

**ANTICIPATED REGULATORY
REQUIREMENTS REPORT FOR THE
ORMOND BEACH WETLAND
RESTORATION FEASIBILITY STUDY**

Prepared for:

California State Coastal Conservancy

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The following agencies have or are anticipated to have jurisdiction in regulating enhancement or restoration activities in the Ormond Beach Study Area (Figure 1):

Federal

- United States Army Corps of Engineers (Corps)
- United States Environmental Protection Agency (USEPA)
- U.S. Fish and Wildlife Service (USFWS)
- National Marine Fisheries Service (NMFS)

State

- State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (ACHP)
- California Department of Fish and Game (CDFG)
- State Water Resources Control Board (SWRCB) and Los Angeles Regional Water Quality Control Board (LARWQCB)
- California Coastal Commission
- California Air Resources Board (CARB)

Local

- Ventura County Planning Division
- Ventura County Air Pollution Control District (VCAPCD)
- Ventura County Watershed Protection District (VCWPD)
- City of Oxnard
- City of Port Hueneme

The U.S. Fish and Wildlife Service, the National Marine Fisheries Services, the U.S. Environmental Protection Agency, the State Historic Preservation Officer and Advisory Council on Historic Preservation often assert their jurisdiction or address their statutory requirements through coordination or consultation with the U.S. Army Corps of Engineers or another federal agency (depending on which is the federal lead agency). Because these agencies are expected to be involved in Ormond Beach through coordination or consultation with the Corps, many of the relevant aspects of these agencies' regulatory involvement are included in the following discussion of the U.S. Army Corps of Engineers' Regulatory Program. Other agencies with potentially more complex involvement or more clearly distinct regulatory mandates are individually described after the discussion about the Corps' Regulatory Program.

Table 1 is an initial list of key agency contacts. Other regulatory or resource agencies might become involved in the restoration project in the future, but their interests might be addressed through other agency permitting processes, such as the Corps' Regulatory Program.

Table 2 provides ranges of costs and timeframes anticipated for addressing various regulatory requirements associated with small-scale and large-scale enhancement or restoration projects at Ormond Beach. There are numerous factors that could decrease or increase costs or change timeframes. Nevertheless, this table identifies which requirements are likely to apply, ranges of costs expected, and schedule considerations.



Aspen
Environmental Group

California Coastal Conservancy
Ormond Beach
Wetland Restoration Feasibility Study


Scale: 1" = 1,200'
Date: July 7, 2006
File: 1101-LandUse3.dwg

**Jurisdictional and Sub-Area
Boundaries**

**Figure
1**

Table 1 Agency Contacts for Anticipated Regulatory Requirements

Contacts	Agency or Entity	Telephone Number	E-Mail Address	Potential Regulatory Triggers
Antal Szijj	U.S. Army Corps of Engineers, Ventura Office	(805) 585-2147	antal.j.szijj@usace.army.mil	Section 404 of the Clean Water Act, Section 10 of the River and Harbor Act, Section 103 of the Marine Protection, Research, and Sanctuaries Act
Chris Dellith	U.S. Fish and Wildlife Service, Ventura Office	(805) 644-1766	Christian_Dellith@r1.fws.gov	Section 7 of the Endangered Species Act, Fish and Wildlife Coordination Act
Valerie Carrillo, Debbie Smith	Los Angeles Regional Water Quality Control Board	(213) 576-6759 (213) 576-6609	vcarrillo@rb4.swrcb.ca.gov dsmith@rb4.swrcb.ca.gov	Section 401 of the Clean Water Act, Section 402 of the Clean Water Act, State Porter-Cologne Act
Morgan Wehtje	California Department of Fish and Game	(805) 491-3571	mwehtje@dfg.ca.gov	Section 1602 or 1605 of the Fish and Game Code, Section 2081 of the Fish and Game Code
Bryant Chesney	National Marine Fisheries Service	(562) 980-4037	Bryant.Chesney@noaa.gov	Magnuson-Stevens Fishery Conservation and Management Act
Tracy Duffey	California Coastal Commission	(805) 641-1752	tduffey@coastal.ca.gov	California Coastal Act, Coastal Zone Management Act (federal consistency determination)
Sergio Vargas	Ventura County Watershed Protection District	(805) 654-2021	sergio.vargas@ventura.org	Encroachment Permit (Flood Control Facilities)
Scott Ellison	County of Ventura, Planning Division	(805) 654-2495	scott.ellison@mail.co.ventura.ca.us	Ventura County General Plan and Ordinances, Ventura County Coastal Area Plan
Matt Winegar	City of Oxnard, Development Services Department	(805) 385-7868	matthew.winegar@ci.oxnard.ca.us	City of Oxnard General Plan and Ordinances, City of Oxnard Local Coastal Plan

Table 2. Anticipated Requirements and Cost Ranges for Small-Scale Versus Large-Scale Enhancement or Restoration Activities

Statute/Regulation	Small-Scale Exotics Removal or Restoration	Cost Range	Large-Scale Exotics Removal or Restoration	Cost Range
CEQA	NOE; Initial Study/Negative Declaration; or Initial Study/Mitigated Negative Declaration	\$0-40,000	EIR	See EIS, immediately below
NEPA	Already completed for Corps General Permit (Nationwide Permit anticipated), if Corps permit necessary	\$0	EIS, with the Corps as the federal lead	Assume joint EIR/EIS: \$500,000-750,000
Section 404 Clean Water Act; Section 10 River and Harbor Act	Depends on location and activity (possibilities): non-jurisdictional or unregulated activity, Nationwide Permit No. 27, or Regional General Permit No. 41	\$0-20,000	Standard Individual Permit	\$30,000-60,000
Section 401 Clean Water Act Water Quality Certification; Porter-Cologne Act Waste Discharge Requirements	Depends on location and activity (possibilities): non-jurisdictional or unregulated activity, or Water Quality Certification (standard or conditional)	\$0-20,000	Water Quality Certification or Waste Discharge Requirements	\$30,000-60,000
Section 402 Clean Water Act National Pollution Discharge Elimination System Requirements	If applying pesticides in water or to plants in standing water, need General Permit for Aquatic Pesticide Use. If disturbing more than 1 acre of ground, need General Permit for Discharges Associated with Construction Activity (requires preparing and implementing a Storm Water Pollution Prevention Plan). If dewatering/pumping groundwater and discharging it into a water or in such a way that it enters a water, need General Permit for Dewatering Activities in Los Angeles and Ventura Counties (could require preparing and implementing a plan and monitoring).	\$0-20,000	Probably need General Permit for Aquatic Pesticide Use; will need General Permit for Discharges Associated with Construction Activity; will probably need General Permit for Discharges Associating with Dewatering Activities in Los Angeles and Ventura Counties or an Individual Permit for dewatering/groundwater discharges.	\$30,000-60,000
Section 1600 of the California Fish and Game Code	Depends on the location and activity: work in the drainage channels or their associated habitats would require a Streambed Alteration Agreement	\$0-20,000	Section 1602 or 1605 Streambed Alteration Agreement	\$30,000-60,000
Endangered Species Act (Federal/State)	Depends on location and activity: whether it "may affect" listed species or designated critical habitat; in which case, Section 7 consultation if Corps must issue a permit and Section 2081 permit process if State species will be affected	\$0-20,000	Section 7 consultation will be required; Section 2081 permit process will also be required if State-listed species will be affected	\$30,000-60,000
Section 106 National Historic Preservation Act	Depends on location and activity: whether it "may affect" cultural resources listed or eligible; in which case, Section 106 consultation if Corps must issue a permit	\$0-20,000	Depends on locations and activity: whether it "may affect" cultural resources listed or eligible; in which case, Section 106 consultation if Corps must issue a permit	\$0-60,000

Statute/Regulation	Small-Scale Exotics Removal or Restoration	Cost Range	Large-Scale Exotics Removal or Restoration	Cost Range
Coastal Act and Coastal Zone Management Act Compliance	Ministerial Action under Local Coastal Plan; federal consistency determination (CD) if Corps permit is required (i.e., Corps cannot authorize without a CD)	\$5,000-10,000	Coastal Development Permit, including a federal consistency determination	\$30,000-60,000
Clean Air Act	No permits required under current regulations	\$0	Conformity Analysis possibly required, but no permits required under current regulations; future regulatory requirements for ozone and PM _{2.5} could necessitate preparation of construction mitigation plans	\$0-10,000
Local Approvals	Probably not required, except possible Local Coastal Plan action (see above)	\$0	Encroachment permits from the City of Oxnard and/or the VCWPD for modifications to flood control facilities or other structures (roads, utilities, etc.)	\$10,000-20,000
Schedule and Cost Ranges	2-6 months	\$5,000-170,000	2-3 years	\$700,000-1,200,000

Projected costs assume that CERCLA or RCRA requirements will not apply.

Projected costs include delineating waters of the U.S. and State, but they do not include the costs of additional biological resource surveys, such as protocol-level surveys for federally or State-Listed species or surveys required to evaluate potential Essential Fish Habitat or make recommendations.

It is assumed effects to federally listed species or designated critical habitat would be completely addressed through Section 7 consultation (not Section 10 consultation).

Projected costs assume that very limited additional soil and water quality sampling and analysis would be required (i.e., considering past and supplemental analyses scheduled for late 2006).

Projected costs are estimated for 2006 and do not take into account unanticipated changes in regulations, inflation, or other unforeseen increases.

Similarly, regulatory requirements are based on what applies in 2006.

U.S. ARMY CORPS OF ENGINEERS

The Corps Los Angeles District's Regulatory Branch has responsibility for administering the Corps' Regulatory Program in the Ormond Beach Study Area. The principal statute sections enforced by the Corps are Section 404 of the Clean Water Act (CWA) of 1972, as amended (33 U.S.C. 1344); Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403); and Section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972 (33 U.S.C. 1413). The Corps has authority to issue permit authorizations under any or all three of these statute sections, with oversight and veto authority by USEPA for CWA and MPRSA actions (note, however, that the USEPA very rarely vetoes Corps permit actions). River and Harbor Act authority rests solely with the Corps, as authorized by Congress. As a federal action agency, the Corps' regulatory review routinely includes ensuring compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.). As such, the Corps is usually the federal lead agency (for NEPA compliance) on projects proposing to impact waters of the U.S., which is the case with large-scale restoration of Ormond Beach. As discussed below, it is anticipated that smaller-scale enhancement or restoration efforts requiring Corps authorization could qualify for a general permit, for which NEPA compliance has already been addressed at the national or district/division level.

Section 404 of the Clean Water Act

Pursuant to Section 404 of the CWA, the Corps regulates the discharge of dredged material, placement of fill material, and certain types of excavation (i.e., those resulting in more than incidental fallback of excavated material) within "waters of the United States" and authorizes the Secretary of the Army, through the Chief of Engineers, to issue permits for such actions. "Waters of the U.S." are defined by the CWA as "rivers, creeks, streams, and lakes extending to their headwaters and any adjacent wetlands." Wetlands are defined by the CWA as "areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions." The Corps' three-parameter delineation approach (i.e., wetlands have predominantly hydrophytic vegetation, hydric soils, and wetland hydrology) is more restrictive than the one-parameter approach (i.e., only need wetland hydrology, hydric soils, or dominance of hydrophytic vegetation) routinely used by other agencies, such as the USFWS, the CDFG, and the California Coastal Commission, to delineate wetlands.

The Corps issues two types of permits:

- General Permits for general categories of projects having *minimal* impacts to the aquatic ecosystem on an individual and cumulative basis; and
- Individual Permits for individual projects, including those that would exceed the minimal impacts threshold.

The former include Nationwide Permits (NWP), issued by Corps headquarters (on a 5-year cycle), and Regional General Permits (RGPs), which are issued by Corps Districts or Divisions as-needed, after public notice and full review to ensure compliance with NEPA and the Section 404(b)(1) Guidelines (40 CFR 230), and to ensure such permits are within the public interest (33 CFR 320-330). Following the issuance of a NWP/RGP, any applicant who believes his or her project qualifies for this permit can apply to the Corps District with jurisdiction to verify it, which is typically a shorter process compared to the Individual Permit process. Applicants whose projects do not qualify for a NWP or RGP can still apply for an Individual Permit. Individual Permits include Standard Permits (SP) and Letters of Permission (LOPs), which are issued for projects that could have a greater than minimal impact on the aquatic ecosystem, individually or cumulatively. The processing of an Individual Permit application follows the process used to issue a NWP or RGP.

Section 10 of the River and Harbor Act

Effects to navigation are subject to Section 10 of the River and Harbor Act. In coastal areas, the extent of Section 10 jurisdiction begins at the Mean High Tide line, which is usually discernibly below the High Tide line (i.e., the coastal landward limit of Section 404 jurisdiction, unless there are adjacent wetlands), and extends 3 nautical miles to the limit of the territorial seas. Besides the difference in geographic jurisdiction, Section 10 authorization is required for any *work* or *structures* within the Section 10 limits. Therefore, activities not regulated under Section 404, such as physical removal of non-native species, removal of structures, and placement of mooring buoys, are subject to Section 10 authority if they occur within the Section 10 geographical limits. It is important to note that the Corps has the discretion to extend the limit of Section 10 jurisdiction to the “historic Section 10” boundary. In the case of Ormond Beach, topographic manipulation the last several decades has undoubtedly altered the extent of the Mean High Tide line, but the Corps could broaden their examination to “look back” at what conditions were like in the past, when sloughs crisscrossed the area. Given the habitat restoration goals of this project, the actual extent of Section 10 jurisdiction is not anticipated to result in any additional regulatory requirements than what would be required under Section 404 of the CWA (i.e., it is not anticipated that the Corps would want to reestablish navigation in the Ormond Beach area). Therefore, this statute is not discussed further. It is simply worth noting that future Corps authorization, whether a General Permit or an Individual Permit, for restoration activities at Ormond Beach would probably include a reference to Section 10.

Section 103 of the Marine Protection, Research, and Sanctuaries Act

Under this statutory authority, the Corps issues permits for the transportation of dredged material to be dumped in the ocean. The Corps has to provide public notice and the opportunity for a public hearing for proposed discharges. Disposal sites for such discharges are selected in accordance with criteria developed by the USEPA in consultation with the Corps (published at 40 CFR 220-229). Section 103 jurisdiction begins at the low water line (i.e., the baseline, as defined by the California State Lands Commission) and extends seaward to the limit of the territorial seas (3 nautical miles). If ocean disposal were part of the Ormond Beach restoration project, material would probably have to be transported for disposal at LA-2 (an approved ocean dredged material disposal site approximately 6 miles south-southwest of the entrance to Los Angeles Harbor). Costs to dispose of material at LA-2 are approximately \$25 per cubic yard and, as noted, the material must meet specific criteria to qualify for such disposal.

Corps General Permit Process

It is unlikely that large-scale enhancement or restoration activities at Ormond Beach would meet the terms and conditions of the Corps’ General Permit program, including any of the 40 Nationwide Permits or Regional General Permit 41 (RGP 41). The Corps might be willing to authorize initial, small-scale exotics removal (i.e., habitat enhancement) or restoration activities under their General Permit Program, but a Standard Permit would probably be required for large-scale efforts. Specifically, initial, small-scale exotics eradication could be authorized under RGP 41, which allows the mechanized removal of invasive exotic plants from waters of the U.S., including wetlands, in the Los Angeles District. However, RGP 41 has several conditions, one of which is a minimum relative percent cover of invasive species of 50 percent. In addition, initial, small-scale restoration activities might be authorized under NWP 27 (stream and wetland restoration activities). In deciding whether to verify authorization under a General Permit, the Corps would consider several factors, such as the presence of particularly sensitive habitat, federally listed species, federally listed cultural resources, and the public interest. A high degree of public interest, for example, could lead the Corps to require an Individual Permit. The Corps will also consider whether this initial work is simply part of a larger project, or if it has independent utility. If the Corps concludes the former, then an Individual Permit will likely be required.

In short, the State Coastal Conservancy (SCC) will need to specify the nature, extent, and locations of enhancement or restoration activities, and whether phasing will occur, before the Corps will be able to evaluate whether verification of authorization under the Corps' General Permit Program is possible. If certain activities were to conform to the Corps' General Permit Program requirements, it would be necessary to prepare and submit an application letter, briefly describing the project, baseline conditions for the area to be enhanced or restored (habitat types, a delineation of waters of the U.S. [including wetlands], any sensitive species and habitats, and cultural resources present), anticipated impacts to waters of the U.S. (including wetlands), and mitigation measures such as timing of activities to avoid affecting listed species. In the case of a General Permit, it is recommended that this application be submitted once the California Environmental Quality Act (CEQA) document is at the draft stage. Verification of NWP authorization (or Notice to Proceed under a Regional General Permit) typically takes 60 days to obtain, but this review time can be greatly lengthened by resource agency consultations, as discussed below. Furthermore, the Corps would need a Section 401 Water Quality Certification (with or without a waiver of Waste Discharge Requirements) from the Los Angeles Regional Water Quality Control Board and a federal consistency determination or waiver from the California Coastal Commission (for activities in the Coastal Zone) before they would issue a verification letter or Notice to Proceed. The federal consistency determination or waiver from the California Coastal Commission is required whether it is ultimately included in a Coastal Development Permit or if a ministerial approval is granted under a Local Coastal Program (City of Oxnard or County of Ventura in this case).

Corps Standard Permit Process, Including NEPA/CEQA¹ Review

The SP process is more rigorous than the general permit process and typically takes 120 days to conclude if formal consultation with the resource agencies is not required (see below). The Corps decides whether to issue an SP based on an evaluation of the probable impacts, including the direct, indirect, and cumulative impacts, of the proposed activity. According to Corps regulations, permits should not be issued for activities that will create "significant" degradation of the "waters of the U.S." or have "significantly adverse effects on wetlands values." However, the CWA provides no clear definition of "significant." The evaluation process for an SP is based on guidelines established under Section 404(b)(1) of the CWA (40 CFR 230 or the Section 404[b][1] Guidelines) and on the Corps' "public interest review" procedures (33 CFR 320-330). The Section 404(b)(1) Guidelines prohibit discharges of dredged or fill material if there is a less environmentally damaging practicable alternative (LEDPA) available. During this process, the burden is on the applicant to demonstrate that impacts to aquatic resources are being avoided and minimized to the maximum extent practicable. If the activity is not water-dependent and would impact a special aquatic site such as wetlands, off-site as well as on-site alternatives must be considered.

In the case of Ormond Beach, the basic purpose is wetland restoration, which is a water-dependent activity. Therefore, an off-site alternatives analysis would not be required. Typically, compensatory mitigation is required for unavoidable impacts to waters of the U.S., including wetlands. Because Ormond Beach would include wetland restoration, it is not expected that additional compensatory mitigation would be required by the Corps.

The public-interest review is facilitated by the issuance of a Public Notice (after a complete permit application is submitted to the Corps) for a 30 day review period (the review period can be shortened to 15 days, but that is unusual), which is intended to notify and solicit comments from the public and potentially interested agencies, such as the USFWS, NMFS, USEPA, CDFG, SHPO, and RWQCB,

¹ While CEQA review is not required to obtain a Corps permit, it is required to obtain a Clean Water Act Section 401 Water Quality Certification from the RWQCB. As discussed in this report (Clean Water Act Section 401), the Corps cannot issue a permit for a project requiring Section 401 authorization until such approval is granted. Therefore, when Section 401 authorization is required, CEQA review is indirectly essential to obtaining a Corps permit.

regarding the proposed project. The Corps can extend the comment period to ensure adequate public review. The Corps can also hold a public hearing if requested by the public and the Corps determines such a hearing is warranted. The public interest review involves a broad, qualitative evaluation of a project's benefits and detriments. Corps regulations have identified 21 factors relevant to permit review including, but not limited to: conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, water quality.

To obtain an SP, applicants must prepare and submit a complete Standard Permit application (Eng Form 4345). Although not required, this process can be expedited by preparing and submitting a Draft Corps Public Notice with the permit application (unless an Environmental Impact Statement [EIS] is required, see below). The application should include baseline habitat conditions of the project area, such as vegetation mapping, results of focused species surveys and cultural resource surveys, a delineation of waters of the U.S. (including wetlands), the anticipated short-term and long-term impacts, proposed mitigation measures for impacts to Corps jurisdiction, proposed mitigation measures (e.g., seasonal restrictions) for threatened and endangered species, and proposed water quality BMPs. The Corps has 30 days to determine if the application is complete, and if not, send a formal request for additional information. Depending on the timing, a draft Environmental Assessment (EA) with a Section 404 (b)(1) Alternatives Analysis should be provided with the application or in a reasonable period thereafter to assist the Corps in completing their review expeditiously (unless an EIS is required, see below). Ultimately, the District Engineer, as delegated to the Regulatory Branch, will add special conditions, as necessary, to ensure that adverse environmental effects are minimized to the greatest extent practicable on an individual and a cumulative basis. Such conditions may include: limiting work to outside the rainy season; limiting work to outside the migratory bird nesting season; having on-site biological or archaeological monitors during construction; implementing BMPs intended to minimize storm water generation and degradation; and requiring alternative exotic species eradication methods (e.g., herbicide cut-and-paint versus mechanized removal).

As part of the SP process, the Corps must also ensure that permitted projects comply with all other applicable federal resource protection laws, such as the Endangered Species Act, the National Historic Preservation Act, the Coastal Zone Management Act (i.e., federal consistency or waiver from the California Coastal Commission, in this case), and the Magnuson-Stevens Fishery Conservation and Management Act (for effects to Essential Fish Habitat). In addition, certification is required that the proposed activity will comply with all applicable effluent limitations and water quality standards of Section 401 of the CWA, prior to issuance of a Section 404 permit.

The timing of the SP process is greatly improved by closely coordinating with the Corps and other agency personnel during the environmental review process (i.e., CEQA and NEPA). In this way, the Corps' concerns are addressed prior to submitting an application, which typically results in fewer modifications to the proposed project, fewer special conditions, and Corps authorization often within 120 days (assuming a Section 401 Water Quality Certification has been obtained from the RWQCB, the appropriate authorization is obtained from the California Coastal Commission, and formal consultation with a federal agency is not required). As described below, if Section 7 consultation with the USFWS and/or NMFS is required by the Corps for potential effects to threatened or endangered species or to designated critical habitat, the process could be extended to six months and, in rare cases, longer. Likewise, Section 106 consultation with the SHPO for potential effects to cultural resource listed or potentially eligible for listing on the National Register of Historic Places could extend the process to six months or longer.

If the Corps determines through its evaluation of an EA or before that an EIS will be necessary, the time frames specified will be greatly lengthened. It is not unusual for the EIS process to take 2-3 years to complete. Given the anticipated scale of this project (at least 750 acres) and the multiple sensitive species

and designated critical habitats in the area, it is likely that an EIS will be required. If an EIS is required, this document should be combined with the CEQA document (anticipated to be an Environmental Impact Report or EIR), as a joint EIR/EIS. In this case, several tasks will be required. What follows is a list of required and recommended steps to complete the EIS/EIR process:

- Initiation, Work Planning, and Project Definition
 - Definition of the Scope of Work
 - Formulation of Project Purpose, Need, and Objectives
 - Preparation of Project Description
 - Development of Project Alternatives
 - Preparation of Draft EIS/EIR Outline
- Public and Agency Noticing and Public Scoping Meeting
 - Preparation, Circulation, and Publication of the Notice of Preparation and Notice of Intent
 - Public Scoping Meeting
- Preparation of the Administrative Draft EIS/EIR
 - Compilation of Information on Baseline Conditions
 - Development of the Cumulative Conditions Scenario
 - Preparation of the Impact Analysis
 - Formulation of Mitigation Measures
 - Preparation of Other CEQA and NEPA Sections
- Preparation and Circulation of the Public Draft EIS/EIR
 - Respond to Corps and SCC Comments on the Administrative Draft EIS/EIR
 - Preparation of Notice of Completion/Availability and Circulation of the Draft EIS/EIR
- Public Meeting on the Draft EIS/EIR
- Responses to Public/Agency Comments and Preparation of the Administrative Final EIS/EIR
- Preparation and Circulation of the Final EIS/EIR
- Completion of the EIS/EIR Process and Decision Making
 - Certification of the Final EIS/EIR
 - Corps Record of Decision (ROD)
 - SCC Project Decision
 - Notice of Determination

Various planning, research, data collection, and maintenance activities can be conducted at the project site prior to completing the EIS/EIR process. As long as such activities do not involve federal funding or approval and do not qualify as a project under CEQA, they can be undertaken without NEPA or CEQA review. For instance, the following activities are categorically exempt from CEQA review: maintenance of wildlife habitat areas and removal of debris from stream channels to protect fish and wildlife resources (Class 1); grading outside a waterway or wetland on slopes less than 10 percent (Class 4); minor alterations of land, water, and vegetation on designated wildlife management areas for improvement of habitat or resources (Class 4); data collection, research, experimental management, and resource evaluation (Class 6); and habitat maintenance, restoration, enhancement, or protection projects not exceeding 5 acres in size (Class 33). For smaller-scale activities not qualifying for a categorical exemption, a Negative Declaration or Mitigated Negative Declaration might apply. To the degree that these types of activities also do not require a federal permit, such as a Corps 404 permit, CEQA and NEPA review would not be required.

Corps Consultation Pursuant to Section 106 of the National Historic Preservation Act

The Corps undertakes consultation pursuant to Section 106 of the National Historic Preservation Act of 1966, when the work requiring authorization would adversely affect historic properties listed or eligible for listing on the National Register of Historic Places (NRHP). Historic properties include any prehistoric

or historic structure, district, site, building, or object included on or eligible for inclusion on the NRHP. Listing eligibility is determined by the SHPO or Tribal Historic Preservation Officer (THPO) and the federal lead agency, using the criteria listed in 36 CFR 60.4 (e.g., the site yielded, or may be likely to yield, information important to prehistory or history). If the Corps is the federal lead agency and the proposed work in the Corps' permit area would affect a historic property, the Corps would coordinate with in-house archaeological staff and the SHPO/THPO to determine whether the site is eligible for listing (if it is not already listed). If the site is listed or is eligible, consultation for the effects on the historic property would begin, culminating in a Memorandum of Agreement (MOA) that specifies the measures the Corps would take to avoid or reduce effects on the historic property. These MOAs are normally signed by the Corps, SHPO/THPO, and the Advisory Council on Historic Preservation. The consultation process can take 6 months or more to complete.

If required, the Section 106 process would occur concurrently with any Section 7 consultation (described below). Surveys for cultural resources need to be completed by a qualified archaeologist, such as Topanga Anthropological Consultants, who have already completed a reconnaissance-level survey for the Study Area. Survey results are incorporated into the CEQA and NEPA documentation. It is beneficial to have discussions with the Corps' archeological staff and the SHPO representative early in the planning process (e.g., during the pre-application process) if significant cultural resources are identified. This would allow for as efficient a Section 106 process as possible, likely satisfying many of the requirements prior to formal application for a SP.

Corps Consultation Pursuant to Section 7 of the Endangered Species Act

The Corps undertakes Section 7 consultation pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), when the activities requiring authorization "may affect" a federally listed threatened or endangered species or its designated critical habitat. Conferencing occurs for species or habitats proposed for federal listing or designation, respectively. The process can occur informally, with a simple letter or electronic mail exchange if the action would not likely adversely affect listed species or designated critical habitat. In this case, the Corps initiates the correspondence with the basis that the action would not likely adversely affect the species or habitat, with a written concurrence from the USFWS and/or NMFS if they agree.

The formal process begins when the lead federal agency completes and submits a biological report (i.e., in the case of an EIS, a Biological Assessment [BA]) fully describing the listed or proposed species and critical habitat present and an analysis of the likely effects with a written request to initiate Section 7 consultation. The federal lead agency, in cooperation with the applicant, coordinates with the USFWS or NMFS, as appropriate, regarding avoidance and minimization of impacts to listed species and designated habitat. After these avenues have been exhausted, the USFWS/NMFS will recommend mitigation, which will allow incidental "take" of individual animals or plants along with occupied habitat. The USFWS will then issue a Biological Opinion (BO), which is required before the Corps can make a permit decision. By the regulations, the USFWS has 90 days from the initiation of consultation in which to complete the biological assessment and 45 days to write the BO. However, the federal lead agency and the USFWS/NMFS can agree to a 60-day extension without approval from the applicant. If there are significant impacts to listed species or an adverse modification to designated critical habitat, the USFWS/NMFS can issue a BO that the proposed project would jeopardize the continued existence of the species or adversely modify designated critical habitat, which would almost certainly result in a permit denial from the Corps. In this situation, the USFWS is supposed to work with the federal action agency and the applicant to identify one or more Reasonable and Prudent Alternatives (RPAs) that could avoid jeopardy and adverse modification. In rare cases, a RPA cannot be identified, which is to be stated in the BO. The federal action agency's written acceptance of an RPA completes the formal consultation process.

In most cases, the USFWS/NMFS renders a “no jeopardy”/“no adverse modification” decision with specific terms and conditions to allow the project to move forward.

In the case of Ormond Beach, there are several federally listed species and designated critical habitat present. Some of the activities may affect these species or habitat. At this time, it is not expected that species or designated critical habitat under NMFS’ responsibility (e.g., southern steelhead) would be affected; so consultation with NMFS is not anticipated. If phasing of restoration activities will occur, it may be possible to avoid consultation or to undertake informal consultation with the USFWS for initial activities, depending on their nature, extent, timing, and location. For larger and long-term activities, formal consultation with the USFWS is expected; then it will be necessary to prepare the Biological Report (if an EA is sufficient) or a BA (if an EIS is required) to address the anticipated impacts to federally listed species and their habitats. Given that it is a habitat restoration project intended to improve the functions and values of the Study Area, it is expected that the USFWS will issue a Biological Opinion authorizing species take incidental to the enhancement/restoration activities (i.e., “no jeopardy”). Similarly, based on discussions with USFWS staff, it is not expected that enhancement or restoration activities at Ormond Beach would result in an adverse modification to designated critical habitat.

Corps Consultation with the NMFS for Effects to Essential Fish Habitat

The 1996 Sustainable Fisheries Act (Public Law 104-297) (1996 amendments to the Magnuson-Stevens Fishery Management and Conservation Act, 16 U.S.C. 1801 *et seq.*) requires cooperation between federal and state agencies in achieving essential fish habitat (EFH) goals of habitat enhancement, conservation and protection (NMFS 1998). Essential Fish Habitat is defined as those water and substrates necessary to fish for spawning, breeding, feeding, or growth to maturity. EFH includes waters historically used by fish, and their associated biological communities. The Act requires all federal agencies to consult with NMFS on all actions, or proposed actions, permitted, funded, or undertaken by that federal agency, that may adversely affect EFH. Consultation is not required by states or private land owners unless a project is funded, permitted, or authorized by a federal agency and the project may adversely affect EFH.

It is expected that large-scale enhancement or restoration activities at Ormond Beach will involve federal consultation and permitting at several stages. The restoration activities within the Study Area will probably not adversely affect EFH in the long term, but there may be some short-term adverse effects during the construction phase.

An EFH consultation can be consolidated with other federal interagency consultation, coordination, and environmental review procedures such as NEPA, Fish and Wildlife Coordination Act, Migratory Bird Treaty Act, Clean Water Act, or the ESA Section 7 consultation associated with the tide water goby (*Encyclogobius newberry*) (NMFS, 1999). It is recommended that there should be an EFH discussion of impacts and benefits in the NEPA/CEQA document for the entire Ormond Beach Study Area, and then it will be possible for the NMFS to assess if adverse impacts are likely to occur and if EFH recommendations would be required (Bryant Chesney 2004, personal communications).

EFH most specifically involves three groups of fish that are federally managed under the auspices of the Pacific Fisheries Management Council in Portland Oregon. Recreationally important species, such as striped bass (*Morone saxatilis*), where there is no commercial fishery, are not covered. Commercially important species that are specifically managed by the states, such as the Pacific herring (*Clupea pallasii*) are similarly not covered directly under terms of the Sustainable Fisheries Act. But in practice, adverse effect to forage fish such as herring are considered under an EFH consultation as an indirect effect (NMFS 1999).

The largest grouping of federally managed fish are collectively covered under the terms of the Pacific Groundfish Management Plan. The Pacific Groundfish Management Plan covers species such as sole, flounders, demersal sharks, rockfish, and similar species that live most of their life near the bottom of the ocean. No groundfish would normally be found in the open water adjacent to the palustrine emergent-persistent (*Scirpus*, *Typha latifolia*, *Distichlis spicata*) semipermanently-flooded lagoon shore wetland, though there are probably several groundfish species regularly using the channels near the Ventura County Game Preserve.

The next major grouping of fish includes the salmonids covered under terms of the Pacific Salmon Fishery Management Plan. Though salmon are occasionally caught in the Ormond Beach Study Area and as far south as Mexico, it would be highly unusual for any to naturally migrate into coastal wetlands, such as the Ormond Beach area. Steelhead may come into the canals adjacent to the Ventura County Game Preserve to forage, but they are not covered under terms of the regional fishery management plans.

The Coastal Pelagic Fishery Management Plan covers five species: northern anchovy (*Engraulis mordax*), Pacific sardine (*Sardinops sagax*), Pacific mackerel (*Scomber japonicus*), Jack mackerel (*Trachurus symmetricus*), and market squid (*Loligo opalescens*). Restoration of the palustrine emergent-persistent (*Scirpus*, *Typha latifolia*, *Distichlis spicata*) semi-permanently-flooded lagoon shore wetland and adjacent open waters to increase flow is likely to encourage several pelagic species to use the lagoon for foraging and possibly juvenile rearing.

The restoration of Batiquitos Lagoon near San Diego included increasing ocean water circulation in the lagoon. Sampling after the restoration of Batiquitos lagoon indicated the presence of anchovies, halibut, sharks, herring rockfish, all of which are federally managed species of fish and consequently involved in an EFH consultation.

Corps Consultation Pursuant to the Fish and Wildlife Coordination Act

The Fish and Wildlife Coordination Act (FWCA) (16 U.S.C.A. Section 661 et seq.) requires that all federal agencies consult with the USFWS, the NMFS, and state wildlife agencies (i.e., the CDFG, in this case) for activities that affect, control, or modify waters of any stream or bodies of water. For example, pursuant to the FWCA and Section 404 of the CWA, the Corps has entered into a Memorandum of Agreement with the USEPA, USFWS, and NMFS that enables the agencies to collaborate during the Section 404 permit review process. The USFWS or NMFS may recommend denial of a permit application, the incorporation of additional permit conditions to minimize adverse effects, or mitigation actions. Also, under the FWCA, the USFWS and NMFS have responsibility for project review. This includes addressing concerns about general plant and wildlife species that may not be considered under NEPA and ESA. For example, this additional responsibility may include consideration of a project's secondary effects on a wetland.

For enhancement or restoration activities at Ormond Beach, the effects to fish and wildlife generally would be addressed through the Corps' coordination with the resource agencies during permit application processing. Given the nature of the activities and the consultations expected to occur, it is unlikely the FWCA would result in additional project requirements. During implementation, it is anticipated that project activities would attempt to avoid and minimize impacts to fish and wildlife to the maximum extent practicable. Over the long term, enhancement or restoration activities are expected to benefit fish and wildlife species in the area and region.

U.S. FISH AND WILDLIFE SERVICE CONSULTATION PURSUANT TO THE MIGRATORY BIRD TREATY ACT

The Migratory Bird Treaty Act of 1918 (MBTA) (16 U.S.C. Sections 703-712) is the domestic law that affirms or implements the United States' commitment to four international conventions with Canada, Japan, Mexico, and Russia for the protection of shared migratory bird resources.

The MBTA governs the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests. The take of all migratory birds is governed by the MBTA's regulation of taking migratory birds for educational, scientific, and recreational purposes and requiring harvest to be limited to levels that prevent overutilization. Section 704 of the MBTA states that the Secretary of the Interior is authorized and directed to determine if, and by what means, the take of migratory birds should be allowed and to adopt suitable regulations permitting and governing take. The Secretary in adopting regulations is to consider such factors as distribution and abundance to ensure that take is compatible with the protection of the species.

The MBTA prohibits the take, possession, import, export, transport, selling, purchase, barter, or offering for sale, purchase or barter, any migratory bird, their eggs, parts, and nests, except as authorized under a valid permit (50 CFR 21.11). Certain exceptions apply to employees of the Department of the Interior to enforce the MBTA and to employees of federal agencies, state game departments, municipal game farms or parks, and public museums, public zoological parks, accredited institutional members of the American Association of Zoological Parks and Aquariums (now called the American Zoo and Aquarium Association), and public scientific or educational institutions.

A recent Federal Court decision held that federal agencies are only bound by the MBTA when the agency itself is actually taking the migratory birds (i.e., a permit issued to someone would not trigger the MBTA – agency personnel would have to be engaged in the take). In response to this litigation, the USFWS tried to get an Executive Order signed that would close the loophole that was identified by the Federal Court, but it was never signed. In short, the onus is on the party engaged in activities that would potentially take migratory birds to comply with the MBTA.

In the case of Ormond Beach, it is likely that a CDFG Streambed Alteration Agreement would be required for large-scale enhancement or restoration activities. The CDFG often includes conditions in their authorizations that protect migratory birds, even though they are under no obligation to do so. Such conditions can include conducting work outside the migratory bird nesting season, conducting surveys for migratory birds, maintaining a buffer (e.g., 500 feet) from nesting birds, etc. Therefore, for large-scale activities at Ormond Beach, measures protecting migratory birds would probably be incorporated into the CDFG authorization, and perhaps other agency authorizations, which would minimize potential MBTA issues.

LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD AND STATE WATER RESOURCES CONTROL BOARD

The Porter-Cologne Water Quality Control Act (PCA) (Water Code Sections 13000 et seq.) was enacted by the State of California in 1969 to conserve, control, and utilize the water resources of California and to protect the quality of all waters of California for use and enjoyment by the people of the State. Under the PCA, the State of California designated the SWRCB as the primary State water pollution control agency for all purposes stated in the CWA. Moreover, the PCA established a system of nine RWQCBs to assist the SWRCB in completing its mission on a day-to-day and local/regional basis, including the issuance of policy statements, development of Basin Plans, establishment of water body impairment lists, and issuance of water quality certifications under Section 401 of the CWA. Potentially relevant sections of the

PCA and Clean Water Act, as administered by the SWRCB/RWQCBs, are described below. More specific discussion about PCA and Clean Water Act requirements that could be imposed by the SWRCB/Los Angeles RWQCB are provided in three reports completed and submitted to the SCC in 2005: *Ormond Beach Wetland Restoration Project Evaluation of Potential Water Sources* (Everest International Consultants and AMEC Earth & Environmental, 2005), *Ormond Beach Wetland Restoration Project Soil Contaminant Review* (Everest International Consultants and AMEC Earth & Environmental, 2005), and *Potential Water Sources for the Ormond Beach Restoration Feasibility Plan* (Kennedy/Jenks Consultants, 2005).

PCA Section 13142.5 Coastal Marine Environment

Subsection (a) states that wastewater shall be treated to protect present and future beneficial uses (e.g., contact water recreation; non-contact water recreation; wildlife habitat; estuarine habitat; rare, threatened, or endangered species; marine habitat) and, where feasible, to restore past beneficial uses of the receiving waters. This subsection also indicates that the highest priority shall be given to improving or eliminating discharges that adversely affect wetlands, estuaries, and other biologically sensitive sites as well as other beneficial uses.

PCA Section 13243 Discharge of Waste

This section of the PCA grants authority to the RWQCBs to specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted.

PCA Section 13260 Reports, fees, exemptions

This section of the PCA specifies the conditions of waste discharge requirements relative to whom and to what is regulated under Article 4 (Waste Discharge Requirements or WDRs). Subsection (a) states that any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the State, other than into a community sewer system, is required to file a report of the discharge or proposed discharge.

PCA Section 13263 Requirements for discharge

This section of the PCA tasks the RWQCBs with the responsibility to prescribe requirements as to the nature of any proposed waste discharge, existing waste discharge, or material change in an existing waste discharge to waters of the State except waste discharges into a community sewer system.

PCA Section 13269 Waiver

This section of the PCA states that waivers for waste discharges can be obtained under certain circumstances, and this section describes the circumstances under which an organization can obtain a waste discharge waiver.

PCA Section 13376 Reports of discharges

Section 13376 of the PCA states that any person discharging pollutants (including dredged and fill material) or proposing to discharge pollutants to the navigable waters of the U.S. within the jurisdiction of California shall file a report of the discharge in compliance with the procedures set forth in Section 13260, except that no report is required for discharges that are not subject to the provisions of the CWA. This section addresses the discharge of pollutants, dredged material, and fill material, as well as the operation of publicly owned treatment works or other treatment works treating domestic sewage.

Clean Water Act Section 401

Section 401 of the Clean Water Act (33 U.S.C. 1341) requires that any applicant for a federal permit (e.g., Corps Section 404 and/or 10 permit) or license that may result in a discharge of pollutants into “waters of the United States” obtain a Water Quality Certification (WQC) or waiver from the state water quality agency that the activity complies with all applicable state water quality standards, limitations, and restrictions. In California, the RWQCBs issue WQCs within their respective jurisdictions, and the SWRCB hears only appeals. Typically, for smaller projects, these certifications are handled administratively by a “Conditional Water Quality Certification and Waiver of Waste Discharge Requirements” drafted by staff and approved by the Executive Officer of the RWQCB. These typically take two to four months to obtain. The WQC will include conditions for construction and post-construction BMPs to address both storm and non-storm water discharges from the project site. For larger, more complex projects, the RWQCBs may require WDRs under their PCA authority in lieu of a WQC. WDRs are prepared by staff and approved by the RWQCB at a public hearing.

As a State agency, the RWQCB, as with the California Department of Fish and Game (discussed below) will not authorize a project until CEQA review has been completed. To assist the RWQCB’s review, it is recommended that a complete draft CEQA document (i.e., Notice of Exemption, Initial Study/Negative Declaration, Initial Study/Mitigated Negative Declaration, EIR) be provided with the application for a Section 401 WQC. Nevertheless, the LARWQCB will still require CEQA to be completed before they will issue their authorization. As a State agency, the SCC could prepare its own CEQA document. In some instances, the RWQCB or the CDFG prepare the CEQA document.

In the case of Ormond Beach, activities requiring a Section 404 or Section 10 permit from the Corps will also require a conditional Section 401 WQC or WDRs. A Section 401 WQC with a waiver of WDRs could be issued for small-scale exotics removal or restoration activities. As discussed, these smaller-scale activities might not require an EIR (i.e., Notice of Exemption, Initial Study/Negative Declaration, Initial Study/Mitigated Negative Declaration). The LARWQCB might require WDRs for larger-scale restoration efforts, particularly if contaminants are a concern (e.g., Halaco slag pile, utilizing inland water sources with elevated contaminant concentrations). As noted previously, it is anticipated that large-scale enhancement or restoration activities would require an EIR.

Clean Water Act Section 402 (NPDES)

Pursuant to Section 402 of the CWA and Section 13370 of the California Water Code, the State of California issues National Pollutant Discharge Elimination System (NPDES) permits to regulate discharges of “pollutants” from point sources to “waters of the United States,” to ensure that the quality and quantity of such discharges does not adversely affect surface water quality or beneficial uses. NPDES regulations cover both non-storm water and storm water discharges associated with municipal and industrial sources.

If one acre or more of ground will be disturbed by activities at Ormond Beach (likely for anything other than small-scale exotics removal), it will be necessary to prepare a satisfactory Storm Water Pollution Prevention Plan (SWPPP) and to submit an NOI and applicable fee to the SWRCB to use their NPDES General Permit for Discharges of Storm Water Associated with Construction Activity. It is possible, given the anticipated large scale of the project (at least 750 acres), that the SWRCB will require an Individual NPDES Permit. Regardless, a SWPPP will be necessary, and it will need to specify the BMPs that will prevent all construction pollutants from contacting storm water, including measures to ensure that all products of erosion are kept from moving offsite into receiving waters. The SWPPP will also need to describe the BMPs that will be used to reduce pollutants in storm water discharges after all construction phases have been completed at the site (i.e., Post-Construction BMPs). Post-Construction

BMPs include steps to minimize land disturbance and installation of appropriately designed and constructed energy dissipation devices.

In addition, if activities at Ormond Beach will include exotic plant eradication involving the application of aquatic pesticides to standing water or to vegetation in standing water, it will be necessary to obtain coverage under the State's General Permit for Discharges of Aquatic Pesticides to Waters of the United States. As with other State General Permits, coverage under this General Permit requires submitting a Notice of Intent (NOI) and permit fee to the SWRCB. This permit also requires the preparation of a Monitoring Plan including a Quality Assurance Plan element (unless the project can be covered under a Regional Pesticide Monitoring Program), representative monitoring, and reporting to the LARWQCB.

It is also anticipated that restoration activities at Ormond Beach could involve excavation down to groundwater and dewatering, with the water likely to be discharged directly into waters or so that it can enter waters; in which case it will be necessary to obtain NPDES authorization for this discharge. At least 45 days before the commencement of discharge, the SCC would need to prepare and submit a Report of Waste Discharge (ROWD) and an application with the required annual permit fee to the LARWQCB. The LARWQCB would determine if the proposed discharge qualifies for coverage under their Discharges of Groundwater from Construction and Project Dewatering to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties. This permit covers groundwater and dewatering discharges to surface waters, including discharges from cleanup of contaminated sites such as pumping or treating groundwater impacted by metals and/or other toxic compounds. To qualify, the discharger is required to demonstrate (through representative sampling, monitoring, and reporting) that the discharge will not violate any applicable water quality objective (Los Angeles Water Quality Control Plan or Basin Plan, 1994, as amended) for the receiving waters, including discharge prohibitions, and that it will not exceed the water quality criteria for toxic pollutants. The LARWQCB may require treatment to reduce the concentration of contaminants to meet the permit's effluent limitations. The discharger cannot commence with the discharge until the LARWQCB determines that it qualifies with this General Permit. If the LARWQCB determines the discharger does not qualify for coverage under this General Permit, the LARWQCB can still grant an individual NPDES permit with more specific requirements. The LARWQCB is first required to provide a written response why the discharge does not qualify for coverage under the General Permit.

CALIFORNIA DEPARTMENT OF FISH AND GAME

Section 1602

Section 1602 of the California Fish and Game Code requires any person, State or local governmental agency, or public utility, which proposes a project that will substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake or use materials from a streambed or result in the disposal or deposition of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into any river, stream, or lake, to first notify the CDFG of the proposed project. Notification is generally required for any project that will take place in or in the vicinity of a river, stream, lake, or their tributaries. This includes rivers or streams that flow at least periodically or permanently through a bed or channel, with banks that support fish or other aquatic life, and watercourses having a surface or subsurface flow that support or have supported riparian vegetation. Based on the notification materials submitted, the CDFG will determine if the proposed project may impact fish or wildlife resources.

If the CDFG determines that a proposed project may substantially adversely affect existing fish or wildlife resources, a Lake or Streambed Alteration Agreement (SAA) will be required. A completed CEQA document (a public draft is sufficient for the application) should be submitted with a complete notification package (filled out Notification and the Questionnaire forms, and the appropriate fees). As a

Responsible Agency pursuant to CEQA, CDFG must consider the certified CEQA document before they will issue an SAA. Within 60 days of receipt of a complete notification package, the CDFG will propose measures necessary to protect the fish or wildlife that your project could affect. These measures may be the same as those included as part of the project and/or measures proposed by the CDFG. The applicant has 14 days after receiving the CDFG's proposed measures to notify in writing whether they accept them, unless this time period is extended by mutual agreement. If the measures are acceptable, the SAA will be issued. If the measures are not acceptable, the applicant may request a meeting with the CDFG within seven days from the date the CDFG receives the response or by some other mutually agreed upon date for the purpose of developing measures that are acceptable to both the applicant and the CDFG. Once the applicant and the CDFG accept or agree on measures necessary to protect fish or wildlife resources, the CDFG will incorporate these measures into a draft SAA for review and signature.

Permitting by the CDFG for restoration or enhancement activities at Ormond Beach could be accomplished in two ways. The first is by permitting individual projects as they arise (i.e., as individual phases come on line) under Section 1602, as described. As stated previously, this typically takes 60 days or less from the time the "complete" application is submitted to CDFG for review. It is anticipated that by using the "template" of the first phase, each Section 1602 Streambed Alteration Agreement could be readily obtained with minimal efforts depending on the size and proximity of the individual project to sensitive species.

Section 1605

The second way is permitting the entire restoration project through Section 1605 of the California Fish and Game Code. This section of the Code, effective January 1, 2004, allows for the preparation of a long-term Streambed Alteration Agreement (SAA) on an indefinite term, eliminating the requirement to renew every 5 years as with Section 1602. The Section 1605 SAA would likely consist of BMPs for water quality, a mitigation program for vegetation impacts, and a set of specific conditions that must be met for the individual projects/phases administered under the project, as well as specific conditions and mitigation measures for individual sensitive species and habitats; especially those listed as threatened or endangered under the California Endangered Species Act (CESA). Unfortunately, not a single Section 1605 SAA has been prepared by CDFG to date; however, one is near completion for the San Diego Creek Special Area Management Plan (SAMP) in Orange County.

It is anticipated that the Section 1605 SAA would ultimately be in a check-list format that would need to be completed and submitted to CDFG for review for each phase that arises under the project. For example, if a proposed project phase would impact western snowy plover, then a box would be checked and the established special conditions under the Section 1605 SAA would need to be adhered to for this species. If that same project phase would not impact another species (e.g., tidewater goby), then that box would not be checked and the established conditions within the Section 1605 SAA for that species would not apply. In addition to the check-list, it is expected that the two CDFG forms, the Notification and the Questionnaire, and the appropriate fees would also need to be submitted for individual project phases. It is expected that the CDFG would be able to conduct a rapid review of the information and authorize individual actions within 30 days. Another possibility is that the Section 1605 SAA is established such that just the information listed above (check-list, Notification, Questionnaire, and fees) is submitted to CDFG and a review period would not be required unless there are extenuating circumstances (e.g., the presence of a threatened or endangered species not previously covered under the Section 1605 SAA).

California Endangered Species Act

Sections 2081(b) and (c) of the CESA allow the Department to issue an incidental "take" permit for a State-listed threatened and endangered species only if specific criteria are met. These criteria include that

the authorized take is incidental to an otherwise lawful activity; the impacts of the authorized take are minimized and fully mitigated; the measures required to minimize and fully mitigate the impacts of the authorized take are roughly proportional in extent to the impact of the taking on the species, maintain the applicant's objectives to the greatest extent possible, and are capable of successful implementation; adequate funding is provided to implement the required minimization and mitigation measures and to monitor compliance with and the effectiveness of the measures; and issuance of the permit will not jeopardize the continued existence of a State-listed species. This process is very similar to the Section 7 process conducted for compliance with the federal ESA. If a project needs take authorization for a State-listed species, the 2081 process needs to be completed before the CDFG issues their Streambed/Lake Alteration Agreement (this is similar to the Corps needing the Section 7 process to conclude before they can issue a federal permit for projects that may affect or take federally listed species). Pursuant to Section 2080.1, the CESA process can be coordinated with the Section 7 process for species listed under both the federal and California ESA. If CDFG determines the federal Biological Opinion to be consistent with CESA as outlined above, a separate take permit is not required.

It is currently unknown whether a CESA permit will be required, given the uncertainty about the enhancement or restoration activities that will occur at Ormond Beach. If it is required, it would be advisable to coordinate the State and federal take authorization processes whenever possible, so additional requirements or delays are minimized.

The California Fish and Game Code also designates a number of species as "fully protected", which may not be taken or possessed at any time. Unlike the CESA take authorization provisions previously discussed, the take of fully protected species cannot be permitted by CDFG. Fully protected species potentially in the vicinity of the project area include California least tern, brown pelican, white-tailed kite, and others.

CALIFORNIA COASTAL COMMISSION

The Coastal Zone Management Act (CZMA) (16 U.S.C. 1456(c)) of 1972, as amended, establishes national policy to preserve, protect, develop, and, where possible, restore or enhance the resources of the nation's coastal zones. Under the CZMA, any federal agency conducting or supporting activities within or outside the coastal zone that directly affects any natural resources, land uses, or water uses of the coastal zone must proceed in a manner consistent with approved state coastal zone management programs, to the maximum extent practicable. No federal agency permits, licenses, or activities are categorically exempt from this requirement.

In 1976, the State of California enacted the Coastal Act (Public Resources Code Division 20 30000 *et seq.*), which established California's coastal zone management program, as administered by the California Coastal Commission (CCC) and the Bay Conservation and Development Commission (BCDC). The CCC is the applicable commission in the case of Ormond Beach. The basic goals of the coastal zone management program are to:

- Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.
- Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.
- Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.
- Assure priority for coastal-dependent and coastal-related development over other development on the coast.

- Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

Many jurisdictions have worked with the CCC to develop their own Local Coastal Program, to meet the requirements of the Coastal Act. In the City of Oxnard, the Coastal Land Use Plan (City of Oxnard Community Development Department, 1988) provides the planning guidance and regulations that apply to land use development and activities occurring within the City's designated coastal zone. Moreover, unincorporated County land is subject to the Ventura County Coastal Plan (Ventura County Coastal Area Plan, 1982). The City of Port Hueneme has a Coastal Plan as well, but it is not expected that Ormond Beach enhancement or restoration activities would trigger this jurisdiction's requirements.

The coastal zone covers nearly all of the Study Area (Figure 1). Essentially, the Coastal Plans implement the policies of the Coastal Act at the local level. As such, the City or the County would normally make the decision on whether to grant a Coastal Development Permit (CDP) for that portion of the project in their jurisdiction and within the coastal zone. In the City of Oxnard, which covers the majority of the Study Area, a CDP is required for activities and facilities proposed to occur in areas designated as Coastal Resource Protection Zone. However, with the size, resources (e.g., wetlands), and various issues associated with this project, it is expected that a restoration project at Ormond Beach would be appealed to the California Coastal Commission, regardless of which Local Coastal Plan applies.

In short, large-scale enhancement or restoration activities at Ormond Beach are expected to require a CDP (including a federal coastal consistency determination) from the CCC, to comply with the Coastal Act and the CZMA. Small-scale enhancement or restoration efforts could be handled ministerially by the local agency, but a federal consistency determination or waiver would still be required from the CCC if a Corps permit is also required. The process of obtaining a CDP and federal consistency determination from the CCC can take 1 year or longer, depending on the particular issues the CCC considers. The local office can facilitate this process. Meetings have already been held with a local staff member, and it will be important to continue the communication to keep the expected permit process on track.

CALIFORNIA AIR RESOURCES BOARD AND VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT

Federal, state, local, and regional agencies have established air quality standards, regulations, and plans that affect projects, proposed or existing, within their jurisdictions. The following federal and State regulatory considerations could apply to a proposed action within the Study Area.

Federal

The federal Clean Air Act of 1970 directs the attainment and maintenance of National Ambient Air Quality Standards (NAAQS). The 1990 Amendments to this Act determine attainment and maintenance of NAAQS (Title I), motor vehicles and fuel reformulation (Title II), hazardous air pollutants (Title III), acid deposition (Title IV), operating permits (Titles V), stratospheric ozone protection (Title VI), and enforcement (Title VII). The USEPA also implements the NAAQS and determines attainment of federal air quality standards on a short- and long-term basis.

The federal General Conformity Rule (40 CFR Part 93, Subpart B) requires that any actions to be funded, approved, or licensed by the Federal Government conform with the applicable implementation plan. For this project, this rule requires that the project's direct and indirect emissions be less than 25 tons per year of NO_x and VOC (emission limits for a severe ozone non-attainment area), or if those emission limits cannot be complied with that the project's direct and indirect emission be fully offset within the same non-attainment area.

State

The California Air Resources Board (CARB) established the California Ambient Air Quality Standards (CAAQS) and determines attainment status for criteria air pollutants. The California Clean Air Act (CCAA) went into effect on January 1, 1989, and was amended in 1992. The CCAA mandates achieving the health-based CAAQS at the earliest practicable date.

Portable stationary engines, such as dredge pump engines or diesel-engine-powered portable rock/crushing and screening plants, would have to either obtain local air quality construction and operating permits or they would have to be registered under the Statewide Portable Equipment Registration Program administered by CARB. This statewide program allows the owner of portable engines to register them one time to avoid having to permit them each time they are moved from site to site. For portable engines to be allowed to be registered under this statewide program they must comply with certain criteria such as meeting emission concentration limits and annual emission limits for non-attainment pollutants (i.e., NO_x and VOC for this project).

Ventura County APCD

Ventura County Air Quality Management Plan. The 1991 Air Quality Management Plan (AQMP) was prepared by the VCAPCD in response to the CCAA. The 1991 Plan elaborated on information contained in the VCAPCD's 1982 and 1987 AQMPs. It also included new and modified control measures designed to move the County further toward achieving State clean air standards. The 1994 AQMP was prepared to satisfy the planning requirements of the CCAA and to outline a strategy for meeting the federal one-hour ozone clean air standard while accommodating anticipated growth. The Plan indicated that Ventura County would attain the federal one-hour air quality standard for ozone by 2005 (VCAPCD, 2000).

The VCAPCD prepared a revision to the 1994 AQMP in 1995. This revision updated information that had changed since the 1994 AQMP, including minor adjustments to the 1990 baseline emission inventory, action taken by CARB to improve additional control strategies, changes to the photochemical modeling, and several other changes. The 1995 Plan Revision indicated that Ventura County would attain the federal one-hour standard by 2005. It focused on ways to reduce ozone levels, and did not address PM₁₀, since Ventura County is an attainment area for the federal PM₁₀ standard. The USEPA approved the 1994 AQMP and 1995 AQMP Revision on February 7, 1997 (VCAPCD, 2000).

The VCAPCD prepared a 1997 AQMP Revision to update the proposed adoption and implementation dates for nine control measures that were included in the 1995 Plan Revision. The USEPA approved the 1997 AQMP on April 12, 1998 (VCAPCD, 2000).

VCAPCD Rules and Regulations. The following rules and regulations would likely apply to specific project actions or components (VCAPCD, 2004a):

Regulation II – Permits. This regulation includes the rules for obtaining an authority to construct and permit to operate, and includes rules that define the requirements for Best Available Control Technology (BACT) and emission offsets. Portable stationary equipment that cannot be registered under the Statewide Portable Equipment Registration Program may be required to obtain air quality permits from the VCAPCD.

Regulation IV – Prohibitions. This regulation includes rules that specify emission limits and operating requirements for various types of pollutant generating equipment and operations. Specific rules that would likely apply to this project include: Rule 50 - Opacity; Rule 51 - Nuisance; Rule 52 -

Particulate Matter - Concentration; and Rule 53 Particulate Matter – Process Weight (for aggregate screening operations, if applicable).

It is anticipated that for large-scale restoration activities at Ormond Beach, coordination and potentially permitting will be required through the Ventura County APCD. The Corps, during their permit review process, will determine whether a General Conformity analysis is required.

COUNTY OF VENTURA

The County of Ventura, Planning Division was contacted about County requirements for restoration activities at Ormond Beach. Initially, Scott Ellison, a permit planner for the County, thought that these activities would not require County involvement, unless new structures or structural improvements were proposed or if the site were ultimately used for some sort of commercial purpose (e.g., ecotourism). He expected that these activities would not be inconsistent with the County's General Plan or ordinances. Upon further review, Scott determined that conversion of agricultural property to habitat could trigger other County requirements. Specifically, the County's Coastal Plan policies protect agricultural land in the coastal zone. Therefore, conversion of protected agricultural land to habitat in the coastal zone could trigger other permit requirements. Scott suggested having a meeting with County managers to resolve the issue. Before such a meeting can occur, the County would require a \$400 deposit, a signed reimbursement agreement, and a written project description.

It is expected that any alterations to the Hueneme Drain, J Street Drain, or Oxnard Industrial Drain would require review and approval by the VCWPD, because these are considered District flood control facilities. Therefore, it is expected that an encroachment permit would be required from the VCWPD.

The VCWPD has an interest in modifying the J Street Drain and/or the Oxnard Industrial Drain to remedy an on-going flooding problem that occurs when the J Street Lagoon closes and flows back up these Drains. They seek a "win-win" solution, whereby flows are routed from J Street or Oxnard Industrial Drain to the restoration area. It is expected that the encroachment permit process would be facilitated by ensuring that the VCWPD's flooding concerns are addressed in the project design.

CITY OF OXNARD

A meeting was held with Matthew Winegar (November 1, 2004), Development Director for the City of Oxnard. Mr. Winegar did not anticipate that any specific City requirements would be triggered by enhancement or restoration activities at Ormond Beach. These activities would not be inconsistent with the City's General Plan or ordinances. Similar to the VCWPD, an encroachment permit would probably be required if a City road or other facility would be affected by project activities. Moreover, depending on the activity, the City's Local Coastal Plan could apply; but as discussed, it is expected that large-scale enhancement or restoration activities at Ormond Beach would be directly appealed to the California Coastal Commission for a decision.

CITY OF PORT HUENEME

It is not expected that enhancement or restoration activities would extend into the City of Port Hueneme. However, activities along J Street Drain would occur immediately adjacent to this jurisdiction's boundaries; therefore, it is recommended that discussions with the City of Port Hueneme occur if modifications to J Street Drain are proposed.