



***Cal* OES**

**GOVERNOR'S OFFICE
OF EMERGENCY SERVICES**

Environmental and Historic Preservation (EHP) Compliance

CDAA-2023-05, 2023 February – April Storms

Cal. Code Regs. Title 19, § 2966

Environmental Compliance State Regulations Compare General provisions for compliance with CEQA and permitting responsibilities:

(a) Prior to commencing work on a project, other than engineering, design or environmental assessment¹ work necessary to determine the scope of work or funding eligibility, each applicant shall, if required by CEQA, prepare, adopt, certify or file, the appropriate CEQA document(s);

(b) Prior to commencing work on a project, other than engineering, design or environmental assessment work necessary to determine the scope of work or funding eligibility, each applicant shall be responsible for obtaining the permits, clearances and necessary approvals from **tribal, federal**, state and local agencies; and,

(c) Applicants shall maintain adequate documentation that demonstrates their compliance with this Section and, upon request, shall furnish the documentation to Cal OES

¹Engineering and Environmental Assessment work that does not require ground disturbance, or scientific collection, i.e., research and non-intrusive field studies.

Words in Blue are in legislative review.

State and Federal Environmental and Historic Preservation (EHP) Compliance Laws

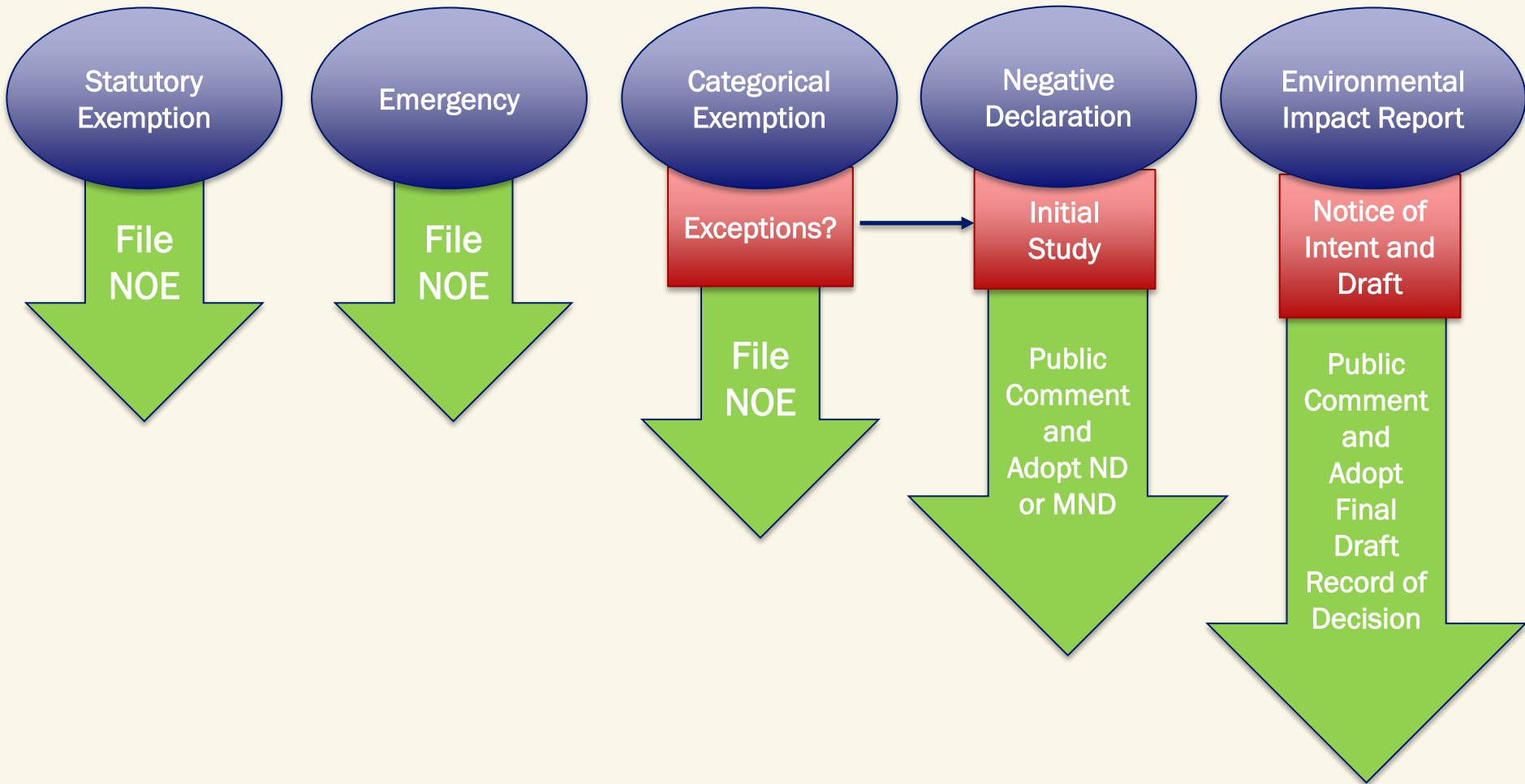
“Umbrella” Environmental Laws

- California Environmental Quality Act (CEQA)
- <https://ceqasubmit.opr.ca.gov/>
- National Environmental Policy Act (NEPA)
- <https://www.whitehouse.gov/ceq/>
- <https://ceq.doe.gov/>

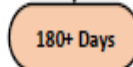
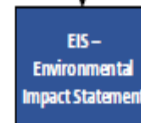
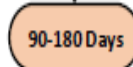
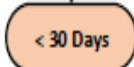
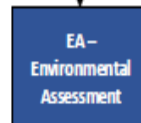
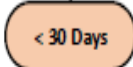
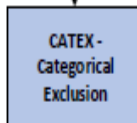
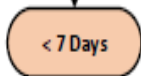


Note: For obligation of Public Assistance Grant funding via CDAA and Stafford Act, documentation of CEQA and NEPA compliance is required.

CEQA



NEPA Determination is conducted concurrently with above Laws/EO review



COMPLEXITY SCALE



12/9/2019

NEPA REVIEW PROCESS SIMPLIFIED DECISION TREE

Key Environmental Laws Considered under CEQA and NEPA

State

1. California Endangered Species Act (CDFW)
2. California Native American Historic Resource Protection Act (SHPO)
- 3a. Porter Cologne Water Quality Control Act (Water Boards, RWQCB)
- 3b. California Fish and Game Code (CDFW)
4. California Clean Air Act (CARB)
5. California Migratory Bird Treaty Act (CDFW)
6. Other State Laws
7. Executive Orders

Federal

1. Endangered Species Act (USFWS)
2. National Historic Preservation Act (SHPO)
3. Clean Water Act (USEPA, USACE)
 - Sections 401 and 402 administered by the Water Boards
 - Section 404 administered by USEPA and USACE
4. Clean Air Act (USEPA)
5. Migratory Bird Treaty Act (USFWS)
6. Other Federal Laws
7. Executive Orders

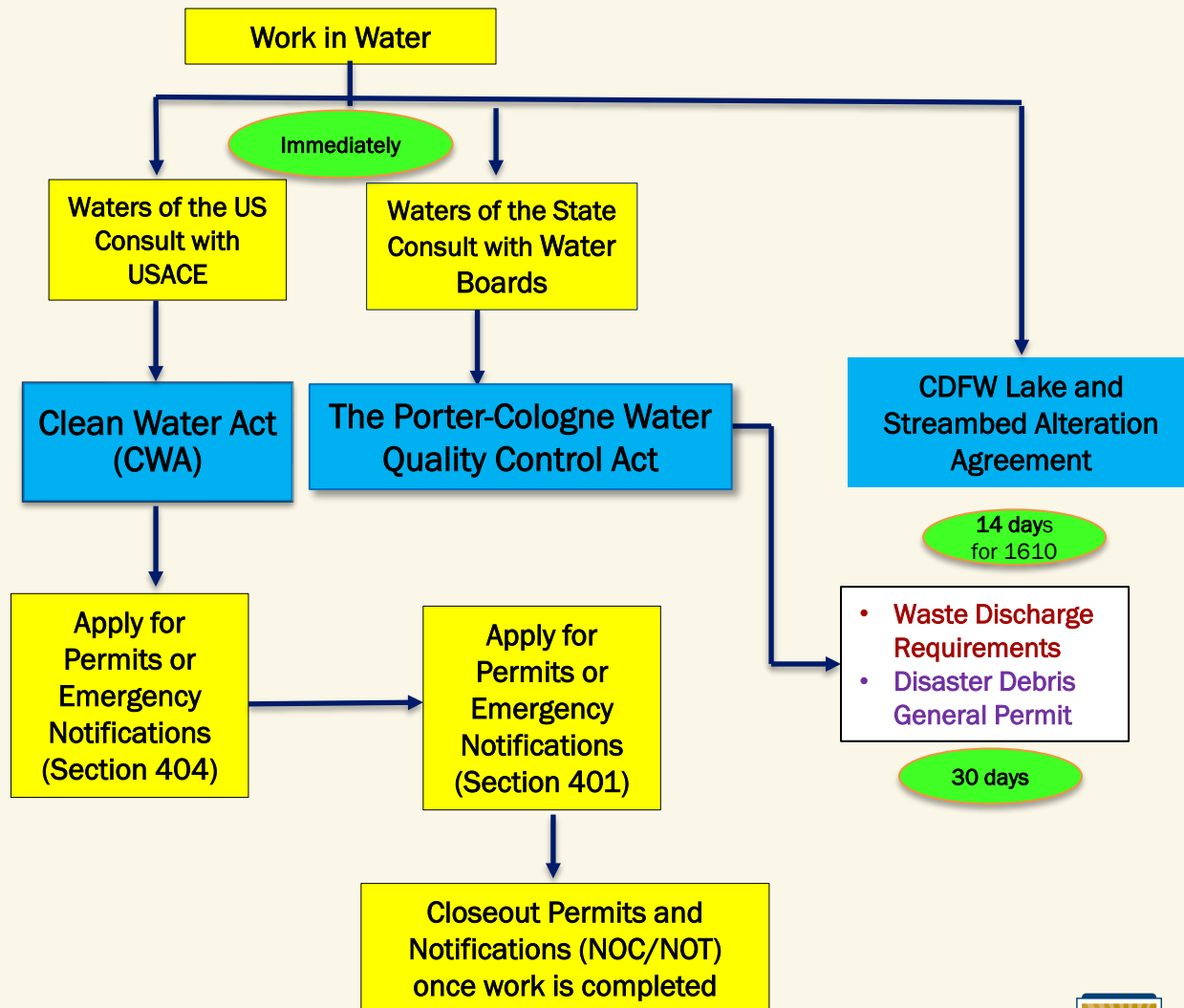
Work in-or-near Water

Examples:

- Culverts
- Wetlands
- Banks
- Watercourses

Concepts:

- Perennial
- Intermittent
- Ephemeral
- Man made



Applicant Permit Due

USACE/Water Boards Jurisdiction

The United States Army Corps of Engineers (USACE) includes two broad categories of water:

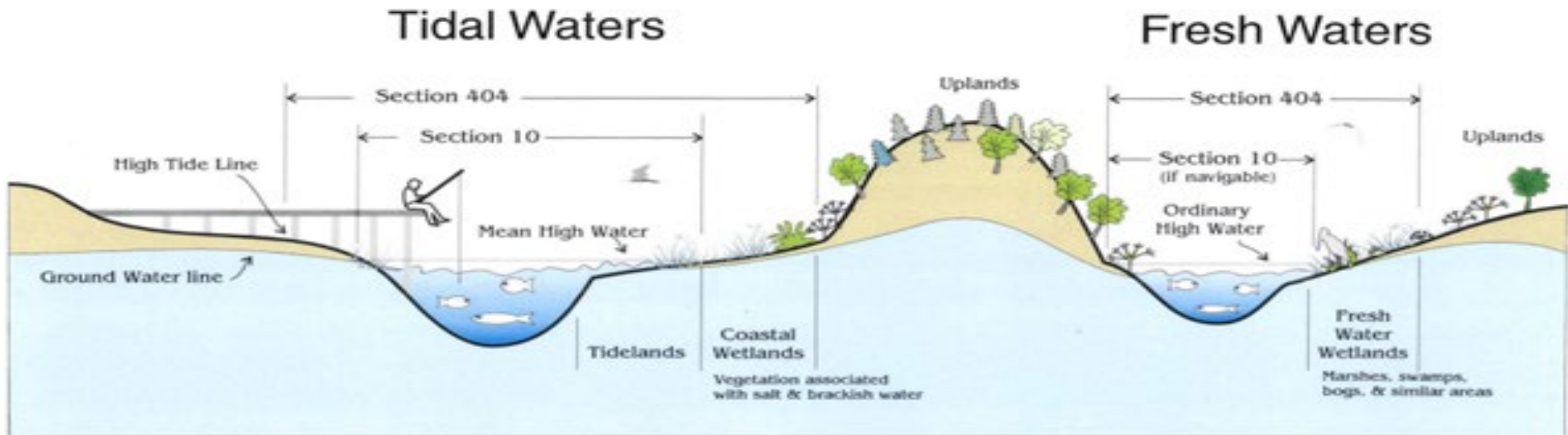
- Navigable Waters of the United States
- Waters of the United States

Without such categories the Water Boards take on the category:

- Waters of the State

- Culverts
- Bridges
- Bank erosion

CORPS OF ENGINEERS REGULATORY JURISDICTION



Typical examples
of regulated activities

Section 103
Ocean Discharge
of Dredged Material

Ocean discharges of
dredged material

Section 404
Disposal of Dredged or Fill Material
(all waters of the U.S.)

All filling activities, utility lines, outfall structures,
road crossings, beach nourishment, riprap,
jetties, some excavation activities, etc.

Section 10
All Structures and Work
(navigable waters)

Dredging, marinas, piers, wharves,
floats, intake / outtake pipes,
pillings, bulkheads, ramps, fills,
overhead transmission lines, etc.

OHWM Field Guides



A Field Guide to the Identification of the Ordinary High-Water Mark (OHWM) in the Arid West Region of the Western United States



A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Western Mountains, Valleys, and Coast Region of the United States

Water Boards Jurisdiction

- STATE WATER RESOURCES CONTROL BOARD ORDER WQ 2020-0004-DWQ GENERAL WASTE DISCHARGE REQUIREMENTS FOR DISASTER-RELATED WASTES
- 401 WATER QUALITY CERTIFICATION/WASTE DISCHARGE REQUIREMENTS
- NPDES STORM WATER PERMITS (Clean Water Act 402)

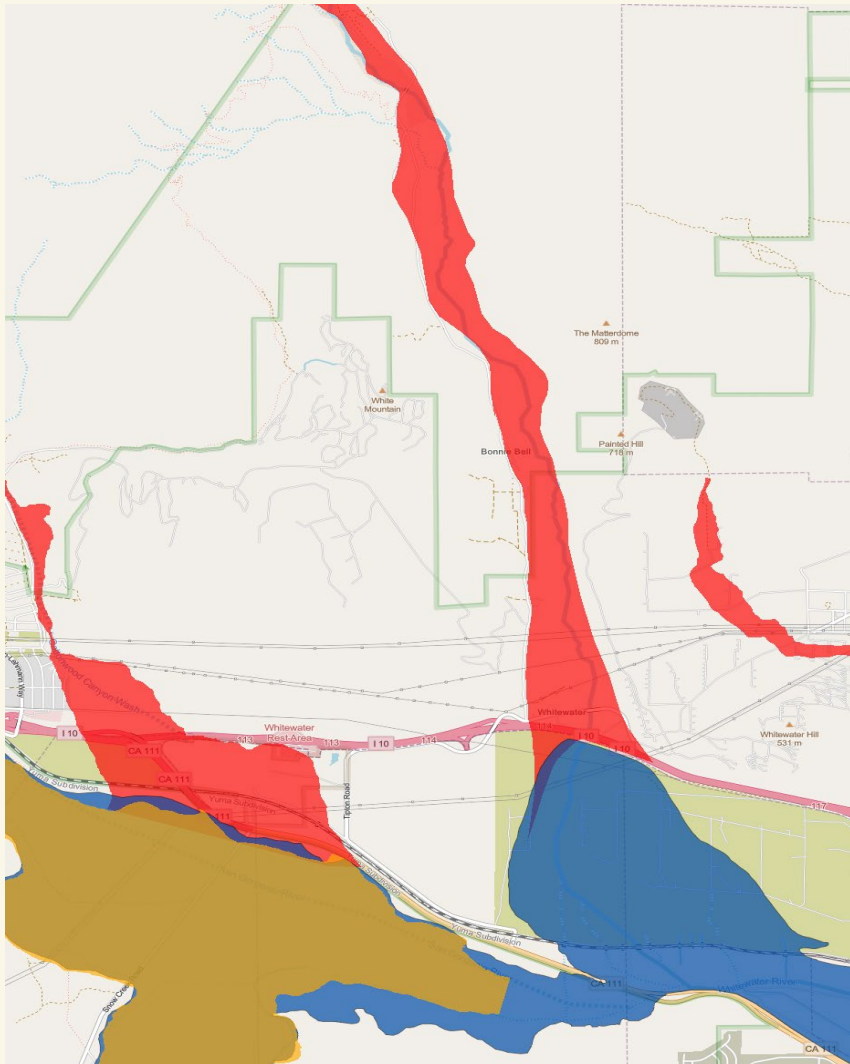


https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2020/wqo2020_0004_dwq.pdf

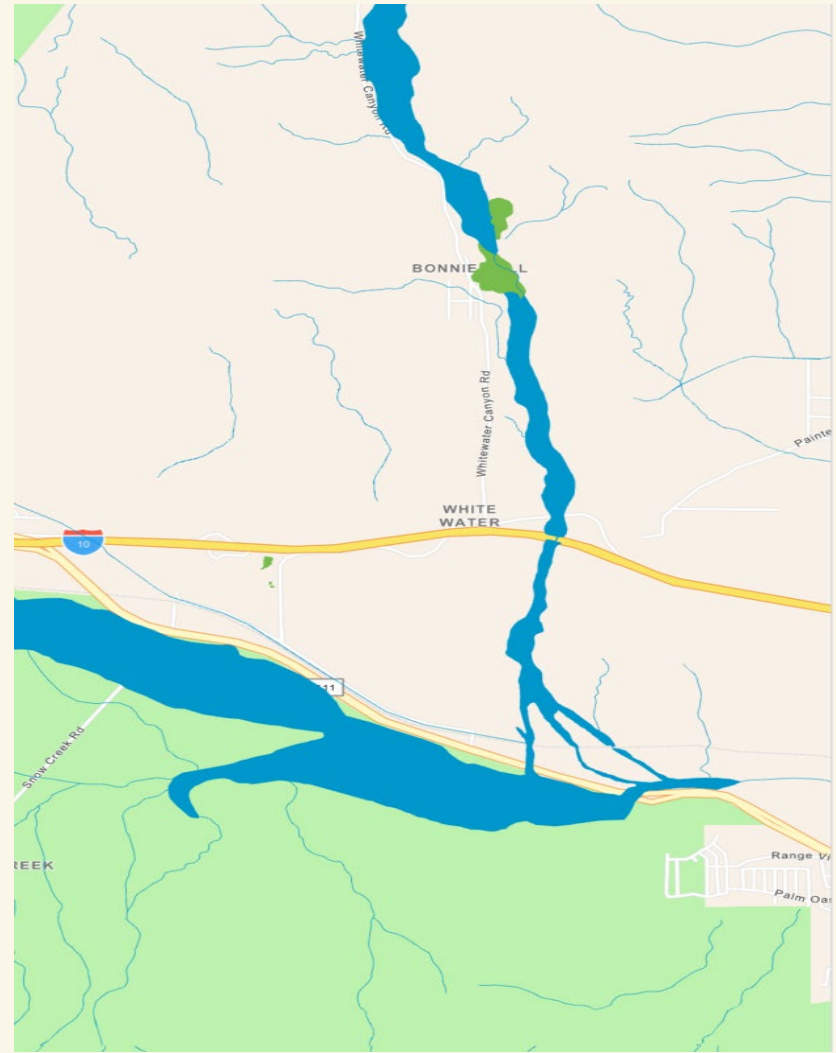


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Floodplains and Wetlands



USA Flood Hazard



National Wetland Inventory



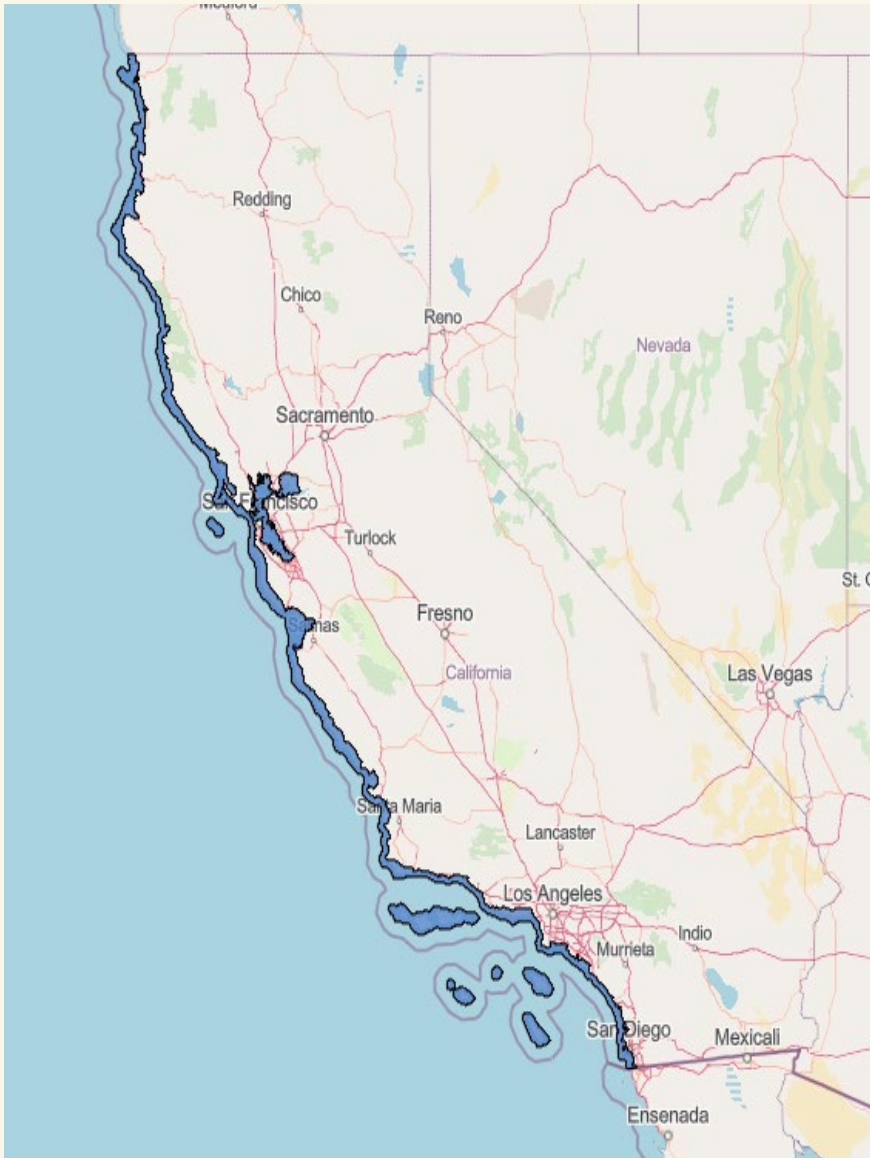
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Work in Floodplains and Wetlands



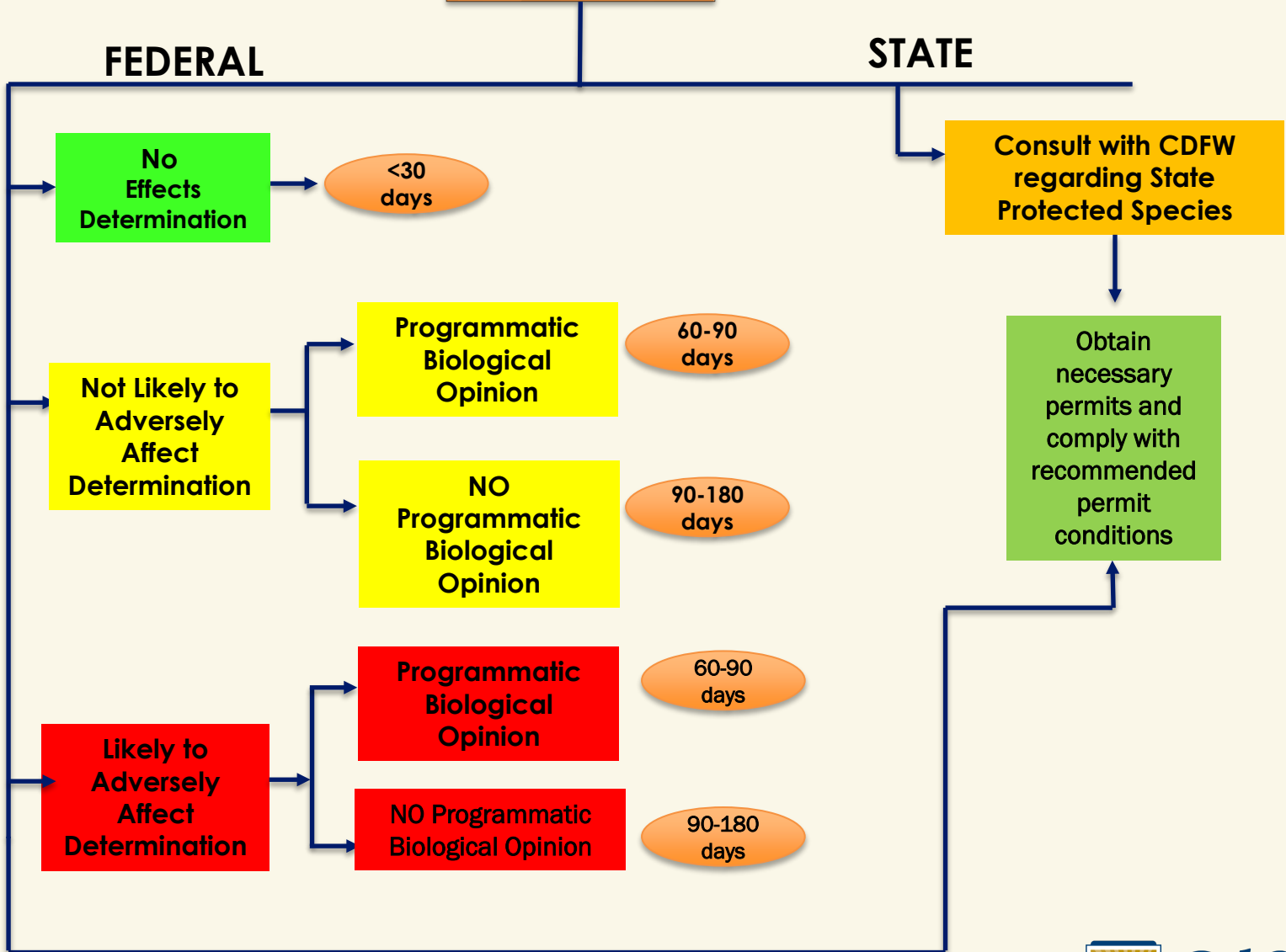
CA Coastal Commission Jurisdiction

Coastal Zone Management Act



- 1000 yards inland from the coast
- Activity/Trigger: Construction work within the Coastal Management Zone (e.g., Placement of segregated fill on a beach).
- If immediate action is necessary contact within three days (72 hours) of the disaster or discovery of the danger,
- 7 days to obtain Emergency Permits:
<https://documents.coastal.ca.gov/assets/cdp/emergency-cdp-appl.pdf>

Endangered Species Act



USFWS/NMFS Jurisdiction

- **Endangered Species Act**
 - **Biological Surveys – Desktop/Field (Hire a biologist)**
 - **Section 7 requires federal agencies to consult with US Fish and Wildlife Service (this can always be informally preempted by the applicant)**
 - **Migratory Bird Treaty Act**
 - **Keep in contact US Fish and Wildlife Service and/or National Marine Fisheries Service Directly**
 - **Incidental Take Permits**
 - **Special Purpose Permits**
 - **Programmatic Biological Opinions:**
 - **Avoidance and Minimization Measures**
- **Use iPac**
<https://ipac.ecosphere.fws.gov/>



CDFW Jurisdiction

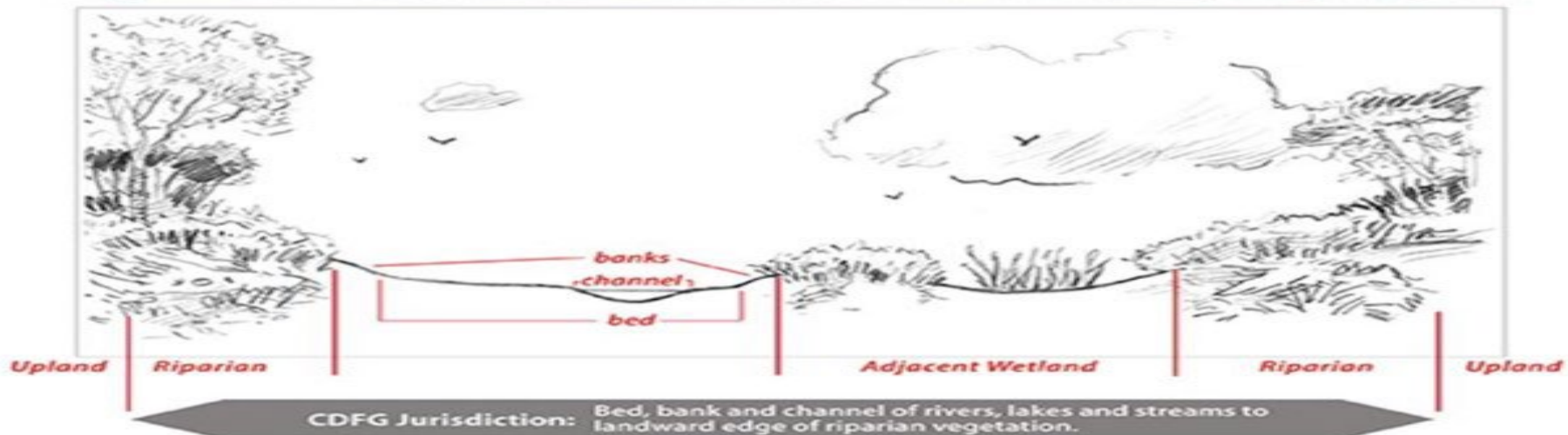


Willow Flycatcher

Illustration © [David Allen Sibley](#).

- Fish and Game Code Section 1600
 - 1602 Permanent Projects
 - 1610 Emergency Notification
- CA Endangered Species Act and CA Migratory Bird Protection Act
 - Biological Surveys– Desktop/Field (e.g. CNDDDB)
 - Contact CDFW
 - Incidental Take Permits
 - Best Management Practices and Species-Specific Measures

CDFG jurisdiction includes the bed, banks and channel of lakes, rivers and streams and includes adjacent riparian vegetation.



National Historic Preservation Act/Cultural Resource Protections

Disaster Event

Federal Jurisdiction

State Declaration

NEPA Process

CEQA Process

Do NOT start work until Federal review

No Potential to Effect

Lead agency or Contractor Should complete a review completed by qualified archaeologists.

Obtaining all necessary SHPO and Tribal Consultations

Programmatic Allowance

No Adverse Effect to Historic Properties

No Historic Properties Affected

Potential to impact historic or precontact resources

Tribal Consultation AB-52

Outreach to the Native American Heritage Commisison

Write contact letters

Consult

National Historic Preservation Act

Precontact Resources



Historic Resources



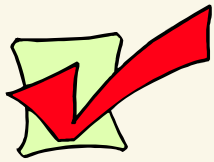
Example – What Applies?

- Clean Water Act?
- Porter Cologne Act?
- Fish and Game Code?
- Endangered Species?
- National Historic Preservation Act?
- Floodplains or Wetlands?
- Other laws?



Project Description

- **Site-Specific Plan, which includes:**
 - Address/Location
 - Aerial map,
 - A description of the site, access to it, and damages,
 - Ground Disturbing Activities, Location, Depth and Dimensions
 - A description of pre-disaster uses and impacts,
 - A description of temporary facilities and equipment stored,
 - A description of necessary construction mitigation Best Management Practices
 - Construction Dates
 - Land Ownership
 - Lead NEPA and CEQA agency
 - National Pollution Discharge Elimination System coverage, if applicable
- Encroachment/Use Permit
 - CalTrans, County or Municipal
- Site assessment by a qualified biologist for Endangered Species Act and California Endangered Species Act
- Site assessment by a qualified Archaeologist for National Historic Preservation Act, or general cultural/tribal resource protections (AB52, CalFire, etc.)
- Section 404 and 401 of the Clean Water Act permit, Fish and Game Code Section 1600 Lake and Streambed Alteration Agreement, compliance with Executive Order 11990 Protection of Wetlands, and Executive Order 11988 - Floodplain Management
- Documentation that the site is not on the Hazardous Waste and Substances sites



Important Points

- 1. Identify and contact the responsible state and federal resource agencies** before work can begin;
- 2. Only when EHP process is complete with those agencies and documented**, can project activities or construction begin without putting obligation of funding at risk;
- 3. Sub-Applicants and Sub-Recipients are responsible** for all EHP compliance requirements;
- 4. All applicable environmental laws must be addressed** in the EHP process **even if** a Statutory or a Categorical CEQA Exemption, or, a Statutory or Categorical NEPA Exclusion (e.g., STATEX or CATEX) is obtained;
- 5. A change in a project scope will require the EHP process to restart** to address the modification which may delay project start;
- 6. Contact CalOES PA, HMGP, and EHP** to help identify appropriate Federal and State Agency Representatives that need to be consulted with on your projects; and
- 7. Keep copies of** all correspondence and other documents.

Questions?

Patricia Nelson,
Environmental Officer,
916-823-1945

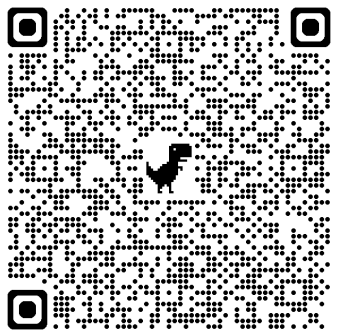
patricia.nelson@caloes.ca.gov

Melissa Ronan,
CalOES EHP Liaison
916-531-6554

melissa.ronan@caloes.ca.gov

recoveryehp@caloes.ca.gov

- **Technical Resources: Environmental Directory and Fact Sheets**



[Cal OES website - Environmental-Historic Preservation webpage](https://www.caloes.ca.gov/ehp)

<https://www.caloes.ca.gov/ehp>

[Jurisdictions Map](http://tinyurl.com/ycbxth3w)

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