hcpplan.html](http://endangered.fws.gov/hcp/hcpplan.html)]

### HOW TO GET PERMITS – See APPENDIX A

- A-1 Permit Flow Charts**
- A-2 Directory of Agencies**

**NOTE:** The management staff of the County DPW or DOT will normally be the ones obtaining the permits, and will usually have to deal with the details described in Appendix A.