

Coastal Conservancy Webinar

March 28, 2016



*Accelerate Your Restoration Project
Using Simplified Permits*



Thanks for participating in today's webinar on Simplified Permitting for Restoration. I'm Erika Lovejoy and I'll be co-presenting with my colleague Erik Schmidt.

Our goal is to help you better understand some of the permits and resources that are available to help you move your restoration projects forward and to make the most of your grant dollars.

AGENDA

1. Sustainable Conservation's Accelerating Restoration program
2. Simplified permitting and new funding for restoration
3. Tips for successful permitting
4. Resources
5. Questions

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1. **Sustainable Conservation's Accelerating Restoration program**
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Sustainable Conservation is a non-profit that helps California thrive by uniting people to solve the toughest challenges facing our land, air and water.

We bring together business, landowners and government to steward the resources that we all depend on, because we believe that finding common ground is the best way to protect CA's resources.



Sustainable Conservation has programs that work with business and agriculture to help them be better environmental stewards, but the key program we are focusing on today revolves around Accelerating Restoration.

One of the ways that Sustainable Conservation works to accelerate restoration is by working with government agencies and the legislature to simplify the permitting process so landowners and restoration proponents can more easily complete projects that restore streams, rebuild habitat, and reduce soil erosion.



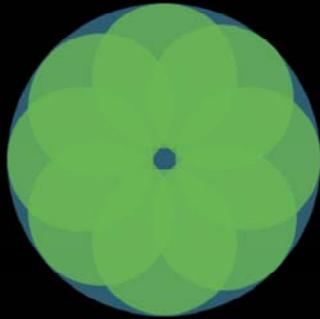
With the pressing environmental problems we face in California in regards to water quality impairment, habitat loss, and species decline, the work that your organizations do on restoration, in partnership with public and private landowners, is essential.



However, there are some challenges that restoration proponents face to getting this work done. As you know, there are a number of agencies responsible for reviewing projects that are needed to address critical environmental problems, so coordinating and simplifying the permitting process, for both applicants and agencies, is a key tool to help meet these restoration needs and get the work done.

Sustainable Conservation has been working for several years collaborating with state and federal agencies on large regional and statewide programmatic permits, or what we like to call “simplified permits”. These permits maintain environmental protections and assurances but create a simpler, faster process to get restoration projects completed.

Programmatic or “Simplified” *Permitting*



A more efficient regulatory process for qualifying projects that:

- ✓ Covers specific project types and habitat
- ✓ Lays out conditions up front
- ✓ Saves time and resources

Let me explain what I mean by programmatic, or “simplified” permit. These permits can be described as a type of “pre-approval” process. If you meet the programmatic permit’s conditions, then you can utilize this permit that’s already been written. They list the eligible project types and environmental conditions up front, saving a lot of time/resources for both applicants and agency staff, and create more certainty in the process. A new permit doesn’t have to be written or negotiated every time someone wants to do a project. You either meet the criteria for the programmatic permit or not and it’s up to the applicant to describe in the application how their project qualifies. These permits are designed to cover a variety common project types, so they apply to many organizations’ restoration activities.

AGENDA

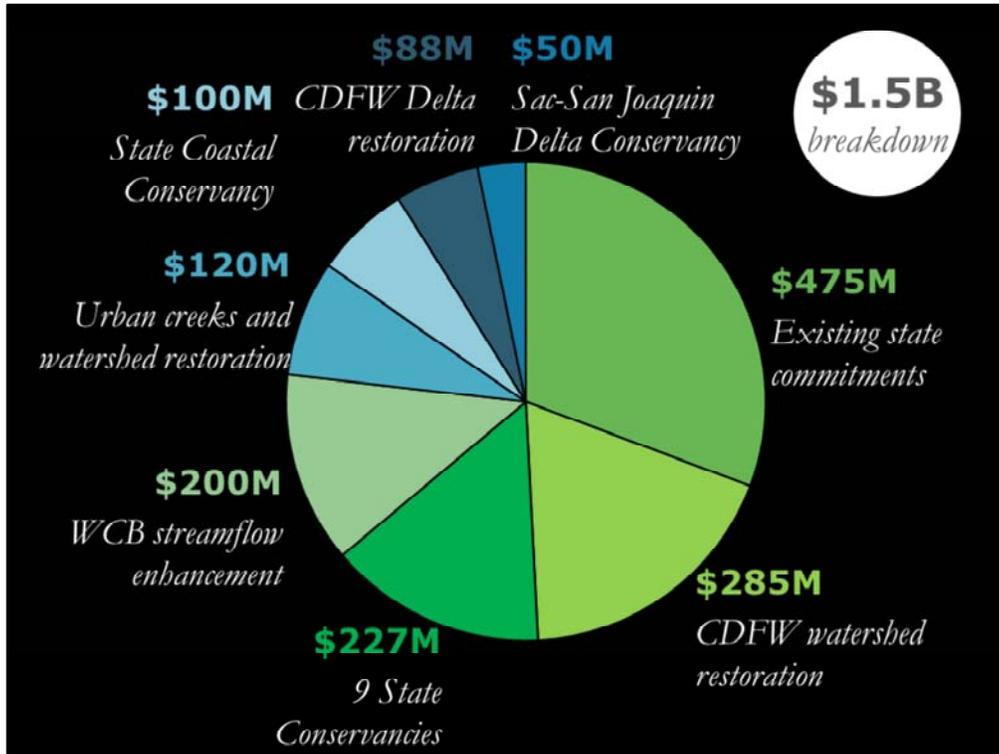
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Importance of Efficient Permitting

to Leverage Grant Funding

- ❑ Applicant is responsible for permitting
 - Simplified permits can:
 - ✓ increase “project readiness”
 - ✓ save time/money

New funding source with prop 1, with approx. 1.5 billion being allocated for ecosystem and watershed restoration projects available over the next ten years. This funding does not come with a simplified permitting process. While some funds may be avail to pay for permits/planning work, applicants will still have to acquire permits on their own and do what’s needed to increase project readiness. Some projects may get delayed during the permitting process. With that, in order to leverage grant funds and be able to put money into on-the-ground restoration versus lengthy permitting processes, simplified permitting is more important than ever.

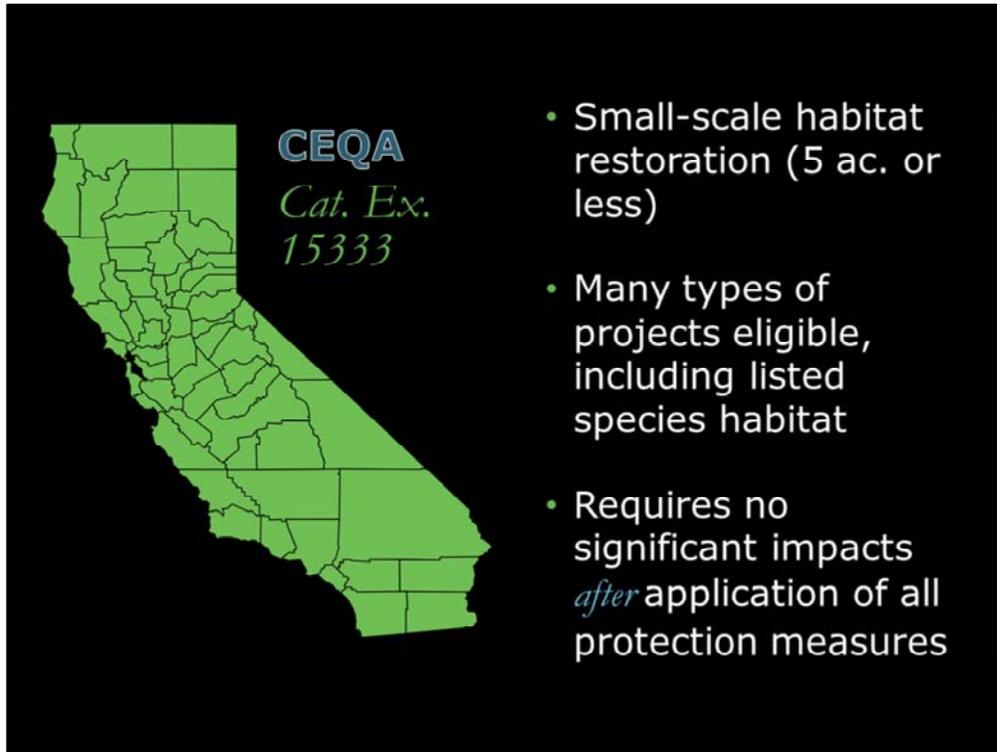


Let's look at the breakdown of Prop. 1 restoration funding. The Coastal Conservancy has about \$100 million, DFW 285 mill for watershed restoration, WCB, 200 mill for streamflow enhancement, and there are other agencies awarding restoration grant funds.

If you are prepared to utilize simplified permits, you will be in a better position to leverage these funds and get more restoration implemented on the ground.



Let's take a detailed look at the simplified permits and authorizations that are available now for restoration proponents to take advantage of.



CEQA
Cat. Ex.
15333

- Small-scale habitat restoration (5 ac. or less)
- Many types of projects eligible, including listed species habitat
- Requires no significant impacts *after* application of all protection measures

CEQA is a critical part of env rev process that state and local agencies must comply with when they are making discretionary decisions on a project. Applicants usually have to provide information to a CEQA lead agency to support whichever type of CEQA documentation is pursued (Cat X, MND, or EIR).

- There's a particular CEQA process that's especially useful for restoration. 10 years ago, Sustainable Conservation helped to create Cat Ex, 15333, which covers most types of restoration projects 5 acres or less. Projects covered under any exemption must avoid potentially significant impacts after application of relevant envtl protection measures.

- In our opin, this exmptn is highly under-utilized, largely due to a lack of agency/applicant understanding of which projects qualify. Many aquatic and upland voluntary restoration project types are eligible. The key to utilizing this Catex is to document how any pot sig impacts will be avoided by inclusion of standard avoidance and environmental protection measures that are built into your project description. The details of how impacts are being avoided can be included in a note for the admin file at the agency, to justify the CEQA decision. It's a good idea for applicants to provide this information to agencies as well.

- If a restoration project isn't covered by this exemption, the alternative is generally MND, however we encourage you to explore whether your project qualifies for this exemption before you move forward.



General 401 Water Quality Certification

- Statewide General Order for small habitat restoration projects eligible for CEQA Cat Ex 15333
- Limit – 5 acres & 500 cumulative linear ft. of streambank

The SWRCB has a very useful prog permit in place that's for small scale aquatic habitat rest projects. It's meant to be used in conjunction with the CEQA 15333 exemption mentioned earlier. The WB created this permit to both encourage restoration projects, and save time for their staff. Can be used by RWQCBs.

- This permit follows the 5 acre limit from the 15333 Cat Ex and currently includes an size limit of 500 cumulative LF of impact to strm bnk from the project. Note this permit is being updated right now, and some of the terms might change.

- There's an important nuance to this permit. Although it works in conjunction with the CEQA 15333 exemption, your project could also be included in a programmatic CEQA document, like an MND or EIR, and still be eligible, if the project itself qualifies for the exemption. Many RCDs and Water Districts have these types of programmatic documents for efficiency purposes.



New program to simplify permitting for voluntary restoration at CDFW. SusCon sponsored the HRE ACT in 2014, which creates a simple process as an alternative to DFW's two key permits: 1600 LSAA and CESA ITP.

- Covers aquatic habitats such as rivers, lakes, ponds, rip areas, floodplains, wetlands, and more. Based on projects that require approval from the Water Boards as well as DFW. Activities include streambank stabilization, revegetation, culvert upgrades, road rehabilitation, pond restoration, and more.
- This new law creates a faster/simpler approval process for restoration projects and sets them aside from the process for that of development projects, by putting restoration on a separate permitting track than development. CDFW wanted to create a process to help move more restoration projects forward and to partner with landowners and restoration proponents to help meet their agency's goals to restore habitat and recover species.

2014 Habitat Restoration and Enhancement Act

A Coordinated Approval

CA Dept. of
Fish & Wildlife
Lake & Streambed
Alteration
Agreement
CESA

State Water
Resources
Control Board
401 General Order
for small
restoration
projects

The HRE Act is that it is linked to an existing simplified permit just mentioned: the State Water Board's 401 General Order for Small Restoration Projects. The idea behind this linkage was to coordinate the two permitting processes, which have similar information requirements. This allows DFW to rely upon the Water Board's process as a baseline for review of HRE Act projects.

Habitat Restoration and Enhancement Act

Qualifying Projects



- ✓ Have certification under State Board's 401 General Order - Small Restoration Projects
- ✓ **OR are eligible for** General Order
- ❑ Same size limits, project types/habitats as Water Board's current permit

More detail on the HRE Act process because it's an essential tool for small-scale restoration.

Two qualifying pathways for approval under the HRE Act:

- Projects must have either obtained approval under the Water Board's small habitat restoration permit, or be eligible for approval based on the WB permit's current conditions – which currently includes eligibility for the CEQA 15333 exemption for small restoration and current size limits of 5 acres and 500 cumulative linear feet stream bank disturbance.
- Projects must also be voluntary restoration, not mitigation or under court order.
- The same types of projects qualify as the Water Board's 401 G.O – for aquatic habitat restoration.

Habitat Restoration and Enhancement Act

CDFW Review Process



- ✓ Timelines for two permitting tracks:
 - ❑ 30 day approval **with** Water Board 401 General Order for Small Restoration Projects (F&G Code sec. 1653)
 - ❑ 60 day approval and additional info **without** 401 General Order for Small Restoration Projects (F&G Code sec 1652)

The two HRE Act permitting tracks have different timelines.

- Under what's called the Sec 1653 process, it's 30 days or less approval time for qualifying projects that have their Water Board General order for small restoration projects in hand. It's a one page checklist application that's really fast!

- Under the Sec 1652 process, it's a 60 day approval for qualifying projects that are eligible for the Water Board's small restoration permit, but they either do not have approval yet under that permit, or they are seeking approval under another type of WB permit. More information is required for the 60 days process than the 30 day process, since folks don't have their Small Restoration permit in hand.

-In either case, expect faster and simpler permitting process with either of these pathways than w status quo. We really encourage the use of this new, simplified permit process with CDFW.

Habitat Restoration and Enhancement Act

Successfully Applying



- ✓ Strategies:
 - ❑ Have pre-application meeting w CDFW
 - Get design and protection measure feedback - submit complete app
 - ❑ Use our online application guidance
 - ❑ Provide species protection measures, SWRCB materials, and the fee

General tips for applying under the HRE Act.

- HRE Act is a FRONT-LOADED application process, so you need a really solid and complete application right off the bat. Make sure you have a pre-application meeting with DFW to get their feedback on project design and environmental protection measures. Make sure potential impacts are avoided and then include measures in your project description/design.
- Sustainable Conservation has developed a guidance document with DFW review. Go to our website and read this guidance before you submit an application. It only a few pages long and will answer many questions.
- Be absolutely sure to list specific environmental protection and avoidance measures for any protected species, and...don't forget to include all of the materials you submitted to the Water Board, and notices they've provided to you.



Here is a recap the linkages here for state programmatic permitting of voluntary restoration projects: If your project is **eligible** for the 15333 exemption, you can **qualify** for the Water Board's 401 for Small restoration projects, and be **eligible** for the HRE Act. The **combination** of these coordinated approvals can **save significant time and resources** to help get more restoration done..

Next: Erik Schmidt to tell you about more THE AVAILABLE **FEDERAL PROGRAMMATIC PERMITS AND authorizations** and **general tips** for USING SIMPLIFIED permits.



*NOAA Fisheries
Biological Opinions - Restoration*

- Issued to NOAA RC and Army Corps
- Stream habitat
- Entire coastal region of California
- Extensive guidelines and protection measures
- Multiple project types

Federal agencies have made signif progress on broad progr approvals, we believe more to come:

- NOAA F (NMFS) - completed 3 progr BOs that cover restor projs potentially affecting salmon/steelhead habitat in entire coastal region w advance consult under ESA. BOs provide incidental take coverage for work affecting habitat of listed species.
- Progr BOs issued to NOAA RC and Army Corps, for projects authorized by NOAA RC (funding/tech assistance) or permitted by Corps under its permit process, Sec 404 of CWA. BOs provide extensive guidelines and protection measures, allow multiple proj types **w/o size limitations assoc w state permits.**
- Emphasize that taking advantage of progr BO, instead of going through project-specific consult that ends in new BO, can cut time reqd for process from 6 mos-1yr to few wks– for both applicant and agency staff. So progr BOs are the way for all appropr projects.



We helped NOAA RC get advance approval from CCC for Community-based Restoration prog in Coastal Zone of N and Central Coasts in 2013 and as of couple wks ago, S Coast.

Really important because advanced approval, formally called “consistency determination” eliminates need for restoration proponents working with NOAA RC – meaning receiving funding or tech assistance -- to obtain Coastal Development Permit from CCC or Local Coastal Programs (LCPs)

Crucial in counties where Coastal permitting is difficult, time-consuming -- and expensive



*Biological Opinion -
Partners Program*

- FWS funded projects: wetlands, riparian, uplands restoration
- Endangered species habitat
- Central Valley and beyond

US FWS has not been able to prioritize develop of progr BOs for restoration like NOAA F has. However - agency has developed several limited-scope BOs you should be aware of – can be quite useful for restoration projs:

FWS offers progr BO for projs receiving funding from Partners in Wildlife progr, covers species in CV and adjacent foothills areas. **I mention this progr BO today b/c it has at times been used to cover projs receiving Coastal Prog funding, so discuss possibility with FWS field office if applying for Coastal Prog grant.**



*Biological Opinion -
Calif. red-legged frog*

- Issued to Corps for 404 permits
- Includes restoration
- Coastal counties where species is found

FWS also has two species-specific programmatic BOs that cover restoration projects permitted by the Army Corps that may affect the California Red Legged Frog in these coastal counties



*Biological Opinion -
Calif. tiger salamander*

- Issued to Corps for 404 permits
- Restoration projects in SF Bay Area counties

And that potentially affect the California tiger salamander in the SF Bay Area.

Clean Water Act Sec. 404

- RGP 41:
Invasive plant removal
- RGP 70: Bioengineered
streambank stabilization
- Nationwide permits
13, 27, 33

Army Corps requires permits for projs affecting aq habitat under CWA, Sec 404.

Regional General Permits, RGPs, offer progr permitting for commonly needed types of restoration or specific activs proposed by agencies and others; two key RGPs to be aware of - 41 for inv plant removal, 70 for bioengineered stream bank stabiliz in 12 counties shown

For statewide permitting of restoration projs, most applicants use NWPs - type of progr permit Corps offers - preferred method for efficient permitting. NWPs 13, 27 and 33 cover wide range of hab restoration, generally work well. Real time consuming part of this process is often ESA consult Corps has to undertake, particularly where new BO must be completed.

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MEETING AGENCY EXPECTATIONS

for Programmatic Permit Use

- ❑ Agencies want permits used – welcome restoration projects!
- ❑ Guidance available from staff/agency websites
- ❑ Ask for help from other restoration proponents if needed; consider partnering – CEQA lead?
- ❑ Experience is gained through process!

few tips on making effective use of progr permits and auths Erika and described.

- Can't emphasize enough - agencies want progr permits and auths to be used → take advantage!
- Agencies can provide guidance and info, through staff or websites
- Ask experienced proj proponents for help and advice – often, another organiz in your area been through process, can provide info and template lang.
- Consider partnering w local District (Water, Parks and Open Space, RCD) – can be CEQA lead. Key when DFW or Reg Board no capacity to lead CEQA process.
- Finally, progr permitting is becoming norm, right time to gain experience by working through process

PROGRAMMATIC PERMIT USE

The Fundamentals

- ❑ Conceptual plan: include permitting
- ❑ Ensure cooperating landowners
- ❑ Be clear – project purpose, methods, benefits
- ❑ Meets size and type requirements

Fundamentals for using progr permits and auths for vol restoration projs:

- Proj's conceptual plan - include prelim strategy for regul compliance, incl using all available progr permits and auths that are appropriate.
- Ensure cooperate landowners, including adj prop owners if prudent
- Be clear that primary proj purpose is vol restoration, not development of some kind that includes restoration component, or mitigation
- Be sure proposed proj design meets size and type reqts of progr permits intend to use

*Request Pre-application
Meeting with Agencies*



- Invite all agencies to coordinated meeting/site visit
- Hear requirements, deadlines
- Establish relationships - view staff as partners
- Provide preliminary info and photos to personalize project

Successful Use of Programmatic Permits



Provide a clear project description with necessary detail and all environmental protection measures upfront

I'll finish w simple guiding principle -- **clear, detailed and well-supported** proj descrip, w all necessary protect measures included up-front, likely to be successfully reviewed and approved by reg agencies under progr permits, auths and consults.



a few important resources you should be aware of:

- First, Sustainable Conservation has put together table of the progr or simplified regul processes available in state for vol restoration applicants.

It's available here on our website

Statewide Approaches

LINKS TO EXPEDITED/SIMPLIFIED PERMITTING FOR VOLUNTARY HABITAT RESTORATION PROJECTS: ([CLICK HERE TO OPEN PDF VERSION](#))

AGENCY / AUTHORITY	PERMIT / APPROVAL	PROJECT SIZE LIMITS	ACTIVITIES COVERED / LOCATION	BENEFITS / DETAILS
California Environmental Quality Act (CEQA)	Categorical Exemption 15333 for Small Habitat Restoration Projects	< 5 acres	Activities Covered: Fish, plant, and wildlife habitat restoration Location: Statewide	• Faster/lower cost alternative to CEQA document (i.e., Initial Study/Negative Declaration)
California Coastal Commission(CCC)	Federal Consistency Determination (CD) – North & Central Coasts (With proposed southern expansion)	Small to Large	Activities Covered: Salmonid habitat and related upland restoration Estuarine and coastal restoration Location: San Luis Obispo County to Oregon Border	• Faster/free alternative to obtaining a Coastal Development Permit (CDP) or individual project CD • Linked to NMFS Programmatic Biological Opinions; requires NOAA Restoration Center funding or technical assistance • Application Information
California Department of Fish & Wildlife (CDFW)	Habitat Restoration and Enhancement (HRE) Act / AB 2193	Currently < 5 acres and 500 cumulative linear feet of streambank or coastline (linked to SWRCB 401 permit for Small Restoration Projects; see below)	Activities Covered: Aquatic habitat restoration and water quality improvement projects Location: Statewide	• Fast and simple process: 30 day approval with SWRCB 401 for Small Restoration Projects, otherwise 60 days • Covers CA Endangered Species Act (CESA) and 1600 Lake and Streambed Alteration (LSAA) approvals through one application • HRE Act Guidance Document
California Department of Fish & Wildlife (CDFW)	Coho HELP Act	< 5 acres and 500 cumulative linear feet of streambank or coastline	Activities Covered: Coho salmon habitat projects, wood placement to enhance fish habitat, bioengineered streambank restoration, and in-stream improvements (culvert upgrade, road crossing) Location: Coho Salmon Habitat	• Approval in 60 days or less • Covers CESA and LSAA approvals through one application
State Water Resources Control Board (SWRCB)	401 Water Quality Certification for Small Habitat Restoration Projects	< 5 acres and 500 cumulative linear feet of streambank or coastline length (subject to change with updates)	Activities Covered: Aquatic habitat restoration and water quality improvement projects Location: Statewide	• Faster, simple process compared to standard 401 Water Quality Certification; coordinated with DFW's HRE and Coho HELP Acts (see above) • Must be eligible for CEQA categorical exemption 15333, though other CEQA compliance methods can be used

(continued)

Here is what you'll see when you click to it:

The table lists all the state and federal programmatic permits, BOs and authorizations we've discuss today, hyperlinks to each of them. We've also summarized the applicable size limits, activities covered and some additional details.

Sustainable Conservation helps California thrive by uniting people to solve the toughest challenges facing our land, air, and water.

The Sustainable Conservation mission ▶

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Accelerating Restoration

California's waterways are in trouble: over 80% of our riparian forest is gone, two-thirds of assessed waterways are polluted, and ten species of salmon and steelhead are listed as threatened or endangered. The good news is that both public and private landowners can do a lot to restore these damaged habitats. Sustainable Conservation is working to simplify permit requirements for restoration projects, so California landowners can become part of the solution.

The Way Forward: Simplified Statewide Permits

Sustainable Conservation works with state and federal agencies to develop simplified approaches for permitting voluntary restoration projects. Preparing pre-written or "programmatic" permits that apply to a variety of restoration projects saves significant time and money without sacrificing environmental protections.

In addition to simplifying the permitting process, Sustainable Conservation promotes programs that provide technical and funding assistance from government and local partners, so property owners can get projects planned, designed, and completed more efficiently and with lower out-of-pocket expenses.

There are over a dozen programmatic permits currently available for habitat restoration projects, from a variety of agencies.

Major Steps in Accelerating Restoration Statewide

The Habitat Restoration and Enhancement Act: AB 2193

In September of 2014, Assembly Bill 2193 (the Habitat Restoration and Enhancement Act), was signed into law. This law establishes a simplified permitting process with the Department of Fish & Wildlife for landowners, state and local government agencies, and conservation organizations wanting to implement small-scale, voluntary habitat restoration projects across California. AB 2193 is a major step forward in Sustainable Conservation's goal of accelerating the restoration of California's waterways and sensitive species' habitats. [Read more about the Habitat Restoration and Enhancement Act.](#)

[Download the AB 2193 Fact Sheet PDF](#)

HRE Act information

For DFW permitting under the Habitat Restoration and Enhancement Act (1600 and CESA 2081 Incidental Take Permit), we have a detailed guidance and FAQ document on our website, available here.

Habitat Restoration and Enhancement Act (HRE Act)

ACCELERATING RESTORATION ON PRIVATE LANDS TO BOOST CLEAN WATER AND STRUGGLING FISH



RESOURCES:

[New! HRE Act Application Guidance](#)

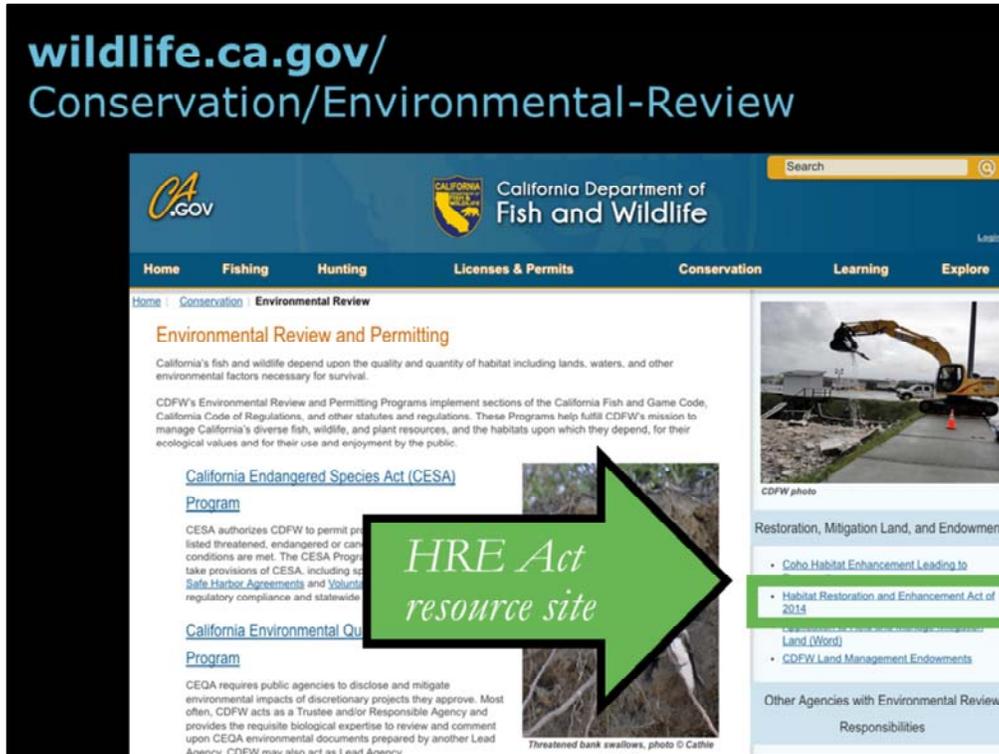
[AB 2193 Fact Sheet](#)

[AB 2193 Status and Bill Language](#)

[AB 2193 Supporters](#)

[California Department of Fish and Wildlife: HRE Act of 2014](#)

If you click to this page, you'll find the detailed application guidance and other information



And DFW has an HRE Act web page, under the Conservation heading you see here at the top of its website home page,

The screenshot shows the California Department of Fish and Wildlife website. The header includes the CA.GOV logo, the department name, and a search bar. A navigation menu lists Home, Fishing, Hunting, Licenses & Permits, Conservation, Learning, and Explore. The main content area is titled 'Habitat Restoration and Enhancement Act of 2014' and features three landscape photos. Below the photos is a 'Background' section explaining the Act's purpose and a 'Defining a Habitat Restoration or Enhancement Project' section. A 'Fact Sheet' is provided by Sustainable Conservation. On the right, a 'Program Forms' section lists 'Section 1652 Request Form', 'Section 1653 Request Checklist', and 'Application Fees'. Below this is a 'Planning a Restoration or Enhancement Project' section with a detailed process flow chart and a 'Click image to enlarge' link. At the bottom right, an 'Other Permits' section is partially visible.

With basic information, a helpful process flow chart for project planning, and on-line application forms for both HRE Act processes, Secs 1652 and 1653, Erika mentioned.

Katie Erika Erik

Sustainable Conservation

Our team offers permitting technical assistance and much more:

restoration@suscon.org

And we are available to provide additional permit guidance for your voluntary habitat projects so contact us!