

## CHAPTER 3

# 3.0 AUTHORIZATION PROCESS FOR DREDGING AND DREDGED MATERIAL DISPOSAL PROJECTS

### 3.1 INTRODUCTION

A number of state and federal agencies regulate dredging and dredged material disposal in the Bay Area. Different laws and regulations govern their roles and responsibilities, but often their purposes and goals overlap (Table 3.1). The primary state and federal agencies involved in permitting such projects are the San Francisco Bay Conservation and Development Commission (BCDC), State Lands Commission (SLC), San Francisco Bay Regional Water Quality Control Board (SFBRWQCB), U.S. Army Corps of Engineers (USACE), and U.S. Environmental Protection Agency (USEPA). These agencies have established the Dredged Material Management Office (DMMO) to coordinate regulatory processes for dredging and disposal projects, thus providing better service to the public while ensuring environmental protection. This chapter describes the role and general operating procedures of the DMMO and its review process for dredging and dredged material disposal projects.

**Table 3.1  
Basis for Regulatory Authority and Mandates of Primary State and Federal Agencies with Jurisdiction over Dredging and Dredged Material Disposal Projects in the San Francisco Bay Region**

<i>USACE</i>	<i>USEPA</i>	<i>BCDC</i>	<i>SFBRWQCB</i>	<i>SLC</i>
<b>Basis for Regulatory Authority</b>				
CWA <sup>1</sup> MPRSA <sup>2</sup> Rivers & Harbors Act of 1899	CWA MPRSA	McAteer-Petris Act Suisun Marsh Protection Act Coastal Zone Management Act	Porter-Cologne Water Quality Control Act CWA	Ownership of State Lands
<b>Mandate includes</b>				
Regulate placement of dredged or fill material into waters of the U.S. Regulate transportation of dredged material for the purpose of ocean disposal Protect and maintain navigable capacity of	Maintain integrity of nation's waters Oversee disposal of materials, including dredged material, into ocean waters	Reduce Bay fill Protect and manage coastal zone resources	Protect the beneficial uses of waters of the state	Manage state's sovereign lands for purposes consistent with the public trust

1 Clean Water Act (33 U.S.C. 151, et seq.).

2 Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401-1445).

nation's waters				
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### 3.2 IMPLEMENTATION MEASURES

The implementation measures related to the review and authorization of dredging, dredged material disposal, and beneficial reuse projects are shown as bulleted, italicized text.

### 3.3 DREDGED MATERIAL MANAGEMENT OFFICE

#### 3.3.1 DMMO Role and Operating Procedures

The DMMO provides coordinated review of dredging and dredged material disposal projects and consistency in recommendations to decision-makers regarding these projects. The permitting system for such projects can be lengthy and complex, because several federal and state agencies issue permits or other approvals. Furthermore, other state and federal agencies consider and comment on these permit actions. The number and types of permits and approvals required for dredging and disposal projects vary depending on the location and ownership of the dredging and disposal sites, the volume of material, and whether the project requires new permits or is considered an episode under an existing multi-episode permit. Although the DMMO is presently a pilot program, and hence projects are not legally required to undergo its review, coordination of the primary responsible agencies through the DMMO decreases redundancy and unnecessary delays in the permitting process, ensures environmental protection, and provides a single point-of-entry into the permitting process, for project proponents and interested parties. The coordinated exchange of technical information by the DMMO also ensures that regulatory actions are taken in an informed and consistent manner.

<p style="text-align: center;"><b>DMMO Responsibilities</b></p> <ul style="list-style-type: none"><li>• Serve as a single point-of-contact for permitting</li><li>• Review and approve the adequacy of Sampling and Analysis Plans (SAPs) and Tier I requests</li><li>• Review sediment test reports and make recommendations on the suitability of dredged material for proposed disposal environments.</li></ul>
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The DMMO does not issue permits; rather, it makes consensus-based recommendations to the member agencies on completeness of permit applications, adequacy of sediment sampling and analysis plans, and suitability of sediments for proposed disposal environments. The member agencies also recommend permit conditions, as appropriate, to be included in individual member agency permits. The individual agencies have agreed to support the consensus recommendations of the group, subject to final approval by each of the individual member agencies through their normal regulatory processes.

The USACE serves as the “host” agency for the DMMO and provides logistical support for meetings by providing meeting rooms, preparing agendas and meeting minutes, and distributing information among participants, applicants, and interested parties. The USACE also maintains files related to the DMMO and maintains a DMMO Web site containing information on the DMMO and on dredging-related issues. Finally, the USACE acts as the initial point of contact and main information clearinghouse for DMMO matters.

### Contacting the DMMO

To contact the DMMO regarding application forms, meeting schedules and agendas, to request to address the DMMO at a meeting, or to get general information about the regulatory process for dredging projects or projects under consideration, contact the DMMO Coordinator at the USACE:

Mr. David Dwinell  
U.S. Army Corps of Engineers, San Francisco District  
333 Market Street  
San Francisco, California 94105-2197  
Telephone: (415) 977-8471  
Fax: (415) 977-8483  
e-mail: [ddwinell@spd.usace.army.mil](mailto:ddwinell@spd.usace.army.mil)

The DMMO Web site contains meeting schedules, agendas, the DMMO consolidated application form, guidance documents on sediment testing, and links to documents regarding dredged material management, and can be accessed at:

[www.spn.usace.army.mil/conops/dmmo.htm](http://www.spn.usace.army.mil/conops/dmmo.htm)

DMMO meetings are usually held twice a month at the USACE offices in San Francisco, and are open to the public. Meeting agendas are posted at least one week before each meeting at the DMMO Web site. Items submitted for review at least one week before a scheduled meeting are added to the agenda for discussion, if time allows. DMMO meetings provide a forum for the member agencies to jointly review project documentation and to ask clarifying questions of applicants, for applicants to get feedback from all agencies at once, and for interested parties to get information about projects under review. When the member agencies come to consensus on a project recommendation, the applicant is officially notified in writing within two weeks of the meeting, except in the case of USACE projects, for which letters are not issued. After DMMO review, applicants must obtain approvals from the individual member agencies.

### 3.3.2 DMMO Review of Projects Beyond the Jurisdiction of One or More DMMO Agencies

Not all dredging and disposal projects fall under the jurisdiction of each of the DMMO member agencies (Table 3.2). For example, the disposal portions of projects proposing to use the San Francisco Deep Ocean Disposal Site (SF-DODS) fall beyond the jurisdictions of BCDC, SLC, and the SFBRWQCB. Such projects are still reviewed by the DMMO, but only the agencies with regulatory authority participate in approving sediment sampling plans or making recommendations on sediment suitability. Agencies without regulatory authority will review such project proposals, participating in an advisory capacity only. Similarly, the DMMO will consider reviewing projects involving beneficial reuse and upland disposal that are located outside some of the DMMO agencies' jurisdictions, unless it is determined that such projects would proceed more rapidly under existing regulatory processes (e.g., USACE Nationwide Permit process).

**Table 3.2**  
**Roles of DMMO Member Agencies in Reviewing Proposals for Dredged Material Disposal in Different Environments**

<b>Regulatory Authority of DMMO Agencies for Dredged Material Disposal Environments</b>				
<i>USACE</i>	<i>USEPA</i>	<i>BCDC</i>	<i>SFBRWQCB</i>	<i>SLC</i>
<b><i>In-Bay</i></b>				
Department of the Army permit pursuant to CWA and Rivers and Harbors Act of 1899	CWA permit oversight	Permit, pursuant to McAteer-Petris Act (MPA) or Suisun Marsh Preservation Act (SMPA), or federal consistency determination (CD), pursuant to Coastal Zone Management Act (CZMA), for dredging and disposal	CWA Section 401 Water Quality Certification (WQC) or Waste Discharge Requirements (WDRs) pursuant to Porter-Cologne Water Quality Control Act	Permit or lease if disposal on state lands
<b><i>Ocean</i></b>				
Department of the Army permit pursuant to MPRSA for transport of dredged material	Site designation and MPRSA permit oversight; determination of material suitability for disposal	Advisory	Advisory	Advisory
<b><i>Wetland (existing) enhancement</i></b>				
Department of Army permit pursuant to CWA	CWA permit oversight	Permit, pursuant to MPA or SMPA, or CD, pursuant to CZMA, for dredging, permit or CD for disposal if site within BCDC jurisdiction	CWA Section 401 WQC or WDRs pursuant to Porter-Cologne Water Quality Control Act	Permit or lease if disposal on state lands
<b><i>Restoration of diked historic baylands</i></b>				
Department of the Army permit pursuant to Rivers and Harbors Act of 1899, and to CWA if disposal site in waters of the US	CWA permit oversight if disposal site in waters of the US	Permit, pursuant to MPA or SMPA, or CD, pursuant to CZMA, for dredging, permit or CD for disposal if site within BCDC jurisdiction	CWA Section 401 WQC or WDRs pursuant to Porter-Cologne Water Quality Control Act	Permit or lease if disposal on state lands
<b><i>Upland disposal (other than diked historic baylands, waters of the US)</i></b>				
Advisory, Department of Army permit pursuant to CWA for return flows to waters of US	Advisory, CWA permit oversight	Advisory	CWA Section 401 WQC or WDRs pursuant to Porter-Cologne Water Quality Control Act	Permit or lease if disposal on state lands
<b><i>Landfill</i></b>				
Advisory	Advisory	Advisory	CWA Section 401 WQC or WDRs pursuant to Porter-Cologne Water Quality Control Act	Permit or lease if disposal on state lands

### 3.4 PROJECT REVIEW AND AUTHORIZATION BY DMMO AGENCIES

Figure 3.1 shows the steps in the authorization process for dredging and dredged material disposal projects. Initially, projects are reviewed by the DMMO and later move through the permitting processes of the individual agencies. The process for obtaining approvals has three phases: (1) suitability determination; (2) permit process; and (3) episode approval, described below. The DMMO serves as the single point-of-entry into the process, although applicants and permittees must eventually obtain separate approval from the appropriate DMMO member agencies.

#### 3.4.1 Suitability Determination

The suitability determination process (Figure 3.1, top) occurs at the DMMO level. During this process, the DMMO member agencies make a joint recommendation to the individual member agencies on whether the sediments to be dredged are appropriate, in terms of potential for environmental impacts, for the proposed disposal or reuse site. The recommendation is usually based on the results of sediment testing. The applicant must submit results from recent sediment testing or submit sufficient data (usually in the form of previous test results) to support a finding by the agencies that the sediments are suitable for the proposed disposal environment. (Details on the testing requirements and criteria for suitability at different disposal environments are described in Chapter 4.)

The applicant should submit to the DMMO either a sediment Sampling and Analysis Plan (SAP), or a written request (with supporting information) requesting a “Tier I” exclusion from testing requirements based on factors such as previous testing history and physical characteristics of the material proposed for dredging.<sup>3</sup>

The DMMO reviews SAPs to determine their consistency with state and federal guidance on testing protocols and to determine whether the proposed testing program would provide the agencies with sufficient information to make a suitability determination of the material for disposal at a specific site. Upon review of a SAP, the DMMO may do the following:

- **Approve the SAP**, the applicant may proceed with sediment testing,
- **Approve the SAP with conditions**, the applicant may proceed with sediment testing but should adhere to the approval conditions, or
- **Not approve the SAP**, the applicant is provided with specific explanations and a recommended course of action, usually that the SAP be revised and resubmitted.

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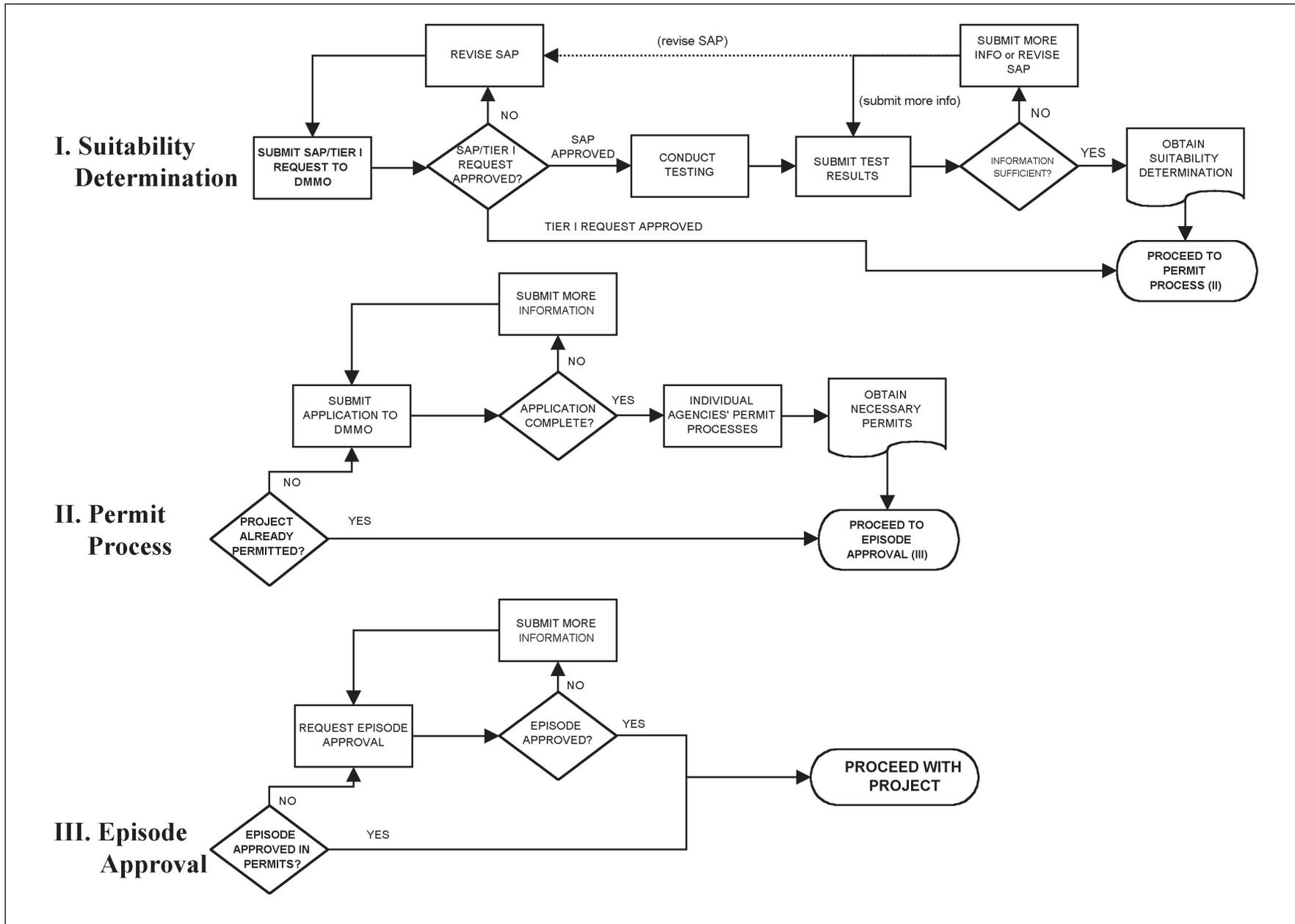
<sup>3</sup> The term “Tier I” comes from joint USACE and USEPA guidance for testing of dredged material for disposal in aquatic environments. The term refers to different tiers of information needed for decision-making, based on the degree of potential environmental risk associated with a proposed project. For more information about the tiered testing approach for in-Bay and ocean disposal, see Chapter 4.

*3.0 Authorization Process for Dredging and Dredged Material Disposal Projects*

Similarly, a request for a Tier I determination may be approved, approved with conditions, or not approved. Approval conditions might include a requirement that sediments be tested for certain

SOURCE: SFBRWQCB, 2000

### Project Review and Authorization by DMMO Agencies



chemical constituents to confirm data presented in support of the request. A Tier I determination constitutes a recommendation by the DMMO member agencies that the sediments are suitable for the proposed disposal environment, and that the applicant may proceed with the next phase of project authorization (Permit Process, Figure 3.1, center). If there is insufficient information to make a determination, the applicant may be advised to revise and resubmit the request, or the agencies may determine that a Tier I determination is not justified and request that a SAP for sediment testing be submitted for review.

Upon approval of a SAP, the applicant can proceed with testing the sediments proposed for dredging. Upon completion of testing, a report of testing results is submitted to the DMMO for review. Based on its review of the sediment testing report, the DMMO may recommend one of the following to their respective agencies:

- **Sediments are suitable for the proposed disposal environment**, the applicant may proceed to the next phase (permit process) of authorization.
- **Require further information, such as additional testing of sediments**, to make a recommendation, the applicant may provide the requested information or choose to alter the project in such a way that the agencies can make a determination without additional information.<sup>4</sup>
- **Some or all of the sediments are not suitable for the proposed disposal environment**, the applicant may elect to not undertake or modify the project, such as by proposing another disposal location, and obtain a suitability determination for the modified project (often the suitability determination process can proceed more quickly for a modified project because of the availability of information from the original project proposal).

### 3.4.2 Permit Process

The Permit Process section of Figure 3.1 (center) shows the steps by which project proponents obtain authorizations from DMMO member agencies for dredging and dredged material disposal projects. While the process begins within the DMMO, final authorization must be obtained from each member agency individually. Table 3.2 summarizes the DMMO member agencies' regulatory authority for different dredged material disposal environments. The processes of the individual agencies are described in Appendix C.

A consolidated permit application form for dredging and disposal projects has been developed that is accepted by all of the DMMO member agencies. Applicants submit a completed application form and supporting documents to the DMMO. The agency representatives to the DMMO review and discuss the applications as a group and may make recommendations to applicants about the proposed project.

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4 For example, if the sediment testing for a project proposing in-Bay disposal showed high concentrations of a potentially bioaccumulative substance, the agencies might request further information, such as testing the bioaccumulation potential of the sediments, before making a determination. The applicant, rather than perform the expensive bioaccumulation tests, could elect to change the proposed disposal location, such as to use as daily cover at a landfill. Existing information might be sufficient to make a suitability determination for the modified project.

Since each agency has different laws and regulations governing the issuance of approvals, at this point the applicant must go through the process of obtaining authorization from each of the DMMO member agencies individually. However, the DMMO may continue to be used as a forum to discuss the project. The DMMO also serves as a point of contact for the applicants and interested parties throughout the project authorization process.

Because permits are issued by the individual DMMO agencies, any necessary enforcement activities are also carried out by the individual agencies, although the DMMO may serve as a forum for initial discussions of problems. Appendix D contains information on the enforcement authorities of the DMMO agencies.

### 3.4.3 Episode Approval

Some permits for maintenance dredging projects authorize multiple dredging and disposal episodes, over a period of several years. Such permits require that permittees obtain formal approval, after a recommendation of suitability by the DMMO, for each dredging episode under the permit (Figure 3.1, bottom). Episode approvals, when appropriate, are issued by the individual DMMO member agencies. Because episode approvals occur in conjunction with a suitability determination for the sediments proposed for dredging, the DMMO should serve as a point of entry into this process, as a forum for the agencies to discuss the project, and as a point of contact for applicants and interested parties.

## 3.5 PROJECT REVIEW BY OTHER AGENCIES

Dredging and dredged material disposal projects may be subject to the review and permitting authority of other federal, state, and local agencies. At the federal and state level, resource agencies (U.S. Fish and Wildlife Service [USFWS], National Marine Fisheries Service [NMFS], California Department of Fish and Game [CDFG]) may review and comment on projects. The Sacramento District of USACE and the Central Valley Regional Water Quality Control Board may have jurisdiction over projects involving reuse of dredged material in the Delta. The California Coastal Commission regulates the transport of dredged material to SF-DODS. Dredging and disposal projects may also require permits from local agencies such as county planning departments. Appendix E describes the roles of other agencies in the review and authorization of dredging and disposal projects.

## 3.6 REVIEW OF INDIVIDUAL PROJECTS PURSUANT TO CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AND NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

CEQA requires California public agencies to consider the environmental impacts of projects they carry out and outlines specific procedures for considering those impacts.<sup>5</sup> Further guidance on CEQA implementation is found in the CEQA Guidelines.<sup>6</sup> The issuance of a permit is considered a “project” under CEQA; therefore, dredging and dredged material disposal projects that require permits from

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5 California Public Resources Code, Sections 21000-21178.1.

6 California Code of Regulations, Title 14, Sections 15000-15387.

public agencies are subject to the CEQA process. The CEQA process is undertaken by the “lead agency,” which is the agency that has the principal responsibility for approving a proposed project. For dredging and disposal projects, the lead agency may be a local planning department or port, one of the LTMS state agencies, or another state agency.

NEPA requires that federal agencies consider environmental impacts of recommendations, reports on proposals for legislation, and other major federal actions.<sup>7</sup> Federal agencies are required (by regulations promulgated by the Council on Environmental Quality [CEQ]) to establish specific procedures for ensuring that their actions give appropriate consideration to the potential environmental effects of their decision-making.<sup>8</sup> The USACE has published regulations supplementing regulations promulgated by the CEQ.<sup>9</sup> For most dredging and disposal projects in the Bay area, the NEPA process is carried out by the USACE as part of the permitting process.

To assist with the preparation and review of CEQA and NEPA documents regarding dredging and disposal projects and to facilitate project consistency with the LTMS goals, the programmatic mitigation measures (in the LTMS EIS/EIR), and implementation measures in the Management Plan, the LTMS agencies implement the following measure:

- *The LTMS agencies will prepare an information resource document on potential environmental impacts of dredging, disposal, and beneficial reuse projects, and the relevant regulatory processes. This document will cite the LTMS goals, program-level mitigation measures, and the LTMS Management Plan implementation measures. The document will be distributed to potential lead agencies for such projects, and used by the LTMS agencies during CEQA and NEPA review.*

### 3.7 INVOLVEMENT OF AGENCIES AND INTERESTED PARTIES DURING PLANNING PHASES OF PROJECTS

Early involvement of agencies and interested parties during the project planning phases is important, as it can streamline the authorization process by allowing issues to be raised and resolved early on, give the LTMS agencies the opportunity to make project proponents aware of the LTMS goals and policies, and allow for coordination with other projects (see Chapter 6, Regional Planning). To facilitate early involvement by agencies and interested parties in the project planning phase, the LTMS agencies implement the following measure:

- *The LTMS agencies encourage early involvement of the interested parties in the project planning phase, and thus will encourage project proponents to, if*

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7 42 USC 4331-4375.

8 40 CFR parts 1500-1508.

9 For USACE Civil Works functions, including dredging, the NEPA guidance is contained in 33 CFR 230. For regulatory actions (permits), NEPA guidance is contained in 33 CFR 325, Appendix B.

*appropriate, conduct early coordination with the DMMO, and establish project-related work groups.*

### 3.8 WORK WINDOWS FOR PROJECTS TO PROTECT BIOLOGICAL RESOURCES

Whenever a federal action is taken that might impact a species that is federally listed as threatened or endangered, the federal agency taking that action must consult with the USFWS and NMFS, pursuant to the Endangered Species Act of 1973, as amended (ESA). This consultation is required to ensure that the action (such as a Section 404 permit) is not likely to jeopardize the continued existence of species that are federally listed as endangered or threatened or result in the destruction or adverse modification of the critical habitat of the species.<sup>10</sup> Likewise, the California Endangered Species Act requires that each state lead agency consult with CDFG to ensure that any action authorized, funded, or carried out by that state lead agency is not likely to jeopardize the continued existence of any state-listed endangered, threatened, or rare species.<sup>11</sup>

Federal and state lead agencies involved in the development of the LTMS EIS/EIR worked closely with USFWS, NMFS, and CDFG to identify potential impacts on listed species during dredging and disposal operations. Additionally, the LTMS agencies entered into formal consultation pursuant to Section 7 of the ESA with the resource agencies to address the potential impacts that implementing the LTMS could have on listed species. The purpose of consultation was to provide the LTMS agencies, the resource agencies, and the dredging community with a set of common guidelines to minimize adverse impacts on listed species from dredging and disposal activities, and to establish a more predictable regulatory environment for these activities.

The consultations with NMFS, USFWS, and CDFG resulted in each of these agencies issuing a Biological Opinion addressing listed species and designated critical habitats under their respective jurisdictions. The Biological Opinions adopted the proposed restrictions on the timing and design of dredging and disposal projects developed in the LTMS planning effort. The Biological Opinions evaluate dredging and disposal activities relative to the LTMS guidelines and environmental windows. If the project can be accomplished during the work windows, the project is authorized for incidental take under the ESAs. However, this section also describes the process that should be followed if a proposed project does not fall within the environmental windows set forth in the ROD.<sup>12</sup>

When planning dredging activities, project proponents should consider whether their project could be accomplished during the work window for that geographic area. (See Figures 3.2 and 3.3.) If the activity proposed is in the work window, the project is covered by the existing Biological Opinions and can take place with the normal permits and conditions. However, if the activity is proposed outside the work windows for that geographic area, project proponents will need to request that the

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<sup>10</sup> 50 CFR Part 402.

<sup>11</sup> Fish and Game Code Section 2090.

<sup>12</sup> For complete information, please refer to the Biological Opinions in the ROD, 1999.

Dredging Work Windows by Area

Site	Species	Jan	Jan	Feb	Feb	Mar	Mar	Apr	Apr	May	May	Jun	Jun	Jul	Jul	Aug	Aug	Sep	Sep	Oct	Oct	Nov	Nov	Dec	Dec		
		1-15	16-31	1-15	16-28	1-15	16-31	1-15	16-30	1-15	16-31	1-15	16-30	1-15	16-31	1-15	16-31	1-15	16-30	1-15	16-31	1-15	16-30	1-15	16-31		
SF Bay Bridge to Sherman Island	Steelhead Trout	WORK WINDOW										CONSULTATION REQUIRED															
	Chinook Salmon Juveniles	WORK WINDOW										CONSULTATION REQUIRED															
Carquinez Bridge to Collinsville	Sacramento Splittail	WORK WINDOW																									
	Delta Smelt	WORK WINDOW																									
	Longfin Smelt	WORK WINDOW																CONSULTATION REQUIRED									
Pinole Shoal Suisun Bay Channel	Chinook Salmon (Adults)	WORK WINDOW										CONSULTATION REQUIRED															
San Pablo Bay	Longfin Smelt	CONSULTATION REQUIRED		WORK WINDOW																		CONSULTATION REQUIRED					
North San Pablo Bay, Napa & Petaluma Rivers	Sacramento Splittail (Juveniles)	CONSULTATION REQUIRED		WORK WINDOW																		CONSULTATION REQUIRED					
Napa & Petaluma Rivers, Sonoma Creek	Steelhead Trout	WORK WINDOW														CONSULTATION REQUIRED						WORK WINDOW					
San Pablo Bay & South SF Bay	Western Snowy Plover	WORK WINDOW																									
North SF Bay & San Pablo Bay shallow berthing areas	Dungeness Crab	CONSULTATION REQUIRED								WORK WINDOW				CONSULTATION REQUIRED													
Richardson Bay, North & South Bay	Pacific Herring	WORK WINDOW				CONSULTATION REQUIRED																		WORK WINDOW			
Waters of Marin County from the Golden Gate Bridge to Richmond-San Rafael Bridge	Coho Salmon	WORK WINDOW										CONSULTATION REQUIRED												WORK WINDOW			
Central SF Bay	Steelhead Trout	WORK WINDOW										CONSULTATION REQUIRED															
	Pacific Herring	WORK WINDOW				CONSULTATION REQUIRED																		WORK WINDOW			
Berkeley Marina to San Lorenzo Creek within 1 mile of coastline	California Least Tern	CONSULTATION REQUIRED				WORK WINDOW										CONSULTATION REQUIRED											
South of Highway 92 Bridge (San Mateo-Hayward)	California Least Tern	CONSULTATION REQUIRED								WORK WINDOW				CONSULTATION REQUIRED													
In Areas with Eelgrass Beds	California Least Tern	WORK WINDOW																									
Baywide in Areas of Salt Marsh Habitat	California Clapper Rail	WORK WINDOW																									
Baywide within 250 feet of Salt Marsh Habitat	California Clapper Rail	CONSULTATION REQUIRED		WORK WINDOW																		CONSULTATION REQUIRED					
In and Adjacent to Salt Marsh Habitat	Salt Marsh Harvest Mouse	WORK WINDOW																									
Within 300' of known roost site	California Brown Pelican	CONSULTATION REQUIRED										WORK WINDOW												CONSULTATION REQUIRED			

(For more detailed information, see Appendix F of the LTMS Management Plan or the LTMS EIR/EIS.)

WORK WINDOW

CONSULTATION REQUIRED

### Summary of Disposal Work Windows

Location & Designation	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Bar Channel (SF-8)	Minimized Disposal					Work Window						
Carquinez (SF-9)	Minimized Disposal					Work Window						
San Pablo (SF-10)	Minimized Disposal										Work Window	
Alcatraz (SF-11)	Minimized Disposal										Work Window	
Suisun (SF-16)	Consultation Required											
Beneficial Reuse Sites	Consultation Required											

### Disposal Work Windows

Species	Site	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Chinook Salmon	SF-9 & SF-16	Minimized Disposal					Work Window						
Steelhead Trout	SF-9, SF-10, & SF-11	Minimized Disposal						Work Window					
Recreational Marine Fishes	SF-10 & SF-11	Work Window				Minimized Disposal							
California Brown Pelican	Within 300' of known roost site	Work Window					Consultation Required		Work Window				
California Clapper Rail, Snowy Plover, Salt Marsh Harvest Mouse, Delta Smelt	Beneficial Reuse Site	Consultation Required											
Delta Smelt	Suisun Bay & marshes (not SF-16)	Consultation Required											
Least Tern	All eelgrass beds, or within 3 miles of nesting area at Alameda Naval Air Station	Consultation Required											

(For more information, see Appendix F or the LTMS EIS/EIR)

**WORK WINDOW**

**MINIMIZED DISPOSAL**

**CONSULTATION REQUIRED**

USACE initiate either informal or formal consultation on their behalf, with the appropriate resource agency for listed species and designated critical habitats.

If a listed species is not federally listed, but is state listed (e.g., Pacific herring), the project proponent must consult with CDFG. This process involves contacting CDFG directly and discussing the rationale for dredging or disposal during the restricted period. If CDFG concurs with the determination of *no adverse effect* on listed species or designated critical habitat, it drafts a waiver for the project, which may contain additional conditions, and sends the waiver to the appropriate permitting agencies.

To ensure protection of biological resources in the Bay, the LTMS agencies implement the following measure:

- *Dredging and dredged material disposal activities that are conducted within the work windows as indicated in Figures 3.2 and 3.3 (and in Appendix F) of the LTMS Management Plan, do not require further Endangered Species Act consultation. The permitting agencies will closely review the rationale for any dredging and disposal projects proposing work outside the work windows. Pursuant to the federal and California Endangered Species Acts, any projects proposing deviation from the work windows are required to undergo consultation with the appropriate resource agency.*

### 3.8.1 Consultation

If some aspect of the project requires dredging or disposal to take place outside the work windows, consultation must occur. The USACE will initiate either informal or formal consultation for the project with the appropriate resource agency. If the restriction is the result of CDFG's Biological Opinion, the *project proponent* should initiate consultation with CDFG.

The informal consultation process is initiated when the USACE provides a complete package of information regarding the project to the appropriate resource agency. Initially, the USACE reviews the project for potential impacts on listed species and designated critical habitat. Some of the information that is necessary for making this determination is shown in Figure 3.4. If the USACE is able to determine that this project *is not likely to adversely affect* the listed species or designated critical habitat, the USACE will request that the appropriate resource agency (NMFS or USFWS) concur with this determination. In cases where listed species or designated critical habitats are present, the use of special mitigation measures may enable dredging and disposal outside the work windows. If the resource agency concurs with the USACE's determination, the resource agency will write a letter formalizing the determination of *not likely to adversely affect* listed species or designated critical habitat (see Figure 3.4).

The formal consultation process is required when the USACE or the appropriate resource agency determines that the proposed project *may adversely affect* listed species or designated critical habitat. If a project is determined to be in this category, formal consultation with the resource agency is necessary and will require the resource agency to develop a Biological Opinion for the project. Federal regulations allow 135 days to complete consultation.

### 3.9 REQUIREMENTS FOR CONSIDERING ALTERNATIVE DREDGED MATERIAL DISPOSAL LOCATIONS

The Clean Water Act (CWA) and BCDC's Bay Plan do not authorize aquatic disposal of dredged material unless an analysis of potential alternatives is first performed and the alternatives prove to be either environmentally unacceptable or infeasible.

#### 3.9.1 Clean Water Act Alternatives Analysis and Definition of Practicability

Fundamental to the CWA Section 404(b)(1) Guidelines (Guidelines) is the precept that dredged or fill material should not be discharged into the aquatic ecosystem unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or cumulatively on the ecosystem(s) of concern. The Guidelines provide the substantive criteria used by the USEPA, USACE, and SFBRWQCB in evaluating proposed discharges to waters of the U.S.

According to the Guidelines, no discharge of dredged or fill material to waters of the U.S. may be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. Practicable alternatives that should be considered include, but are not limited to, activities that do not involve a discharge into waters of the U.S. or ocean waters, and discharges at other aquatic locations that would have less adverse impact. An alternative is practicable if it is available and capable of being done, after taking into consideration cost, existing technology, and logistics.<sup>13</sup> An alternative is practicable only if it fulfills the applicant's project purpose (e.g., maintaining navigability of channels and other subtidal areas).

Practicability is determined on a case-by-case basis; no national or regional guidance exists for evaluating the practicability of any particular alternative. Nevertheless, certain general policies exist that regulatory decision-makers may use to help determine practicability. For example, an alternative that is not capable of fulfilling the applicant's project purpose is clearly not practicable. Alternatives that would require technological advances that are not currently available (e.g., shallow-draft ocean-going barges) are not considered practicable. Similarly, the absence of available alternatives to aquatic disposal (i.e., beneficial reuse sites) may render these alternatives impracticable. Logistics, such as the need to employ equipment that is unavailable, may also make an alternative impracticable. In addition, all practicable alternatives that do not involve discharge to a special aquatic site are presumed to have less adverse impact on the aquatic environment, unless clearly demonstrated otherwise.<sup>14</sup> The DMMO has developed a list of questions to guide applicants in preparing an alternatives analysis (Table 3.3).

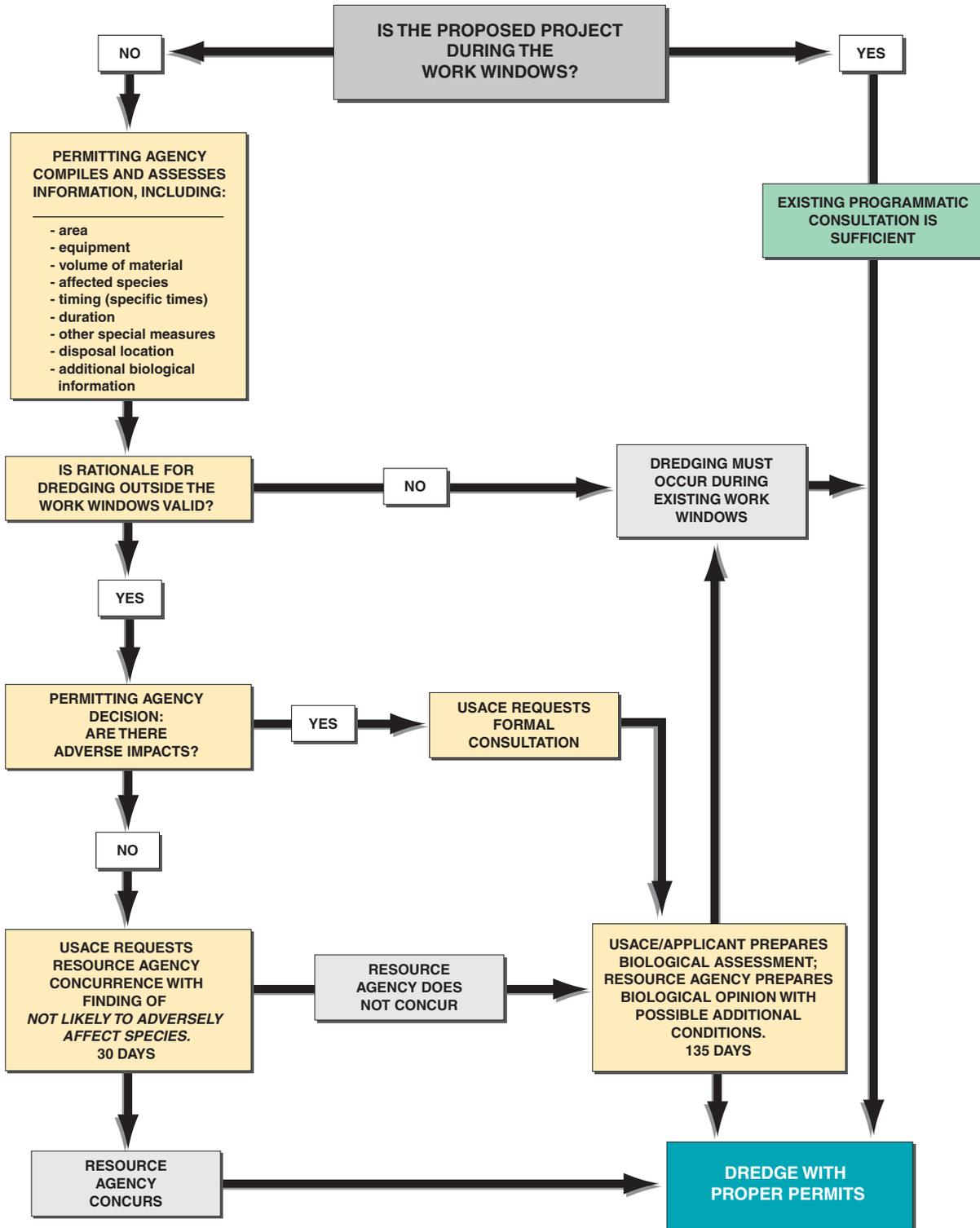
Cost factors often play a large role in assessments of the practicability of alternatives to aquatic disposal of dredged material. The Guidelines are clear that cost must be considered in terms of the overall scope of the proposed project. Therefore, practicable alternative disposal options for a small

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<sup>13</sup> 40 CFR 230.3(q).

<sup>14</sup> Special aquatic sites are defined in the Guidelines at 40 CFR 230.3 (q-1); the definition includes jurisdictional wetlands.

Consultation Process Flowchart



marina will differ from those for the USACE maintenance dredging or for major port dredging projects. Similarly, the alternatives analysis prepared for a small marina will not require the same level of effort as would be required of a major port. The Guidelines preamble also clarifies that the term “cost” does not necessarily account for the applicant’s financial status, investment, or market share. The preamble to the Guidelines states that an alternative is not practicable if it is “unreasonably expensive” to the applicant, and is determined on a case-by-case basis.

**Table 3.3 Alternatives Analysis for In-Bay Disposal**

**Questions that should be addressed by permit applicants in an analysis of alternatives to aquatic discharge of dredged material**

In order for projects proposing the discharge of dredged material to waters of the U.S. to be approved under Section 404 of the Clean Water Act, it must be shown that there is no practicable alternative to the proposed discharge that would have less impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. Applicants for permits for such discharges must submit a written analysis of the alternatives to the proposed discharges. The DMMO has developed a list of questions to guide applicants in preparing the discussion.

- Do alternative disposal sites capable of accepting the proposed dredged material exist?
- What logistical and/or technological issues associated with alternative disposal options exist?
- What are the potential impacts associated with alternative disposal options (e.g., air, water quality, traffic, etc.)?
- Can alternative disposal for this project be made practicable by combining disposal with other projects?
- What is the cost of alternative disposal options?
- What is the cost of disposal site monitoring (taking into account other projects)?
- Do other aquatic sites exist that may be less environmentally damaging?
- If so, what logistical and technical issues exist? What are costs?
- Can the material be used as a resource (e.g., construction material)?
- If so, what costs would accrue to the project proponent?
- If so, what other environmental impacts (e.g., air quality) may result?

### 3.9.2 BCDC Requirements Regarding Feasible Alternatives to In-Bay Disposal

BCDC’s Bay Plan Dredging Policy 3 states in part that dredged material disposal in the Bay should not occur “unless disposal outside these areas is infeasible.” Further, Bay Plan Dredging Policy 4 states in part that in the event in-Bay disposal is proposed, which “exceeds either disposal site limits or any disposal allocation” adopted by the Commission the project proponent “must demonstrate that the potential for adverse environmental impact is insignificant and that non-tidal and ocean disposal is infeasible because there are no alternative sites available or likely to be available in a reasonable period, or because the cost of disposal at alternate sites is prohibitive.” (Chapter 10 presents the complete text of the Bay Plan’s dredging policies.) Therefore, as part of any permit application for disposal of dredged material in the Bay, applicants must analyze the feasibility of alternative disposal locations. BCDC policies are stated broadly and do not have more detailed guidance similar to the

404(b)(1) Guidelines. However, BCDC will work with the other permitting agencies to coordinate implementation of their feasibility determination.

### 3.9.3 Determining Practicable Disposal Alternatives Prior to Determining Sediment Testing Framework

The dredging community has expressed concerns about the expense of sediment testing as alternatives to in-Bay disposal become available. They have expressed particular concern that a project proponent could test sediments for in-Bay disposal only to be told by the agencies that an alternative disposal site was practicable, and be required to remobilize and test sediments again for a new disposal environment (Chapter 4 contains a discussion of sediment testing requirements). To address this concern, the LTMS agencies implement the following measure:

- *To minimize the need for sediment sampling and testing events for multiple disposal environments, the DMMO will encourage project proponents to submit alternatives analyses pursuant to the Clean Water Act and BCDC's laws and policies regarding Bay fill before conducting sediment testing.*

The LTMS agencies strongly recommend this course of action for the following projects: new work projects, maintenance projects exceeding 10,000 cubic yards, and maintenance projects proposing a change from beneficial reuse or ocean disposal to in-Bay disposal.<sup>15</sup>

## 3.10 CONSOLIDATED PERMIT CONDITIONS

Authorizations for dredging and dredged material disposal projects issued by the LTMS agencies include permit conditions, specific requirements about how the project is to be performed. Each LTMS agency has conditions that are included in most project authorizations. In some cases, these requirements are similar in each agency's authorization, but not identical, making it difficult for the permittees to ensure they are complying with all conditions of all permits, and for the agencies to track compliance.

In keeping with the LTMS goal of establishing a cooperative permitting framework for dredging and dredged material disposal applications, the LTMS agencies have reviewed and compared permit conditions, and determined that they could be modified to be more consistent throughout. Appendix G contains a list of model permit conditions that will be included, as appropriate, in USACE, USEPA, BCDC, and SFBRWQCB authorizations for dredging and disposal projects. Consequently, the LTMS agencies implement the following measure:

- *The LTMS agencies, in issuing permits for dredging and disposal projects, will coordinate permit conditions and may use, on a case-by-case basis, consolidated conditions contained in the LTMS Management Plan (Appendix G). Each agency may include permit conditions other than those identified in Appendix G.*

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<sup>15</sup> If the sediments turn out to be unsuitable for in-Bay disposal, another placement alternative must be proposed, which could involve additional testing, regardless of the initial evaluation of practicability and feasibility.

### 3.11 CONSOLIDATED PERMIT

A number of the interested parties requested that the LTMS agencies develop a single consolidated permit for dredging and disposal projects, as a step in fulfilling the fourth goal of the LTMS to “establish a cooperative permitting framework for dredging and dredged material disposal applications.” DMMO has made substantial progress toward this goal by providing a single point of entry into the permitting process, developing a joint application form, and providing coordinated review of applications and supporting documents. Further, the LTMS agencies have made progress toward this goal through modification of certain permit conditions.

Through review of the existing laws and regulations, it appears that the only available method for a consolidated permit is issuance of a programmatic general permit (PGP). The USACE could, after opportunity for public comment, issue a PGP to one of the LTMS state agencies. That agency would then be responsible for administering the PGP for dredging and dredged material disposal in the geographic area specified by the PGP. The New England District of the USACE has issued a number of PGPs to states within its jurisdiction, which could serve as models for a San Francisco PGP.

However, several factors limit the usefulness of a PGP for the Bay Area:

- A PGP would not be applicable to SF-DODS. The Marine Protection, Research, and Sanctuaries Act (MPRSA) does not provide for USEPA to yield control of the program. Moreover, because SF-DODS is located beyond the boundary of the State of California, the LTMS state agencies do not have jurisdiction at the site.
- There are currently no PGPs pursuant to Section 404 of the CWA in California because no state agency has the statutory authority to administer a PGP.
- While a PGP could eliminate the need for individual federal permits for in-Bay disposal projects, there is no mechanism for the state agencies to yield control of their regulatory programs to one another.

Based on a thorough consideration of the time and effort needed to develop a PGP, the lack of statutory authority for the state to assume a PGP, and its limited usefulness, the LTMS agencies have decided not to pursue a consolidated permit at this time.

### 3.12 DREDGING AND DISPOSAL FEES

Processing fees for permits and/or authorizations from the BCDC and the SFBRWQCB vary, and project proponents should contact the individual agencies for more information or refer to the DMMO website. Through the course of the LTMS planning process, the implementation of new fees for dredging and dredged material disposal in the Bay Area was discussed. Existing fees include: (1) the above-referenced permit processing fees (including fee for the disposal of materials in waters of the State that are subject to Waste Discharge Requirements and/or require CWA 401 Water Quality Certification); (2) the disposal fee collected and used for the Regional Monitoring Program; and (3) the State Lands Commission fee for resource extraction. The discussion among the LTMS agencies

and the interested parties covered the potential for assessing new fees—which would require state legislation prior to implementation—and the possible use of fees for disposal site impact analysis, and the development and management of beneficial reuse sites. In general, participating members from the environmental community supported the concept of a new fee while representatives from the dredging and business communities did not. In light of the inability to reach consensus among the members of the group, the LTMS agencies decided to put the issue on hold. However, so as to facilitate further consideration of a new fee for dredging and disposal activities, the LTMS agencies implement the following measure:

- *The LTMS agencies will reconsider funding mechanisms for the LTMS program, including possibly instituting a new fee for dredging and disposal activities, at the initial three-year transition review period.*