

APPENDIX 10-D
ENVIRONMENTAL REGULATIONS

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ENVIRONMENTAL REGULATIONS

1.0 FEDERAL ENDANGERED SPECIES ACT

Pursuant to the federal Endangered Species Act (ESA), U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NOAA Fisheries) have authority over projects that may affect the continued existence of a federally listed species. Species are defined as Threatened or Endangered under ESA if they are listed in Title 50 of the Code of Federal Regulations (§17.11 or §17.12).

Section 9 of ESA and federal regulations prohibit the “take” of federally listed species; take is defined under ESA, in part, as killing, harming, or harassment of such species. Under federal regulations, “take” is further defined to include habitat modification or degradation where it actually results in death or injury to wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. An incidental take permit under Section 10(a), or federal consultation under Section 7, ESA is required if the project might affect a federally listed species.

For projects where federal action is not involved and take of a listed species may occur, the project proponent must secure an incidental take permit under Section 10(a) of the federal Endangered Species Act. Typically, the Section 10(a) process is initiated when the project proponent proposes an action that may take a listed species, and there is no federal agency with permitting authority over the project area.

Section 10(a) of ESA allows USFWS/National Marine and Fisheries Service (NOAA Fisheries) to permit the incidental take of listed species if such take is accompanied by a Habitat Conservation Plan (HCP) that includes components to minimize and mitigate impacts associated with the take. Following review of the HCP, USFWS/NMFS issues an opinion based on whether the proposed project threatens the continued existence of the species and reviews any proposed avoidance and mitigation

measures of impacts. After the review is completed, USFWS/NOAA Fisheries releases a determination whether to issue a permit to allow the incidental take.

Take of a federally listed species may be approved through Section 7 consultation between USFWS/NOAA Fisheries and another federal agency, if the proposed project is sponsored by or under another federal agency's jurisdiction. An example of when a Section 7 consultation is applicable is when the U.S. Army Corps of Engineers (USACE) issues a Section 404 permit for fill of wetlands. As part of the 404 permit process, USACE initiates informal consultation with USFWS/NOAA Fisheries. Prior to completion of a Biological Assessment (BA), USFWS/NOAA Fisheries determines whether the proposed project would have "no effect" on listed Threatened or Endangered species or "may affect" these species. Should USFWS/NOAA Fisheries render a "may affect" determination, formal consultation would be initiated between USFWS/NOAA Fisheries and the federal lead agency via submittal of the BA to USFWS/NOAA Fisheries. A BA evaluates the effects of a project on listed and proposed Threatened and Endangered species. USFWS/NOAA Fisheries then prepares a Biological Opinion regarding whether the project would jeopardize the continued existence of the species.

2.0 CLEAN WATER ACT

Section 401 of the Clean Water Act requires that any person applying for a federal permit or license, which may result in a discharge of pollutants into waters of the United States, must obtain a state water quality certification that the activity complies with all applicable water quality standards, limitations, and restrictions. The State Water Resources Control Board (SWRCB), via its Regional Water Quality Control Boards (RWQCB), administers this certification in California. No license or permit may be issued by a federal agency until certification required by Section 401 has been granted. Further, no license or permit may be issued if certification has been denied. Hence, Section 401 Water Quality Certifications are typically required in order to obtain a Streambed Alteration Agreement from the CDFG or a Clean Water Act Section 404 permit from the U.S. Army Corps of Engineers.

Section 402 regulates construction related stormwater discharges to surface waters through the NPDES program, administered by the EPA. In California, the SWRCB is authorized by the EPA to oversee the NPDES program through the RWQCBs (see “Porter-Cologne Water Quality Control Act” below). The NPDES program provides for both general permits and individual permits.

An NPDES permit is required for projects that disturb one acre of land or more. This is identified under the NPDES General Permit for Construction Activities (General Construction Permit), which requires the applicant to file a public notice of intent to discharge stormwater and to prepare and implement a storm water pollution prevention plan (SWPPP). The SWPPP includes a site map, description of proposed construction activities, demonstration of compliance with relevant local ordinances and regulations, and overview of the BMPs that will be implemented to prevent soil erosion and discharge of other construction-related pollutants that could contaminate nearby water resources. Permittees are required to conduct annual monitoring and reporting to ensure that BMPs are correctly implemented and effective in controlling the discharge of stormwater-related pollutants.

Section 404 of the Clean Water Act (CWA) establishes a requirement to obtain a permit prior to any activity that involves any discharge of dredged or fill material into “Waters of the United States,” including wetlands. As previously noted, Waters of the United States include navigable waters, interstate waters, all other waters where the use or degradation or destruction of the waters could affect interstate or foreign commerce, tributaries to any of these waters, and wetlands that meet any of these criteria or that are adjacent to any of these waters or their tributaries.

Pursuant to Section 404 of the CWA, USACE regulates and issues permits for such activities. Nearly all surface waters and wetlands in California meet the criteria for Waters of the United States, including intermittent streams and seasonal lakes and wetlands. Activities that require a permit under Section 404 include placing fill or riprap,

grading, mechanized land clearing, and dredging. Any activity that results in the deposit of dredge, or fill material within the “Ordinary High Water Mark” of Waters of the United States usually requires a permit; even if the area is dry at the time the activity takes place.

3.0 MIGRATORY BIRD TREATY ACT

The Migratory Bird Treaty Act (MBTA), first enacted in 1918, implements domestically a series of treaties between the United States and Great Britain (on behalf of Canada), Mexico, Japan, and the former Soviet Union, which provide for international migratory bird protection and authorize the Secretary of the Interior to regulate the taking of migratory birds. MBTA provides that it shall be unlawful, except as permitted by regulations, “at any time, by any means, or in any manner, to pursue, take, or kill any migratory bird, or any part, nest, or egg of any such bird, included in the terms of conventions” with certain other countries (16 U.S.C. 703).

The current list of species protected by MBTA can be found in Title 50, Code of Federal Regulations §10.13. This statute does not cover loss of nonnative species, such as house sparrow, European starling, and rock dove.

4.0 CALIFORNIA ENVIRONMENTAL QUALITY ACT

Under the California Environmental Quality Act (CEQA), Lead Agencies proposing projects are required to address such projects within a wide range of compliance provisions provided by the statute and its implementing guidelines. Ultimate discretion, however, on precisely how, what to provide, and the specific vehicle for compliance is solely up to the Lead Agency. The engineering activities and range of related recommendations identified in this document cover a wide range of potential actions available to NID. Factors including, specific project activities (e.g., construction details), project size, geographic location, and existent environmental resources will largely determine the appropriate CEQA action. Decisions on the appropriate CEQA

process are determined on a case-by-case basis as specific projects are identified, detailed, and advanced. At this time, no such specific projects have been identified.

5.0 CALIFORNIA ENDANGERED SPECIES ACT

Pursuant to the California Endangered Species Act (CESA), consultation with CDFG is required for projects that could affect a state listed Threatened or Endangered species. Threatened and Endangered species are listed in Title 14, California Code of Regulations §670.2 and §670.5. Section 2080 of CESA prohibits “take” of any of these species. The take of state listed species incidental to otherwise lawful activities requires a permit, pursuant to §2081(b) of CESA. The State has the authority to issue an incidental take permit under Section 2081 of the Fish and Game Code or to coordinate with USFWS/NOAA Fisheries during the Section 10(a) process to make the federal permit also apply to state-listed species.

6.0 SECTION 1600 OF THE CALIFORNIA FISH AND GAME CODE

All diversions, obstructions, or changes to the natural flow or bed, channel, or bank of any river, stream, or lake in California that supports wildlife resources is subject to regulation by CDFG, pursuant to §1600 through §1603 of the California Fish and Game Code. Section 1603 governs any person and includes that it is unlawful for any person to substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake designated by CDFG, or use any material from the streambeds without first notifying CDFG of such activity. Stream is defined as a body of water that flows, at least periodically or intermittently, through a bed or channel having banks and supports fish or other aquatic life. This includes watercourses having a surface or subsurface flow that supports or has supported riparian vegetation. CDFG’s jurisdiction within altered or artificial waterways is based upon the value of those waterways to fish and wildlife. A CDFG Streambed Alteration Agreement must be obtained for any project that would result in impact to a river, stream, or lake.

7.0 STATE FISH AND GAME CODE §3513 - ADOPTION OF MIGRATORY BIRD TREATY ACT

Section 3513 of the Fish and Game Code of California provides for adoption of MBTA's provisions. It states, "it is unlawful to take or possess any migratory non-game bird as designated in the Migratory Bird Treaty Act or any part of such migratory non-game bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act." Therefore, as with MBTA, this State code offers no statutory or regulatory mechanism for obtaining an incidental take permit for the loss of nongame, migratory birds.

8.0 STATE FISH AND GAME CODE §3503.5 - PROTECTION OF RAPTORS

Section 3503.5 of the State Fish and Game Code states that it is "unlawful to take, possess, or destroy any birds-of-prey in the orders Falconiformes or Strigiformes." This statute does not provide for the issuance of any type of incidental take permit.

Table 1. Summary of Agency Contact Information

Law	Agency Jurisdiction	Who to contact
California Environmental Quality Act (CEQA)	California State Clearinghouse	http://ceres.ca.gov/planning/sch/ P.O. Box 3044 Sacramento, CA 95812 (916) 445-0613
California Fish and Game Code - Sections 1600-1607	California Department of Fish and Game (CDFG):	http://www.dfg.ca.gov/1600/index.html lsaa@dfg.ca.gov <u>Larry Week</u> Branch Chief, NAFWB 830 S Street Sacramento, CA 95814 (916) 327-8840
Federal Clean Water Act - Section 404	U.S. Army Corps of Engineers (Corps)	http://www.spk.usace.army.mil/ Executive Office U. S. Army Corps of Engineers, Sacramento District Colonel Ronald N. Light, District Engineer 1325 J Street Sacramento, CA 95814 (916) 557-7490
	U.S. Environmental Protection Agency (EPA)	http://www.epa.gov/region9/ Region 9 75 Hawthorne Street San Francisco, CA, 94105 (415) 744-1500
Federal Clean Water Act - Section 401	Central Valley Regional Water Quality Control Boards (RWQCBs)	http://www.waterboards.ca.gov/centralvalley/ Central Valley Regional Water Board 11020 Sun Center Drive #200 Rancho Cordova, CA 95670 Phone: (916) 464-3291 Fax: (916) 464-4645
	State Water Resources Control Board (SWRCB)	http://www.swrcb.ca.gov/ State Water Resources Control Board Bonderson Building 901 "P" Street Sacramento, CA 95814 (916) 657-1247
Endangered Species Act	U.S. Fish and Wildlife Service (USFWS)	http://www.fws.gov/pacific/sacramento/default.htm Sacramento Fish and Wildlife Office, Conservation Planning Branch 2800 Cottage Way, Room W-2605, Sacramento, California 95825 Phone (916) 414-6600 or (916) 414-6734~ FAX (916) 414-6713.

Law	Agency Jurisdiction	Who to contact
Fish and Wildlife Coordination Act	U.S. National Marine Fisheries Service (NMFS) NOAA Fisheries Service	http://www.nmfs.noaa.gov/pr/permits/ Habitat Conservation Division Steve Edmondson Northern California Supervisor Attn: HCD Division 777 Sonoma Ave Rm 325 Santa Rosa Ca 95404 (707) 575-6050 Fax (707) 578-3435
State Endangered Species Act	California Department of Fish and Game	http://www.dfg.ca.gov/ http://www.dfg.ca.gov/hcpb/ceqacesa/ceqacesa.shtml Habitat Conservation Planning Branch 1416 Ninth St., Sacramento, CA 95814 Telephone: (916) 653-4875
Local Ordinances	City of Grass Valley	http://cityofgrassvalley.com/services/departments/cdd/general_overview.php The City of Grass Valley 123 East Main St. Grass Valley, CA 95959 Attn: Joe Heckel, Director of Community Development (530) 274-4330
	Nevada City	Nevada City 317 Broad St. Nevada City, CA 95959 (530) 265-2496 Ed Martin
	Nevada County	Planning Department Randy Wilson, Planning Director 950 Maidu Avenue Nevada City, CA 95959-8617 (530) 265-1440