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Introduction

Purpose of Guide

This user-friendly, how-to-guide was created for Terra Verde Environmental Consulting (Terra Verde), a biological consulting firm, located in San Luis Obispo, California. Terra Verde provides biological services including surveys for threatened and endangered species, general botanical and wildlife, as well as habitat assessment, technical reports, and permitting assistance. This guide serves as a summary of the environmental laws and permits that apply when completing a project near a stream or wetland area, as further described in the text. Clients of Terra Verde can utilize this guide to familiarize themselves on current regulations and permits required during project development. With this knowledge, clients can start the permit process in a manageable time period in accordance with their coordination with Terra Verde and the commencement of their project.

Why Protect Our Resources

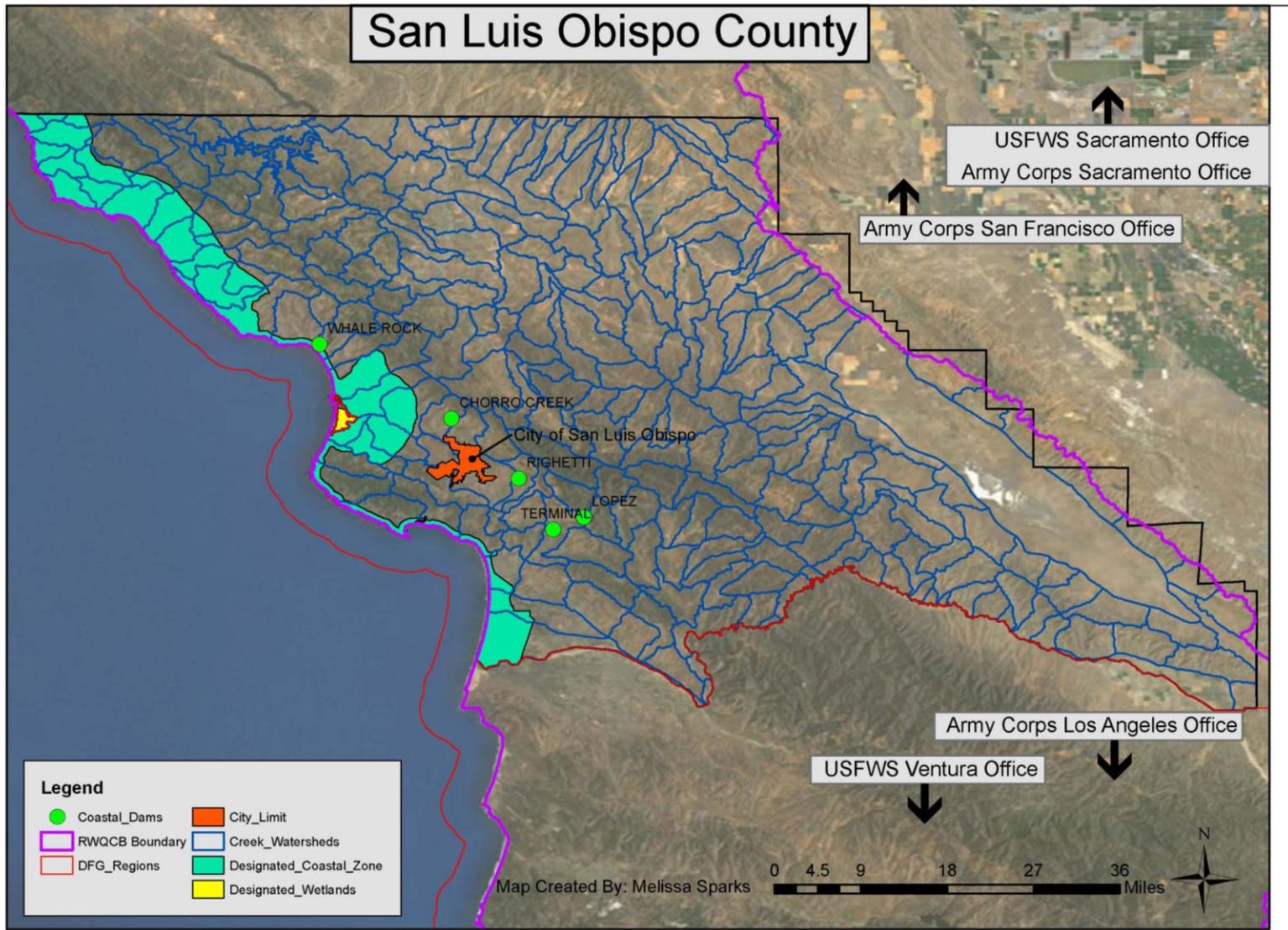
The resources found within or surrounding streams and wetlands are vital to the health of the ecosystem, and the human values that depend on them. Wetland and stream ecosystems support thousands of plant and wildlife species, many of which are identified as endangered or threatened by the agencies that have jurisdiction in these areas. The key resources of concern include soil, water, vegetation, and wildlife. These resources are not only important for the health and survival of the overall habitat, but also for human benefits, such as agricultural, water filtration, and recreational purposes. In complying with the jurisdictional agencies and their regulations, a balance between human development and protecting our natural resources can be achieved.



Figure 1. Panoramic view of a seasonal Bishop's Peak wetland, located at the base of Bishop's Peak Trail.

Environmental Compliance in San Luis Obispo County

Local area: San Luis Obispo Map



Environmental Agency and Law Background

The following information summarizes the environmental laws and permitting agencies involved with stream and wetland regulation compliance.

Introduction to Permitting Agencies

Federal	Acronym
United States Army Corps of Engineers	Corps
National Oceanic and Atmospheric Administration	NOAA
NOAA Fisheries Services	NOAAFS
United States Fish and Wildlife Service	USFWS

State	Acronym
California Department of Fish and Game	CDFG
State Water Resources Control Board	SWRCB
Office of Planning and Research	OPR
California Coastal Commission	CCC

Regional	Acronym
Regional Water Quality Control Board	RWQCB

Local	Acronym
City of San Luis Obispo	N/A
San Luis Obispo County	N/A
San Luis Obispo County Flood Control and Water Conservation District (Zone 9)	N/A

*The San Luis Obispo County Flood Control and Water Conservation District (Zone 9) advises the County Board of Supervisors on policy related to the San Luis Obispo Creek Watershed. There are also Water Conservation Districts in Oceano (1/1A) and Arroyo Grande (3).



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Environmental Law Summaries

The **Clean Water Act** (CWA) of 1972 protects the surface waters of the United States under Federal jurisdiction for water quality purposes. The CWA is regulated by the U.S. Army Corps of Engineers (Corps). They provide requirements for project compliance for any potential damage to waterbodies, such as dredging or filling, as defined by the law. The Corps protects waters that are:

- “Waters of the United States”, or water under the jurisdiction of the government, including lakes, estuaries, streams, wetlands, coastal waters
- Any navigable waters, or water that promotes interstate or foreign commerce
- Waters with a significant nexus, or connection to “Waters of the United States” or navigable waters

**This includes subsurface or ground water connections to Waters of the U.S.

The Clean Water Act was derived from the **Rivers and Harbor Appropriation Act** of 1899, which was the first law to protect navigable waters of the US.

The **Porter-Cologne Water Quality Control Act** of 1969 is a state law that implements the federal regulations of the CWA for the protection of water quality through permitting programs regulated by Regional Water Quality Control Boards.

California Environmental Quality Act (CEQA) of 1969 is a broad environmental law that establishes procedures and policy for discretionary projects in the state of California. CEQA is primarily used for public disclosure in exposing environmental effects, and when significant, mitigation and alternatives to reduce or avoid environmental damage. CEQA is implemented on a project basis, as to whether the project applicant needs to comply with CEQA or if they are exempt. The overall CEQA process for a single project is regulated by a designated lead agency, typically a local, State, or Federal agency with jurisdiction in the project area.

Defining a Wetland or Stream Area

One of the most difficult questions to answer when planning near, in, or around water is “What is a wetland”? There are a few key concepts that are essential to know when complying with wetland regulations.

The Three H’s

The three H’s are criteria used by the Corps for determining if an area is considered a jurisdictional wetland. The three H’s are hydrology, hydric soils, and hydrophytic vegetation. These three indicators are analyzed by using the Corps technical manual.

Hydrology

A hydrologic value, or water value, must be identified as one of the three characteristics when determining if a wetland is present. Standing water may be found, but it is not uncommon to find water that is present only seasonally at different times throughout the year. A defined creek channel, or thalweg, and debris racking along vegetation near dry stream beds are strong indicators of seasonal hydrology. The hydrology of a wetland further affects the soils and vegetation that is present in determining a wetland.

Hydric Soils

Hydric soils are defined as soils formed under saturated, or wet, and anaerobic (lacking oxygen) conditions. Even areas that are dry part of the year may form hydric soils.

Hydrophytic Vegetation

Hydrophytic vegetation is the third H when determining and identifying a wetland. Hydrophytic vegetation is defined as water-loving or plants that thrive in highly-saturated areas. Vegetation can be broken into three broad categories: species are 99% of the time found in wetland areas (obligate), species found in wetland, transitional, and upland areas (facultative), and upland species. Common hydrophytic vegetation found in San Luis Obispo County are : Cordgrass, Box Elder, Alder, Pickleweed, Wild Blackberry, Mule Fat, Cattails, Mexican Elderberry, Wax Myrtle, Willows, Cottonwood, Sycamore, Rushes, Mugwort, and Sedges.



Figure 2. Obligate and facultative wetland species.

Types of Wetlands: Natural versus Artificial

According to the Corps definition of wetlands, there are both naturally and artificially occurring wetlands. Natural wetlands are areas that include the three wetland indicators (hydrology, hydrophytic vegetation, and hydric soils), but have developed over time without direct human impact, simply according to the natural ecological functions of the system. Artificial or constructed wetlands have the three indicators as well, but created by humans. Most commonly found, constructed wetlands are intended to be built; occasionally, there are wetlands that are unintentionally created. These unintentionally wetlands are difficult to regulate; should the three H's or critical habitat for threatened or endangered species be present, these wetland areas are required to be regulated.

Some examples of Natural Wetlands are:

- Marshes
- Estuary
- Vernal Pools
- Riparian Ecosystem

Some examples of Artificial Wetlands are:

- Man-made ponds
- Stock ponds
- Drainage ditches
- Culvert Crossings (part of wetlands)

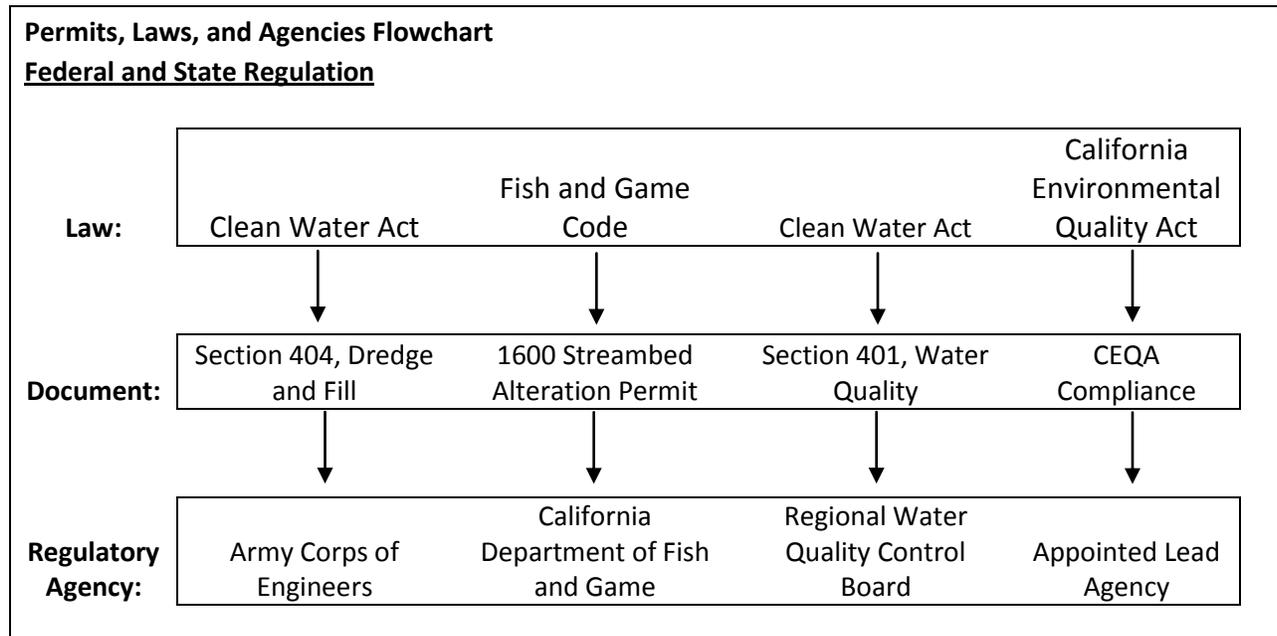


Figure 3. Example of a freshwater marsh in San Luis Obispo County.

Permitting and Compliance

Introduction of the “Big” Four Permits

With wetland and stream development, there are potentially up to four main permits required. These permit applications must be completed in a timely manner and submitted to the correct jurisdictional agency. The following chart shows the four permits, which law the permit is derived from, and which regulatory agency oversees the approval and administering of each permit.



General Permitting Process

When determining if a permit is necessary for a project, applicants can follow the steps of the general permitting process. Here are the steps to the general process of receiving approval for a permit:

1. **Consultation with an Agency** – Before filing the permit, it is often helpful for the project applicant to contact the jurisdictional agency who regulates the resources or area. An initial on-site meeting may be set-up to discuss the pre-application process and to verify that the permit applies to the proposed project.
2. **Biological Review** – Many times the first step in preparing a permit application is to have the agency or private environmental consultant conduct a biological review to assess the potential impacts of the project, particularly potential impacts to sensitive species.
3. **Pre-application Requirements** – Some regulatory agencies require receipts or letters of concurrence from other agencies before completing the permit application. This may be determined during the consultation meeting with the agency.
4. **Application** – There is an application required for each of the four big permits. The application most always includes: applicant information, project purpose, project description, and project location. There are required application components, which are specified in the four permitting sections.

Note: There are specific time deadlines and, fees required for each of the four big permits. These areas will be discussed in each of the four permitting sections.

Clean Water Act - 404 Permit

Trigger: The 404 permit addresses dredging, filling, removing, and replacing materials in Waters of the U.S. which are under the jurisdiction of the Corps. For riparian stream areas, the Corps has jurisdiction of the area beneath the Ordinary High Water Mark, or the point in a riparian system where the water level rises to, as well as adjacent wetlands, when they have a significant nexus to a navigable water of the United States.

Types of Permits: There are three types of permits that an applicant can receive under Section 404 of the Clean Water Act administered by the Corps. The three types of permits are: Regional General Permit (RGP), Nationwide Permit (NWP), and Individual Permit (IP).

Regional General Permit (RGP) – RGPs are permits that are pre-written for a small category of projects, mostly maintenance-related with little to none environmental impacts, within a specific region. Coordination with other agencies is often required; RWQCB, USFWS, and NOAA Fisheries are often required for sensitive species consultation and water quality pre-approval purposes.

Time Process: RGPs typically require 1 month or less to process after submitted. (Newly proposed project categories for RGPs may take 6 months to 1 year).

Fee: RGPs do not require an application fee.

Nationwide Permit (NWP) –The NWPs are also pre-written for project categories (approximately 40) but on a nationwide level. Project types include road crossings, bank stabilization, structure repairs, flood control maintenance, and wetland restoration. Projects must result in impacts less than 0.5 acre to Corps jurisdiction. Permanent impacts exceeding 0.5 acre require an Individual Permit (IP).

Time Process: NWPs typically require 3 to 4 months to process after submitted. This may include the time for the Corps to consult with other agencies.

Fee: NWPs do not require an application fee.

Individual Permits (IP) – When projects significantly impact more than 0.5 acre of jurisdictional waters, the Corps requires an IP, as well as public review of the proposed project. Project types are generally large development projects.

Time Process: IPs typically requires 6 to 12 months including public review.

Fee: IPs requires \$0-100 dollars per project.

Emergency Definition: The Corps defined emergencies as “clear, sudden, unexpected and imminent threat to life or property demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property or essential public services”.



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RWQCB - 401 Certification

Trigger: The 401 Certification, administered by the Regional Water Quality Control Board, is required when loose materials from development activities may affect the quality of a waterbody or wetland or when a 404 Permit is required.

Types of Permit: The 401 Application can be completed online or by hand. The following information must be included: applicant information, project purpose, project description, location information, latitude/longitude boundary points, temporary, permanent, and cumulative impacts to Waters of the U.S., mitigation strategies, other required permits, and CEQA/NEPA compliance.

Time Process: After the online application is submitted, the review process typically takes from 3 to 4 months.

Fee: The online application requires a fee, which is calculated based upon project conditions.

Emergency Definition: The RWQCB uses the same definition of Emergency as the Corps, which includes “clear, sudden, unexpected and imminent threat to life or property demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property or essential public services”.



Figure 4. Example of riparian ecosystem at Laguna Lake.



CDFG - 1600 Streambed Alteration Agreement

Trigger: The Streambed Alteration Agreement (SAA), administered by the California Department of Fish and Game (CDFG), is required when a stream or waterbody is altered, changed, damaged, or disturbed in some way, including disturbance to the riparian vegetation system. Some damaging actions include obstructing or diverting the natural flow of water, extracting material from riparian areas, and disposing of waste into the riparian area.

Types of Permit: The Streambed Alteration Agreement requires two forms, the Notification of Lake or Streambed Alteration and Project Questionnaire. These two forms are available online and require the following information: applicant information, project description, location information, identified waterbodies and tributaries, biological impacts (from biological review consultation), other required permits, and CEQA compliance.

Time Process: After the two SAA forms are submitted, the review process typically takes from 3 to 4 months, if the CEQA compliance is already completed. Once an agreement is received, the applicant has 30 days to review it and provide corrections.

Fee: The online application requires a fee, which is available online with the application.

Emergency Definition: The CDFG requires notification 14 days prior to the following activities: immediate emergency actions to protect life, property, repair public services facilities, and emergency public highway projects in one year. CDFG requires notification to minimize biological resources impact through coordination prior to project actions.



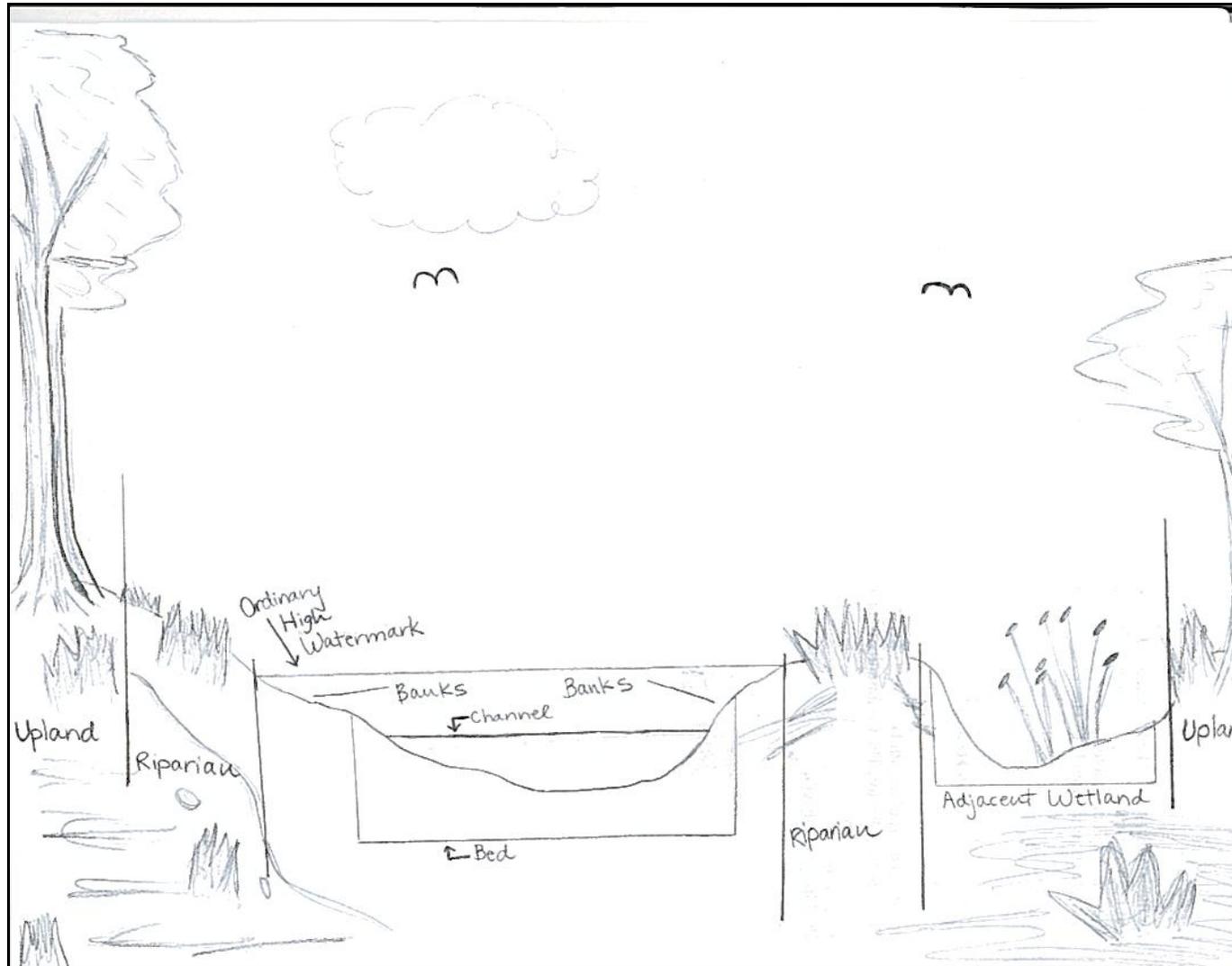


Figure 5. Image of Jurisdictions for Corps and CDFG. Corps jurisdiction is below ordinary high water mark and extends to adjacent wetlands. CDFG jurisdiction extends over the bed, bank, and channel of rivers, lakes, and streams to the end of riparian vegetation.

CEQA Compliance

Trigger: CEQA compliance is required when project actions are considered discretionary and have significant impacts to the environment with no alternatives or mitigations that reduce the potential impacts to less than significant that are not otherwise exempt. Discretionary permits are those that require a public agency to approve or disapprove issuing a permit. CEQA compliance requires the exercise or judgment and approval from a public jurisdictional agency. The public agency follows the project action to the end of the review process as the lead agency, even if other permits and/or agreements are required. The CEQA process is unique with required documentation throughout each phase.

Types of Compliance: The following documentation is required in complying with CEQA: Initial Study (IS), Negative Declaration (ND), Mitigated Negative Declaration (MND), Environmental Impact Report (EIR), and Categorical Exemption (CE). The IS is similar to a biological review that is required in determining the threshold of significance of the environment and the baseline conditions of the current site for where the project development is proposed. The ND is a statement from the lead agency announcing that the baseline conditions have no negative impacts to the current environment and, therefore, the project can continue. The MND is a similar document as the ND, except that the significance to the environmental was greater than the threshold that the environment could handle, but with the appropriate mitigation techniques, the significance is lowered and, therefore, does not significantly affect the environment. Lastly, the EIR is required with the significance of the project actions on the environment is not easily mitigable and, therefore, requires a document with project alternatives and mitigation measures that the lead agency approves.

Time Process: The ND or MND requires 180 days from the date of the project application for review. The EIR requires 365 for review by the lead agency.

Fee: A fee/cost is required by the lead agency per project.

Emergency Definition: CEQA defines emergency protocol as a “sudden, unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of or damage to life, health, property or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident or sabotage.”

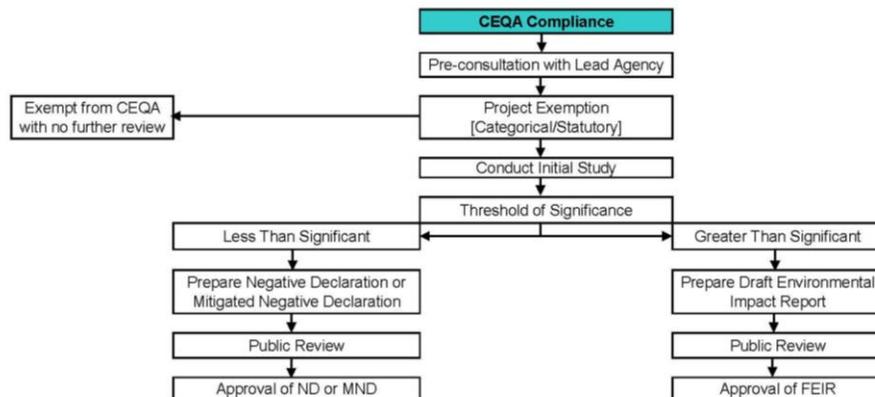
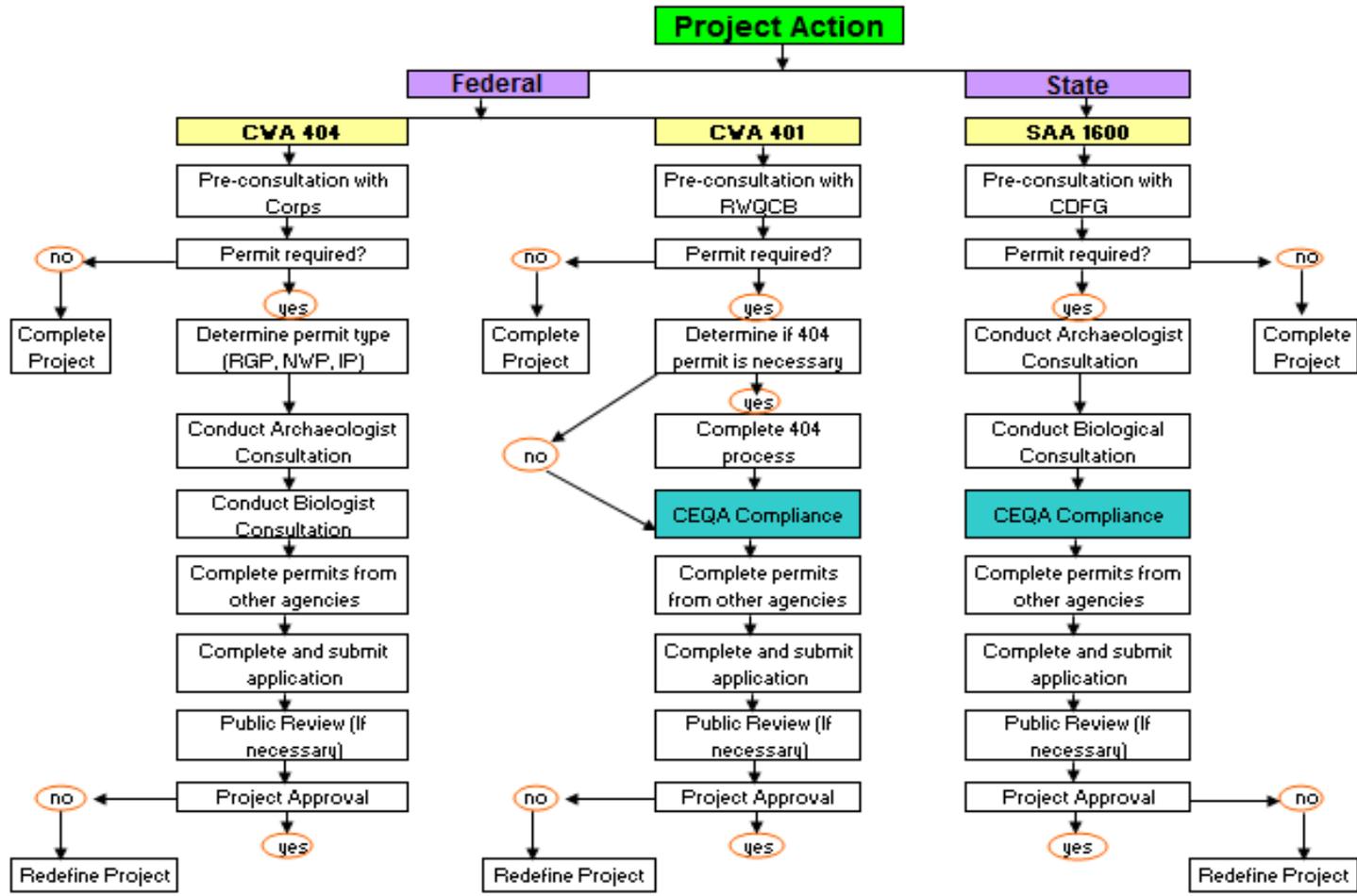


Figure 6. CEQA Compliance flowchart process.

Overview Flowchart

The following flowchart displays the compliance processes of the Section 404 Permit, Section 401 Permit, and Streambed Alteration Agreement (SAA) 1600. Tips to coordinating multiple permits and working with multiple jurisdictions can be found on page 17 of this document. Often times, when a Section 404 permit is required from the Corps, a Section 401 permit is also required from the RWQCB. Also, when a SAA 1600 is required, CEQA Compliance may be necessary, when determining the scale of the project.



Environmental Compliance in San Luis Obispo County

Contact Sheet

The chart listed below contains contact information for the specific agency offices that have jurisdiction in San Luis Obispo County.

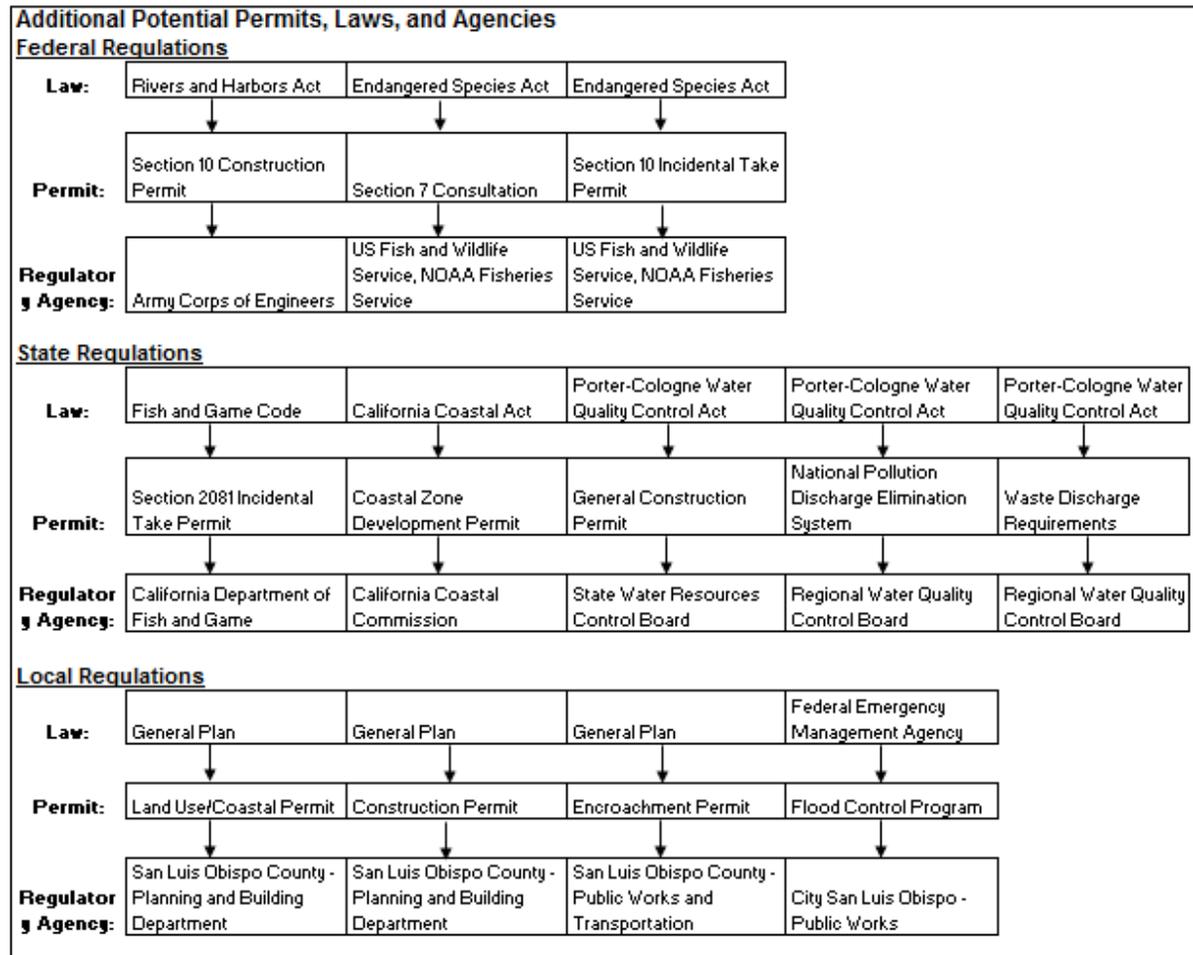
Contact Sheet of Jurisdictional Agencies

Agency	Address	Website	Phone
County of San Luis Obispo	1055 Monterey Street San Luis Obispo, CA. 93408	www.slocounty.ca.gov	805.781.5000
City of San Luis Obispo	990 Palm Street San Luis Obispo, CA. 93401	www.slocity.org	805.781.7100
California Coastal Commission	45 Fremont Street, Suite 2000 San Francisco 94105-2219	www.coastal.ca.gov	415.904.5260
California Department of Fish and Game, Region 4	1234 E. Shaw Avenue, Fresno CA. 93710	www.dfg.ca.gov/regions/4/	559.234.4005
Central Coast Regional Water Quality Control Board, Region 3	895 Aerovista Place, Suite 101 San Luis Obispo CA. 93401	www.swrcb.ca.gov/rwqcb3/index.htm	805.549.3147
U.S. Army Corps of Engineers	P.O. Box 532711 Los Angeles CA. 90053	www.spl.usace.army.mil/cms/index.php	213.452.3908
U.S. Army Corps of Engineers	1455 Market Street San Francisco, CA 94103	http://www.spn.usace.army.mil/index.html	415.503.6800
US Fish and Wildlife Service	2493 Portola Road, Suite B Ventura CA. 93003	www.fws.gov/ventura/	805.644.1766
US Fish and Wildlife Service	800 Cottage Way, Sacramento, CA 95825	http://www.fws.gov/sacramento/	916.414.6600
Natural Resource Conservation Services	65 S Main St Ste 106 Templeton, CA 93465	http://www.nrcs.usda.gov/	805.434.0396

For more information and location of regulatory agencies, please see the following link:
<http://www.steelheadrecovery.org/jurisdictions.html>

Additional Permits

Aside from the four big permits required for wetland and stream projects, there may be other permits that are necessary in order to allow the project to continue. Compliance with these permits should also follow the steps of the general permit process. Please see the following table for additional permits, laws, and agencies that may also be required:



Tips to Obtaining Permits

1. Start early! As soon as you identify the need to obtain regulatory permits, begin gathering information and materials you will need to complete the applications. As noted above, some of these permits can take several months to process so time is of the essence.
2. Develop your project description. This is the primary driver in what type of permits you will need and will be the basis for determining potential environmental impacts. You will avoid delays and frustration if you have a solid project description from the beginning. The description often describes equipment to be used, access routes, staging areas, disposal areas, quantities and types of materials to be used, duration of work, and time of year the project will occur. The agencies can “reset” the clock for processing your permit if you submit incomplete information.
3. Consider contacting the regulatory agencies. All of the regulatory agencies will assist you in determining which permits you need and the information needed prior to submitting your applications.
4. Get help. If you have a complex project or are unclear about the process, contact a professional organization for assistance. The County of San Luis Obispo maintains a list of pre-qualified environmental consultants that can help you navigate the permitting process. It is common to call several of the companies to ask questions about your project and to get cost estimates for permitting assistance. Other professional organizations also help permit projects, including engineering firms.
5. Determine potential biological impacts. This step typically requires the help of a professional biologist or botanist. It is important to know what impacts your project may have and to ensure any biological or botanical work is conducted during the right season (e.g., certain sensitive plants only bloom in the spring, some animals can only be detected seasonally). If you miss the appropriate survey window(s), the agencies may have to hold your permit application until the proper survey work can be conducted.
6. Double check your applications. When you are ready to submit your applications, read carefully through them to ensure you’ve addressed all the necessary items. It’s best to not leave items blank; rather, note that the items are not applicable or N/A. Some agencies request copies of the applications or permits from other agencies so ensure you have included the necessary materials. Make sure you keep copies of everything you send to the agencies.

Project Examples in SLO County

Example 1: Bank Stabilization

The most common stream alteration in San Luis Obispo County is bank stabilization, which is necessary in preventing erosion during high storm flows. Stabilization techniques include: constructing groins to divert water flow, stalling riprap, and replanting banks with vegetation.

Project Work: Recontouring a streambank and channel, installing stabilization materials and native plants, and dewatering of potential steelhead pool.

Location: Corps and CDFG Jurisdiction; not in Coastal Zone.

Biological Resources: Biological opinions for steelhead trout and California red-legged frog.

Permits: Section 404 Permit, Section 401 Permit, SAA 1600, CEQA Compliance.



Figure 7. Example of Bank Stabilization in San Luis Obispo County.

Example 2: Utility Line Protection

With the development of cities and infrastructures, utility lines are commonly found crossing streams. Scouring over time can expose the utility lines, requiring additional work in the channel in order to protect the utility as well as the water quality. This then triggers the “big four” permits.

Proposed Project Work: Maintaining sewer lines, repairing exposed areas of the creek, installing permanent erosion control measures, and applying appropriate restoration techniques to prevent undesirable sewage leaks.

Location: Corps and CDFG Jurisdiction; not in Coastal Zone.

Biological Resources: California red-legged frog, California tiger salamander and critical habitat, Western spade foot toad, Southwestern pond turtle, burrowing owl.

Permits: Section 404 Permit, Section 401 Permit, SAA 1600, CEQA Compliance.



Figure 8. Example of Utility line protection in San Luis Obispo County.

Example 3: Man-made Pond Maintenance

Many artificially created wetlands and streams, support wetland habitat and are important to wetland functions. Even with manmade ponds, such as stock ponds, maintenance activities may still require regulation.

Proposed Project Work: Managing man-made wetland drainage ditch site for annual vegetation thinning to restore wetland in preparation for an outdoor community event near the site.

Location: CDFG Jurisdiction; not in Coastal Zone.

Biological Resources: Blue herons, red-winged black birds, amphibian surveys.

Permits: Streambed Alteration Agreement 1600.



Figure 9. Example of Man-made pool in San Luis Obispo County.

Example 4: Sediment Removal

When upstream erosion causes deposition of materials that reduce flow capacity, sediment removal may need to be excavated to the original grade in order to avoid flooding. Often times, wetland vegetation and sensitive species habitat has developed in these infrequently maintained systems.

Proposed Project Work: Removing sedimentation build up, restoring original grade of stream bank beneath bridge.

Location: Corps and CDFG Jurisdiction; City of San Luis Obispo, County of San Luis Obispo, San Luis Obispo County Flood Control and Water Conservation District; not in Coastal Zone.

Biological Resources: California red-legged frog, steelhead trout, Coast range newt, white-tailed kite, Southern pacific pond turtle, Western yellow-billed cuckoo, monarch butterfly.

Permits: Section 404 Permit, Section 401 Permit, SAA 1600, CEQA Compliance.



Figure 10. Example of site selected for sediment removal in San Luis Obispo County.

Example 5: Vegetation Maintenance

Similar to habitat restoration, vegetation maintenance activities protect native wetland species from being replaced by invasive, non-native species. With infrequent maintenance, site inspections and identification of sensitive species an alteration agreement is necessary.

Proposed Project Work: Removing non-native species from the perimeter of the pond, and replanting with native species.

Location: Corps and CDFG Jurisdiction; City of San Luis Obispo, County of San Luis Obispo, San Luis Obispo Flood Control District ?; not in Coastal Zone.

Biological Resources: pond turtle, site inspections – no sensitive species.

Permits: Streambed Alteration Agreement 1600.



Figure 11. Example of site that requires vegetation maintenance in San Luis Obispo County.

Appendix

Glossary

Banks – The side slopes of a stream or channel between which the flow of water is normally confined

Bed – The bottom of a stream or channel bounded by banks

Channel – the low-flow part of the bed, where water flows over some duration of the year (can be the entire bed or a portion of the bed).

Coastal Zone – The Coastal Zone is an identified boundary a measured distance from the ocean shoreline, where within this boundary, specific regulatory review is required.

Discharge – release of pollutants into waters of the United States, including the placement, fill, or substantial redistribution of soils, sediment, or other fill, as defined by the Clean Water Act

Discretionary Projects – project permitted through the CEQA process that requires the exercise of judgment by a regulatory agency

Endangered Species – species (plant or animal) that are in danger of extinction throughout all or a significant portion in a range

Ephemeral Stream – a stream that flows for only a short time during and after rainfall

Facultative – adapted equally to both wet and dry conditions

Habitat – the area or environment where a plant, animal, or ecological community lives

Intermittent Stream – a stream that flows seasonally and when groundwater provides water for stream flow

Mean High Water Mark – average high tides over a defined period

Mitigation – feasible actions to offset or reduce the impacts of a project

Obligate – requiring a specific environment to grow, specifically in wet areas

Ordinary High Water Mark – identifiable natural line visible on the bank of a stream that show the upper limit or typical stream flow or water level

Perennial Stream – a stream that flows continuously for all or most of the year

Upland – any area that does not identify as a stream, wetland or riparian habitat

Watershed – a geographic area of land that drains water to a common destination

Wetland Delineation – the process of defining the boundaries of a particular wetland area

Environmental Compliance in San Luis Obispo County

Abbreviations

CCA – California Coastal Act

CCC – California Coastal Commission

CDFG – California Department of Fish and Game

CE – Categorical Exemption

CEQA – California Environmental Quality Act

CORPS – United States Army Corps of Engineers

CWA – Clean Water Act

EIR – Environmental Impact Report

IP – Individual Permit

LCP – Local Coastal Plan

MND – Mitigated Negative Declaration

ND – Negative Declaration

NMFS – National Marine Fisheries Services

NOAA – National Oceanic and Atmospheric Administration

NWP – Nationwide Permit

RGP – Regional General Permit

RWQCB – Regional Water Quality Control Board

SAA – Streambed Alteration Agreement

SWRCB – State Water Resources Control Board

USFWS – United States Fish and Wildlife Service

Environmental Compliance in San Luis Obispo County

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