

4.8 REGULATORY ENVIRONMENT

The federal and state regulatory agencies participating in the LTMS effort are the U.S. Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers (COE), the San Francisco Bay Conservation and Development Commission (BCDC), the San Francisco Bay Regional Water Quality Control Board (SFBRWQCB) and the State Water Resources Control Board (SWRCB). The five cooperating agencies in the LTMS each have unique organizational characteristics as they are charged with implementing different bodies of state and federal law. Policies developed through this analysis must not be inconsistent with these bodies of law.

This section first describes the legal and policy environment within which the LTMS agencies operate, then the specific activities of each cooperating agency as they relate to dredging and material disposal within the Planning Area.

4.8.1 Existing Laws and Policies Governing Dredged Material

A number of major laws and policies govern the disposal of dredged material within the Planning Area. These are outlined in the following section, beginning with an international agreement, followed by federal, state, and local laws and policies.

4.8.1.1 International Treaties

The major international agreement affecting dredging is related specifically to ocean disposal of dredged material. An agreement developed by the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters (26 UST 2403: TIAS 8165), also known as the London Dumping Convention (LDC), became effective on August 30, 1975, after ratification by the participating nations including the United States. The criteria from the LDC has been incorporated into the Marine Protection, Research, and Sanctuaries Act (MPRSA) assuring compliance via federal law.

4.8.1.2 Federal Laws

Rivers and Harbors Act of 1899, Section 10

This Act authorizes the COE to regulate virtually all obstruction to navigation within the navigable waters of the United States. Virtually all dredging projects must comply with this Act and therefore require a Section 10 permit, however the COE does not issue Section 10 permits to itself for federally authorized projects.

Water Resources Development Acts

The legislation that governs the conduct of the Corps of Engineers' Civil Works program consists of numerous separate enactments of Congress. The work of preparing and considering such legislation is done largely in the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure. Study authorizations are either unique, study-specific authorities; or standing, program authorities, and are contained in public laws governing water resources, primarily the Water Resources Development Act (WRDA). This legislation seeks to specifically authorize those projects that meet the nation's need to support commercial navigation, reduce flood damages due to hurricanes and storms, and to restore and protect the environment.

WATER RESOURCES DEVELOPMENT ACT OF 1986. The Water Resources Development Act of 1986 establishes new requirements for non-federal interests regarding cost-sharing for harbor construction and maintenance and for flood control and other purposes. It also allows non-federal interests to undertake navigation studies, consistent with COE regulations, and submit them to the Secretary of the Army for transmittal to Congress. Another provision of the law allows non-federal interests to levy tonnage duties or fees on vessels using improved harbors to finance the non-federal share of project improvements. The Act also established the Harbor Maintenance Trust Fund in the U.S. Treasury by amending the Internal Revenue Code of 1954.

WATER RESOURCES DEVELOPMENT ACT OF 1992. The Water Resources Development Act of 1992 authorizes the Secretary of the Army to carry out projects for the protection, restoration, and creation of aquatic and ecologically related habitats, including wetlands, in connection with dredging for construction, operation, or maintenance of an authorized navigation project in certain circumstances. In addition, any such project would require a cooperative agreement with a local sponsor which would include, among other things, cost-sharing requirements.

WATER RESOURCES DEVELOPMENT ACT OF 1996. The Water Resources Development Act of 1996 revises and clarifies cost sharing for dredged material disposal facilities. Section 201 states that land-based and aquatic dredged material disposal facilities for construction and O&M will now be considered general navigation features and cost shared in accordance with Title I of WRDA '86. Section 601 provides that the Harbor Maintenance Trust Fund will be the source of the federal portion of funds for construction of dredged material disposal facilities for

O&M. Section 207 allows the Assistant Secretary of the Army to select disposal methods that are not the least cost option if incremental costs are reasonable in relation to the environmental benefits including creation of wetlands and shoreline erosion control. Section 217 allows for the design and use of excess capacity in authorized dredged material disposal facilities at the request and expense of a non-federal interest.

Water Resources Planning Act of 1965

This Act creates the Water Resources Council (WRC) and outlines its purposes and duties concerning development of planning principles and guidelines. A subsequent document, *Economic and Environmental Principles for Water and Related Land Resources Implementation Studies* (March 10, 1983), published by the WRC, references this Act. This document describes the federal objective for water and related land resources project planning as that project which contributes to national economic development consistent with protecting the Nation's environment, pursuant to national environmental statutes, applicable executive orders, and other federal planning requirements. Contributions to national economic development (NED) are increases in the net value of the national output of goods and services, expressed in monetary units. Contributions to NED are the direct net benefits that accrue in the planning area and the rest of the Nation. Contributions to NED include increases in the net value of those goods and services that are marketed, and also of those that may not be marketed. The federal standard is the equivalent of NED for maintenance projects in that it denotes the level of maintenance at which the improved net value of the project is preserved.

National Environmental Policy Act of 1969 (42 U.S.C. 1251 et seq.)

The National Environmental Policy Act (NEPA) affects federally authorized projects and was established to ensure that federal projects or decisions incorporate considerations of environmental consequences into the decision making process. NEPA establishes a process for input by affected parties through public noticing and scoping. This input is considered when analyzing a reasonable range of alternatives in the document, either an Environmental Assessment (EA) or Environmental Impact Statement (EIS). For dredging projects, the federal lead agency, typically the COE, is responsible for NEPA compliance.

Clean Water Act of 1972 (33 U.S.C. 1252 et seq.)

The Clean Water Act (CWA) was enacted to restore and maintain the chemical, physical, and biological integrity of the Nation's waters through the elimination of discharges of pollutants. Among other things, the CWA provided that continuing (point-source) pollutant discharges could not occur unless specifically authorized by permit, and it established permit programs for various forms of discharges, including the discharge of dredged materials. The main sections of the CWA that apply to dredging and dredged material disposal are Sections 401 and 404.

CWA SECTION 401. The Act requires Section 401 Certification that the permitted project complies with state water quality standards for actions within state waters or federal water quality criteria for offshore waters. The State is required to establish water quality standards for all state waters including the territorial sea under Section 301 of the CWA. Compliance with Section 401 is provided by approval of a Water Quality Certification or waiver from the State and Regional Water Quality Control Boards (SWRCB and RWQCBs), and is a condition for issuance of a Section 404 permit discussed below.

CWA SECTION 404(b)(1). This section of the CWA addresses permits for dredged or fill material. It establishes guidelines for the discharge of dredged or fill materials and for the prevention of such discharges, individually or in combination with other activities, from having unacceptable adverse impacts to the ecosystem.

The COE has the legal authority to regulate, through the issuance of a Section 404 permit, the discharge of dredged or fill material in inland waterways, wetlands, and territorial seas. The COE must also provide notice and opportunity for public hearings. This Section also requires EPA to develop guidelines (the "404(b)(1) Guidelines," published separately at 40 CFR Part 230) that the COE must follow in evaluating and issuing permits for the discharge of dredged or fill material. Although this Section specifically applies to applications for federal permits, and the COE does not issue itself permits, the COE policy is to apply the EPA guidelines to their projects as well.

The 404(b)(1) Guidelines include environmental criteria for determining whether a proposed discharge may have unacceptable adverse effects, and also establishes that aquatic disposal may not be permitted if a non-aquatic disposal alternative is practicable. Sediment testing (i.e., consistent with the recently released Inland Testing Manual [USEPA/USACE 1998]) is one aspect of

determining whether a proposed discharge of dredged material is environmentally acceptable; however, other considerations (including the availability of practicable alternatives) also separately apply. In addition, no permit for the discharge of dredged material into waters of the U.S. may be issued if it would violate applicable state water quality criteria or federal water quality standards.

Clean Air Act as Amended (42 U.S.C. Section 7401 et seq.)

The Clean Air Act (CAA) is intended to protect air quality by regulating emissions of air pollutants and applies to dredging projects disposing of dredged material onshore and within the territorial sea. The CAA requires compliance with state and local requirements and prohibits federal agencies from engaging in non-conforming activities.

Marine Protection, Research and Sanctuaries Act of 1972 (also known as the Ocean Dumping Act) (33 U.S.C. 1401 et seq.)

The Marine Protection, Research, and Sanctuaries Act (MPRSA) is the United States' implementation of an international treaty, the Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter (also known as the "London Convention"). The MPRSA requires EPA to establish criteria for reviewing and evaluating permits for disposal of material in ocean waters. It requires permits for the disposal of some wastes (such as dredged material), and prohibits the disposal of some wastes entirely (including radioactive wastes, and chemical and biological warfare materials). The main sections of the MPRSA that apply to dredging and dredged material disposal are Sections 102, 103, and 104.

MPRSA SECTION 102. The Act authorizes EPA to establish criteria for evaluating all dredged material proposed for ocean dumping. These criteria are published separately in the Ocean Dumping Regulations at 40 CFR Part 220-228. The ocean dumping regulations describe when dredged material may be disposed at an ocean dredged material disposal site (ODMDS), and when it may not. For example, dredged material containing certain chemical contaminants at other than trace levels are prohibited from disposal. "Trace contaminants" are, in turn, defined as materials that will not cause significant undesirable effects, as measured by bioassay test procedures acceptable to EPA and the COE (the accepted bioassay procedures are published in the testing manual known as the Green Book [USEPA/USACE 1991]).

Section 102 also authorizes EPA to designate permanent

ODMDS. ODMDS designations are made in accordance with specific site selection criteria designed to minimize the adverse effects of ocean disposal of dredged material (for example, by avoiding sensitive habitat areas, sanctuaries, etc., to the maximum extent practicable). EPA recently designated an ODMDS approximately 50 nautical miles offshore of the Golden Gate, SF-DODS.

MPRSA SECTION 103. The Act authorizes the COE to issue Section 103 permits, subject to EPA concurrence or waiver, for dumping dredged materials into the ocean waters. It requires public notice, opportunity for public hearings, compliance with criteria developed by the EPA (unless a waiver has been granted), and the use of designated sites whenever feasible. Although the COE does not issue itself permits, the COE and EPA apply these standards to COE projects as well. The COE cannot issue a Section 103 permit unless EPA concurs, concurs with conditions, or issues a waiver for the proposed project.

MPRSA SECTION 104. Section 104 establishes the authority for EPA and the COE to require permit conditions addressing virtually any aspect of ocean disposal operations that may relate to environmental effects, such as the type and volume of material discharged, the timing and location of discharge, and surveillance and monitoring.

Coastal Zone Management Act of 1972 and subsequent 1990 Amendments (16 U.S.C. 1456 et seq.)

This Act provides for the development and implementation of coastal management programs by the states. BCDC's coastal management program for the Bay, which was approved in 1977, is based on the provisions and policies of the McAteer-Petris Act, the Suisun Marsh Preservation Act of 1977, the San Francisco Bay Plan, the Suisun Marsh Protection Plan, and its administrative regulations. Under the CZMA, federal agencies are required to carry out their activities and programs in a manner consistent with BCDC's coastal management program. To implement this provision, federal agencies make *consistency determinations* regarding proposed federal activities while applicants for federal permits or licenses, or federal financial assistance make *consistency certifications*. The BCDC reviews these determinations and certifications, and either concurs or objects based on a proposal's consistency with its laws and policies.

Fish and Wildlife Coordination Act of 1958 (16 U.S.C. 661 et seq.)

This Act requires the federal lead agency for a dredging project to consult with and consider the recommendations

of the U.S. Fish and Wildlife Service (USFWS), the California Department of Fish and Game (CDFG) (in California) and, for projects affecting marine fisheries, with the National Marine Fisheries Service (NMFS). The Act is applicable to COE and EPA evaluation of CWA Section 404 and MPRSA Section 103 permits.

Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)

This Act protects federally listed and proposed threatened and endangered species. Consultation with and an opinion statement from USFWS and NMFS are required under Section 7 of this Act. Section 7(a) further prohibits federal agencies from jeopardizing listed and proposed species, and it requires federal agencies to implement conservation programs for listed species. Section 9 of the Act prohibits the taking of listed species without authorization from the USFWS or NMFS.

Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.)

This Act prohibits taking or harassment of any marine mammals except incidental take during commercial fishing, capture under scientific research and public display permits, harvest by native Americans for subsistence purposes, and any other take authorized on a case-by-case basis as set forth in the act. The Department of the Interior, Fish and Wildlife Service, is responsible for the polar bear, sea otter, marine otter, walrus, manatees, and dugong, while the Department of Commerce, National Marine Fisheries Service, is responsible for all other marine mammals.

National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.)

This Act is intended to protect historic and prehistoric resources from impacts by federal projects and requires consultation (under Section 106) with the State Historic Preservation Officer (SHPO).

Farmland Protection Policy Act of 1984

The purpose of this Act is to minimize contributions to the unnecessary and irreversible conversion of farmland to non-agricultural uses by federal agencies. Restoration of historic diked baylands or dredged material placement on uplands currently in agricultural uses or under agricultural preserve status (such as the Williamson Act) require coordination with the Soil Conservation Service.

4.8.1.3 State Laws and Policies

California Environmental Quality Act of 1973 (P.R.C. 21000-21177)

The California Environmental Quality Act (CEQA) contains requirements similar to NEPA and requires the preparation of an Environmental Impact Report (EIR) prior to implementation of applicable projects. CEQA requires significant impacts to be mitigated to a level of insignificance or to the maximum extent feasible. The state or local lead agency is responsible for CEQA compliance.

Porter-Cologne Water Quality Control Act of 1966 (C.W.C. Section 13000 et seq.; C.C.R. Title 23, Chapter 3, Chapter 15)

This Act is the primary state regulation addressing water quality, and waste discharges (including dredged material) on land. The Act's requirements are implemented by the State Water Resources Control Board (SWRCB) at the state level, by the San Francisco Bay Regional Water Quality Control Board (SFBRWQCB) in the Bay Area, and by the Central Valley Regional Water Quality Control Board (CVRWQCB) in the Delta. The dividing line between the SFBRWQCB and the CVRWQCB is in the vicinity of Chipps Island in Suisun Bay. Additionally, the SWRCB requires a Permit to Appropriate Water for actions including diversion of surface waters to non-riparian land or for seasonal storage of unappropriated surface waters.

California Endangered Species Act of 1984 (Fish and Game Code Section 2050 et seq.)

This Act provides for recognition and protection of rare, threatened, and endangered plants and animal species. The Act requires state agencies to coordinate with the CDFG to ensure that state authorized/funded projects do not jeopardize a listed species. The Act prohibits the taking of a listed species without authorization from the CDFG.

McAteer-Petris Act

The McAteer-Petris Act, first enacted in 1965, created the San Francisco Bay Conservation and Development Commission to prepare a plan to protect the Bay and shoreline and provide for appropriate development and public access. The McAteer-Petris Act directs the Commission to issue or deny permit applications for placing fill and extracting materials, including dredged material, or changing the use of any land, water, or

structure within its jurisdiction, which includes the Bay, shoreline band, saltponds, managed wetlands, and certain waterways. Such permits are issued or denied in accordance with the provisions of the McAteer-Petris Act and Suisun Marsh Preservation Act, and the policies of the *San Francisco Bay Plan* and the *Suisun Marsh Protection Plan*. The shoreline development aspect of the McAteer-Petris Act ensures that prime shoreline sites are reserved for priority uses, such as ports, water-related industry, airports, wildlife refuges, and water-related recreation. The Act also ensures that public access to the Bay is provided to the maximum extent feasible for each development project, and that shoreline development projects are designed in an attractive and safe manner. Under the federal Coastal Zone Management Act, federal agencies are required to carry out their activities and programs in a manner consistent with BCDC's coastal management program.

California Wetlands Policy

This state policy recognizes the value of marshlands and wetlands. The California Resources Agency and the departments within that agency do not authorize or approve projects that fill or harm any type of wetlands. Exceptions may be granted for projects meeting all the following conditions: the project is water dependent; there is no other feasible alternative; the public trust is not adversely affected; and the project adequately compensates the loss.

State Lands Commission Policies

California became a state on September 9, 1850, and thereby acquired nearly 4 million acres of land underlying the state's navigable and tidal waterways. Known as "sovereign lands," these lands included the beds of rivers, streams, and sloughs; non-tidal lakes; tidal navigable bays and lagoons; and tide and submerged lands adjacent to the entire coast and offshore islands of the state from mean high tide line to 3 nautical miles offshore. These lands are managed by the California State Lands Commission (SLC). The state's interest in these lands consists of sovereign fee ownership, or a Public Trust easement implicitly retained by the state over sovereign lands sold into private ownership. They can only be used for public purposes consistent with the provisions of the Public Trust, such as fishing, water dependent commerce and navigation, ecological preservation, and scientific study. Use of these lands, including dredging and dredged material disposal activities, may require written authorization from the SLC. Many of the alternative project components under consideration are subject to the jurisdiction of the SLC. Therefore, coordination with the SLC will be fulfilled when required for a specific project. In addition, the

SLC reviews dredging projects for compliance with CEQA. Public and private entities may apply to the SLC for leases or permits on state lands for many purposes including dredging.

Early in its history, the California Legislature statutorily transferred certain tide and submerged lands in trust to cities and counties, which were then required to develop harbors to further state and national commerce. For those grants where minerals were reserved to the state, a dredging lease is required by the SLC (P.R.C. 6001-6706). In some cases, the state legislature has granted, by statute, administration of the state's interests in filled and unfilled tidelands and submerged lands to local agencies. In these cases, SLC retains an oversight role. Most of the alternative project components under consideration have the potential for affecting sovereign lands, including disposal at in-Bay sites as well as upland/wetland/reuse options, and thus would be subject to the jurisdiction of the SLC. Therefore, coordination with the SLC would be necessary.

4.8.2 Description of the Permitting Framework and Process

Since the LTMS was initiated in 1990, the LTMS agencies have adopted several measures to improve the regulatory process. First, the agencies agreed on the order in which the permit applications should be processed as well as other measures to reduce interagency procedural conflicts. Second, in order to resolve many of the concerns regarding past testing requirements, the agencies prepared improved, consistent interim guidelines for testing of dredged material proposed for in-Bay disposal. These guidelines are contained in COE Public Notice (PN) 93-2. The agencies also agreed to conduct extensive informal coordination on permit applications and implement consensus solutions to problems, including beneficial reuse of dredged material whenever possible. As a result, a coordinated permit process for dredging is being developed that will provide for the streamlined processing of routine dredging permit applications in the region.

The following section describes the current permit application process. It is important to note that a more streamlined permit process will not, in and of itself, allow for the full implementation of any of the alternative long-term approaches evaluated in this EIS/EIR. The action alternatives' larger target volumes for upland or wetland reuse (especially those of Alternatives 2 and 3) would be difficult to fully achieve under existing agency authorities and cost sharing requirements. In Chapter 7, the EIS/EIR includes a preliminary discussion of the kinds of steps

that could be taken in the future — including some that are outside the agencies' control — to more fully achieve the long-term beneficial reuse goals of any of the alternatives. However, project-specific decisions (permits or other project authorizations) at any time must be based on the relevant regulatory provisions in place at that time. Following completion of the EIS/EIR, the LTMS agencies will develop a detailed Management Plan that implements the selected alternative to the greatest extent possible consistent with existing laws, regulations, and agency authorities. The Management Plan would be updated in the future as environmental conditions or the agencies' authorities and regulations change.

4.8.2.1 Current Application Process

An applicant begins the permit process by preparing information that describes the location of the project, volume of material that needs to be removed, historical data on the types and quality of sediment removed from that site, and the proposed disposal location. The applicant then contacts one of the permitting agencies (presently, there is no single point of contact for initiating the application process with all agencies). The agencies then review the basic information provided by the applicant and determine what level and type of sediment tests are appropriate for the project's size, location, characteristics, and potential for contamination. Applicants are then directed to prepare a sampling and analysis plan of appropriate scope and detail.

Most applicants propose in-Bay disposal and test accordingly (as per PN 93-2 as discussed in more detail in Chapter 3). Under the current permit process, additional testing is required for ocean disposal (as described in USEPA and USACE 1991) and upland/wetland reuse (SFBRWQCB Interim Sediment Screening Criteria) when initial tests indicate the sediment is not suitable for in-Bay disposal or when there is insufficient capacity at in-Bay sites.

Applicants submit the testing data to the agencies that have the regulatory authority over the proposed disposal location as described in the sections below. These agencies will review the testing data and determine whether the results are acceptable and whether the material is suitable for disposal at the proposed location. If the testing was improperly performed or other problems invalidated the results, then the agencies will require retesting. If all or some of the material is judged to be unsuitable for disposal based upon the test results, the applicant can either defer dredging, test for disposal at a different environment (for example a landfill), or conduct more intensive testing to better determine the

areal extent or nature of the contamination/toxicity. (In very rare situations if the material is determined to be a hazardous waste or the RWQCB [Regional Board] determines it to pose an unacceptable threat to water quality, then the owner will be required to remove the material to an approved location). The final stages of the permit process depend on the disposal site(s) and are described in more detail below.

In-Bay Disposal

If disposal is proposed in or near the Bay, the applicant first fills out a COE permit application. Applicants must check with the State Lands Commission (SLC) to determine whether a SLC lease is required. If so, the SLC application must also be filled out. Once the COE determines that an application is complete, it prepares a public notice for the proposed project.

The applicant also requests Regional Board certification or waiver indicating that the proposed project will meet water quality standards, and applies for a BCDC permit. The Regional Board lists certifications for approval at its monthly meetings, but conducts public hearing only on projects that staff determines require consideration by the Board or that are controversial. The actual certification is issued by the SWRCB (State Board) with any appropriate permit conditions.

Once the Regional Board takes action on the water quality certification, the BCDC permit application can be filed. Major permits require preparation of staff summaries and recommendations, public hearings before the Commission, and a Commission vote on applications. However, BCDC's regulations allow most maintenance dredging and smaller new work projects to be authorized administratively. Proposed administrative permit actions are listed and are processed as major permits requiring public hearings if the BCDC Executive Director determines that the project does not qualify for administrative processing or the Commission objects to administrative processing. BCDC can issue a permit for part or all of the proposed project and include permit conditions. The SLC uses a similar consent calendar approach for most dredging lease applications. The USFWS, the NMFS, and state resource agencies provide comments as part of each of the COE's and the state agencies' public review processes.

Although EPA does not itself issue permits for in-Bay disposal, the EPA participates in the entire permit process from pre-application consultation to post-project enforcement. EPA's review of proposed in-Bay disposal projects is primarily implemented through the CWA Section 404 process administered by the COE. The EPA

assists applicants on technical matters regarding sediment sampling and analysis, provides comments to the COE and the state regarding the acceptability of the proposed action, recommends appropriate special conditions on permit issuance, and can object to permit issuance under certain conditions.

After circulation of the public notice, the COE directs the applicant to respond to any issues and concerns that have been submitted by other agencies or the public. All outstanding issues must be resolved, water quality certifications (or formal waivers of these certifications) must be issued by the Regional and State Boards, and a permit from BCDC is required prior to issuance of the COE permit.

Although the existing process implies a sequential process for agency review of applications, much of the actual review occurs concurrently. Agency staffs spend extensive time informally coordinating their review of applications. However, even with such coordination, permit processing often requires varying periods of time, may contain different special conditions, and can be enforced independently.

Ocean Disposal

If the proposed disposal is to the ocean, then no approval is required from the state. This is because the ocean disposal site designated by EPA is outside state waters. However, permits are still required for the dredging from BCDC and potentially from the Regional Board. The COE will process the dredging application in a manner similar to that for in-Bay disposal, but subject to the requirements of the MPRSA rather than the CWA. In this case, the EPA must actively concur that material is suitable for ocean disposal for a permit to be issued. Sediment suitability is determined in accordance with the evaluation guidelines in USEPA and USACE (1991).

Upland/Wetland Reuse (UWR) Disposal or Reuse

Requirements for UWR projects differ from those for open water disposal. In most locations, a Regional Board permit for discharge of waste to land will be required. An additional permit will be required from BCDC if the disposal site is within 100 feet of the Bay or Suisun Marsh. A BCDC permit would be needed if a disposal site were located within the shoreline band or Suisun Marsh, as noted, as well as within other areas of its jurisdiction (e.g., the Bay, salt ponds, managed wetlands, etc.). Further permits will also be required if the proposed disposal site is a wetland; in these cases, a COE permit under CWA Section 404 will be required with full EPA involvement and the requirement for

Regional Board water quality certification. COE CWA applications for disposal in wetlands are handled much differently from permits for disposal at designated open water sites and involve, among other things, a wetlands jurisdictional determination and a 404(b)(1) alternatives analysis for each permit application.

In addition to these requirements, most UWR projects are subject to additional state and local controls. The Integrated Waste Management Board (IWMB) may become involved, particularly if the material is taken to a landfill. However, its regulations are mostly implemented through local governments. Approval will be required by local government, based on consistency with applicable General Plans, Specific Plans, zoning, and applicable health and safety codes. In most instances, a use or grading permit will be required. If the material is to be taken to a landfill, either as a waste or building material, then the material must meet the requirements of the landfill. Landfill requirements vary considerably, but all must meet the standards promulgated by the IWMB.

Projects in the Sacramento-San Joaquin Delta are regulated by the Sacramento District of the COE on the federal level, and by the Central Valley Regional Board on the state level.

In all cases, the applicant must follow the requirements of CEQA and NEPA. Routine maintenance dredging is usually categorically exempt from the provisions of CEQA. The USFWS and the NMFS, in addition to commenting to the other agencies, will also require consultation under the ESA if any threatened or endangered species may be affected by the proposed project. The California Department of Fish and Game (CDFG) has a similar role under the state Endangered Species Act. A Fish and Game permit is required if the project would result in streambed alteration.

4.8.2.2 COE Projects

Dredging of areas maintained by the COE under congressional authorization is not subject to many of the provisions discussed above. For example, the COE does not need to obtain a permit from itself for disposal projects authorized by Congress. However, it is supposed to meet the same substantive requirements as required by its permitting authority. There is continuing controversy as to whether the COE needs to obtain state permits for disposal projects that would affect water quality; however, the COE must receive water quality certification from the Regional Board and consistency certification from BCDC. The consistency certification requirements and process differ substantially from the

permit process; for example, conditions cannot be placed on consistency certifications. No local permits are needed if the COE constructs an authorized UWR project, but local sponsors must obtain any state or local permits if they provide UWR sites for use by the COE for authorized projects.

4.8.3 Process for Material that is Unacceptable for Aquatic Disposal

Approvals and permits required to operate as a disposal site for contaminated dredged material may include, but are not limited to, the following:

- Individual Section 401 water quality certification for the effluent discharge at the disposal site, from the RWQCB.
- Waste Discharge Requirements for the placement of dredged material, from the RWQCB.
- A Solid Waste Facilities permit, if temporary dredged material holding basins are constructed, from the IWMB.
- A Section 10 and/or 404 permit for impacts to navigation or the discharge of dredged or fill material into waters of the United States (including wetlands), from the COE.
- A Section 106 consultation under the National Historic Preservation Act if the project may impact cultural resources. This consultation will occur through the COE's permit process. The COE is responsible for completing the 106 process, with the applicant's participation.
- A Section 7 consultation (formal or informal) under the Endangered Species Act for identifying and assessing potential impacts to endangered species. This consultation will occur through the COE's permit process.
- A permit from the BCDC for work within the 100-foot shoreline band around San Francisco Bay, in the Suisun Marsh, or in other managed San Francisco Bay wetlands, salt ponds, or certain waterways.
- A Section 1603 or 1604 Streambed Alteration Agreement from the CDFG.
- A permit or lease for lands in which the state holds a property interest and to ensure disposition and/or use of those properties, from the SLC.
- Approval over lands in which the state holds a property interest and to ensure proper disposition and/or use of those properties, from the Department of Health Services.
- Approval for the portion of the project that relates to assessing and ensuring the safety of levees, from the State Water Resources Board.
- Approval to ensure structural safety of dams and approval of construction or enlargement of dams and reservoirs, from the State Department of Safety of Dams.
- A permit to establish requirements for air emission from equipment to be used during operation at the site, as necessary, from the Bay Area Air Quality Management District.
- Approvals from local city and county planning departments as appropriate (e.g., general plan amendments, zoning ordinances, etc.).