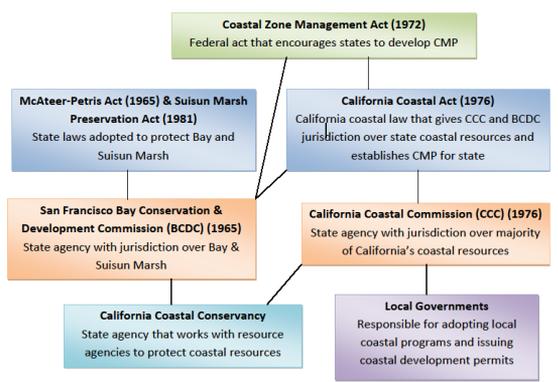


Navigating the Environmental Compliance Process in Coastal California

Instructors:
Monique Fountain
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COASTAL ZONE MANAGEMENT ACT

Coastal Laws & Governing Bodies



Coastal Zone Management Act of 1972

- Purposes:
 - Preserve, protect, develop, and, where possible, restore and enhance coastal zone resources
 - Actively involve states in coastal preservation process
 - Provides “incentives” to develop state-specific Coastal Management Programs

Coastal Zone Management Act (cont.)

- Responsible Agency:
 - NOAA, Office of Ocean and Coastal Resource Management (OCRM)
 - State and local agencies with coastal zone oversight (i.e., CCC, BCDC, and local governments)
- Trigger: Project modifies land or water use in the coastal zone of state with an approved “coastal zone management program”

“Coastal Zone” Defined under CZMA

- Coastal waters (including the lands therein and thereunder)
- Adjacent shorelands
- Seaward to outer limit of State title
- Inland from the shoreline
- To a point that has “significant and direct impacts on coastal waters”

Federal Consistency

- CZMA mechanism that allows state agencies to ensure federal actions are consistent with CZMP
- Triggered by:
 - Federal action
 - Reasonably likely to affect land/water resources in the coastal zone

What are Federal Actions?

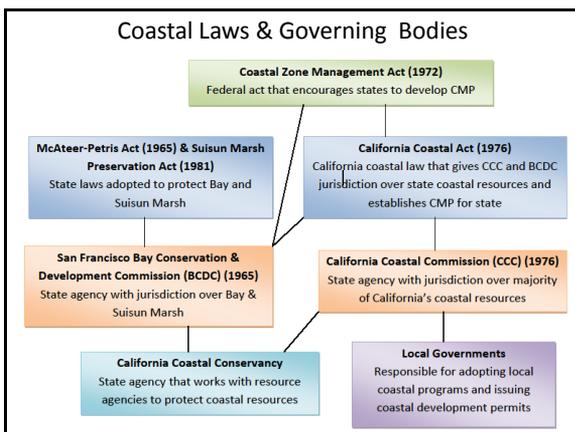
- Federal activities, including development projects
 - Requires *Consistency Determination (or Negative Determination)*
- Projects requiring Federal license, permit, or funding, or OCS activity
 - Requires *Consistency Certification (or No Effects Determination)*

Federal Consistency Summary

Federal Activity		Federal License, Permit, Funding, or OCS Activity	
Federal action that is reasonably likely to affect resources in coastal zone			
Consistency Determination	Negative Determination	Consistency Certification	No Effects Determination
Activity consistent to the maximum extent practicable with CZMP	Activity will have no effect on coastal zone	Activity complies with and will be conducted in a manner consistent with CZMP	Activity will have no effect on coastal zone
Federal agency provides written documentation 90 days prior to federal approval		Project applicant provides written documentation to state agency	
State agency reviews / comments within 60 days		State agency reviews / comments within 6 months	
Federal agency may continue with a Federal Activity even if state agency disagrees		Federal agency <u>cannot</u> approve / finance project without state agency agreement	

CALIFORNIA STATE COASTAL LAWS & GOVERNING BODIES

Coastal Laws & Governing Bodies



McAteer-Petris Act of 1965

- Purpose:
 - Preserve San Francisco Bay from indiscriminate filling
 - Develop regional plan governing long-term use of the Bay
 - San Francisco Bay Plan

Nejedly-Bagley-Z'berg Suisun Marsh Preservation Act of 1974

- **Purpose:**
 - Protect Suisun Marsh from potential residential, commercial and industrial development
 - Develop regional plan to ‘preserve the integrity and assure continued wildlife use’ of Suisun Marsh
 - Suisun Marsh Protection Plan

California Coastal Act of 1976

- **Purpose:**
 - Provide long-term protection to California’s coastline
 - Established California’s CZMP
 - Established California Coastal Commission (CCC)
 - Made San Francisco Bay Conservation and Development Commission (BCDC) responsible for coastal resources in Bay Area
 - Partnered CCC and local governments

San Francisco Bay Conservation & Development Commission

- Responsible for implementing San Francisco Bay Plan and Suisun Marsh Protection Plan
 - Render decisions on San Francisco Bay Development & Suisun Marsh Development Permit Applications
 - **GOAL:** prevent unnecessary filling of Bay and increase public access
- Responsible for enforcement of CCA and CZMA in Bay Area
 - Federal consistency reviews
 - **GOAL:** ensure federal actions occurring in the Bay are consistent with CCA and CZMA

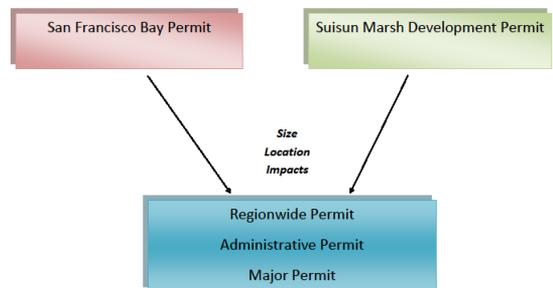
BCDC Jurisdiction

- San Francisco Bay
- Certain waterways that flow into the Bay
- Salt ponds and managed wetlands around the Bay
- Shoreline band (100 feet inland from the Bay)
- Primary management area of Suisun Marsh (i.e., below 10-foot contour line)

Activities Requiring BCDC Permit

Filling	Placing solid material, building pile-supported or cantilevered structures, disposing of material or permanently mooring vessels in the Bay or certain tributaries to the Bay
Dredging	Extracting material from the Bay bottom (in excess of \$20)
Shoreline Projects	Nearly all work, including grading, within 100 feet of the Bay shoreline
Suisun Marsh Projects	Nearly all work in the portion of the Suisun Marsh below the 10-foot contour level, including land divisions
Other Projects	Any filling, new construction, major remodeling, substantial changes in use, and many land subdivisions in the Bay, along the shoreline, in salt ponds, duck hunting preserves, or other managed wetlands adjacent to the Bay

BCDC Permit Mechanisms



California Coastal Commission

- Responsible for enforcing the provisions of the CCA and CZMA outside of BCDC’s jurisdiction
 - Issue Coastal Development Permits (CDP)
 - Complete federal consistency determinations
 - Review and certify Local Coastal Program (LCP) and amendments
 - Hear coastal permit appeals

CCC Jurisdiction

- State’s coastal zone, excluding Bay area, where coastal zone is defined as:
 - Land and water
 - Extending seaward (3 miles)
 - Including all offshore islands
 - Extending inland generally 1,000 yards (100 feet-5 miles)
- Delegated to local governments with approved LCP except shoreline activities
 - Tidelands (i.e., below mean high / low tide lines)
 - Submerged lands (i.e., below mean low tide line)
 - Public trust lands (i.e., all lands subject to common law public trust)

CDP Trigger

- Any activity that modifies land or water use in the coastal zone:
 - Development
 - Restoration
 - Division of land
 - Change in intensity of use
 - Public access to state waters

CDP Comparison

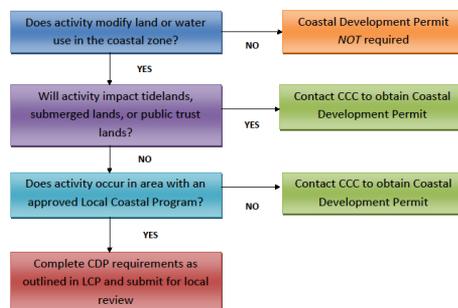
Regular Permit	Administrative Permit	Emergency Permit
For all coastal development outside scope of an Administrative or Emergency Permit	Can be used for: <ul style="list-style-type: none"> - Improvements to existing structures - Single-family dwellings - Development of any four dwelling units - Other development not in excess of 100K 	Activity in the coastal zone that must occur immediately to prevent loss of life, health, property, or essential public services

Opportunity for Permit Exclusion or Waiver?

Role of Local Government

- Majority of CDPs are issued by local government under LCPs certified by the CCC
- Local Coastal Programs comprised of:
 - Land use plan (i.e., general policies for development in community)
 - Implementation plan (i.e., how general policies applied)
 - Zoning ordinances
 - Zoning maps
 - Other implementing requirements for sensitive coastal resource areas
- Reviewed by CCC at least every 5 years

Local Government or CCC?



General Process for CDP under LCP

- Varies between local governments
- Generally processed by Planning and Development Department and approved by Planning Commission or Zoning Administrator
- Typically has additional specific requirements to address regional concerns (e.g., water availability)

Coastal Permitting Key Considerations

- Broad resource consideration (e.g., public access)
- Coastal zone boundary determinations
 - Made by CCC, NOT local governments
 - Overlapping jurisdictions?
- Wetland Definitions
 - Two “prong” test (sometimes “one” prong test)
 - Extend 100 feet landward of upland limit
 - Differences between LCP and CCA definitions

Coastal Permitting Key Considerations

- “Environmentally Sensitive Habitat Areas”
 - CCA requires protection, enhancement, and restoration of ESHAs
 - i.e., intertidal and nearshore waters, wetlands, bays and estuaries, riparian habitat, certain wood and grasslands, streams, lakes, and habitat for rare or endangered plants / animals
 - Specifically designated in LCP
 - Development in ESHA limited
 - Cannot significantly disrupt habitat values
 - Only allows “use dependant” development
 - Development adjacent to ESHA must consider impacts on ESHA

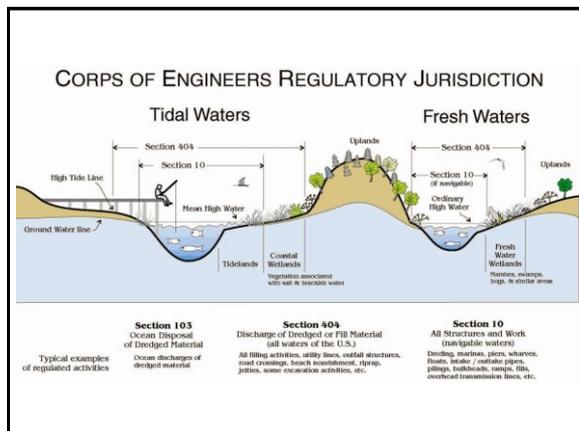
Coastal Permitting Key Considerations

- Sea Level Rise
 - State of California Sea-Level Rise Guidance Document (2013)
 - Assist state agencies with approaches for incorporating sea level rise into planning decisions
 - Provides standardized range of SLR over time that reflects most recent scientific data (i.e., Ntl Academy of Science (2012))
 - Consider timeframe of project, adaptive capacity, and risk tolerance when estimating sea level rise impacts
 - Consider storms and other extreme events
 - Available at: <http://www.opc.ca.gov/2013/04/update-to-the-sea-level-rise-guidance-document/>

OTHER NATURAL RESOURCE LAWS – WETLANDS AND WATER QUALITY

Clean Water Act, Section 404

- Purpose of CWA: Protect the nation’s waters
- Responsible Agency:
 - U.S. Army Corps of Engineers
 - EPA (Oversight)
- Trigger: Discharge of dredge or fill material into waters of the U.S., including wetlands



Types of Permits

General Permits	Standard Permits
Issued for a category or categories of activities causing only minimal adverse environmental effects	Issued for activities not covered by a prior authorized General Permit
<ul style="list-style-type: none"> ❖ Nationwide General Permits ❖ Regional General Permits ❖ Programmatic General Permits 	<ul style="list-style-type: none"> ❖ Individual Permits ❖ Letters of Permission
<ul style="list-style-type: none"> ➢ Issued on a national, state, or regional basis ➢ Require minimal time for USACE review 	<ul style="list-style-type: none"> ➢ Require NEPA compliance and a 404(b)(1) Alternatives Analysis ➢ Require a thorough review process

- ### Rivers and Harbors Act, Section 10
- **Purpose:** Prevent unauthorized obstruction or alteration of any navigable water
 - **Responsible Agency:** USACE
 - **Trigger:** Work in, over, or under a navigable waterway
 - *Navigable waterways* are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce

- ### Process
- Generally processed with CWA Section 404 permit
 - If no CWA nexus, follow Department of the Army General / Standard Processes

- ### Clean Water Act, Section 401
- **Purpose:** Ensure discharges requiring a federal license or permit comply with state and federal water quality standards
 - Prohibits federal agency from issuing license or permit for a project that would not comply with state or federal water quality standards
 - **Responsible Agencies:**
 - RWQCB (delegated by SWRCB)
 - EPA (federal oversight)

- ### Porter-Cologne Water Quality Control Act Waste Discharge Requirements
- **Purpose:** Protect waters of the state from discharge of pollutants
 - Requires WDR to regulate activities that may affect waters of the state (surface or groundwater) or that may discharge waste in a diffuse manner
 - **Responsible Agencies:**
 - RWQCB (delegated by SWRCB)

Process

- **WDRs:**
 - Applicant must submit a complete Report of Waste Discharge at least 120 days prior to discharge
- **CWA 401 “Water Quality Certification”** typically used in place of WDR when the discharge has a federal nexus, and is a one-time or short-term discharge
 - WDRs typically issued for on-going, long-term discharges

Clean Water Act, Section 402

- **Purpose:** Maintain state water quality standards through regulation of point-source discharges to surface waters of the U.S.
- **Responsible Agency:** SWRCB
- **Trigger:** Action would result in new or continued point source discharge of pollutants into surface waters of the U.S.

Construction General Permit

- General NPDES Permit
- Applies to construction projects that encompass 1 or more acre of soil disturbance and result in discharge to waters of the U.S.
 - File electronically “Permit Registration Documents” with SWRCB
 - Notice of Intent
 - SWPPP (prepared by ‘Qualified SWPPP Practitioner’)
- Typically submitted prior to construction by construction contractor / engineer

California Fish and Game Code, Section 1600-1616

- **Purpose:** Protect and conserve fish and wildlife resources associated with streams, rivers, and lakes
- **Responsible Agency:** CDFW
- **Trigger:** Project will:
 - Divert or obstruct the natural flow; or
 - Substantially change the bed, channel or bank of any river, stream, or lake; or
 - Use material from a streambed

Jurisdiction

- **Streams:**
 - Perennial, intermittent, or ephemeral (including desert washes)
 - From which fish or wildlife derive benefit
 - Vegetated or unvegetated
 - To top of bank, if no riparian vegetation
 - To edge of riparian vegetation
- **Artificial drainages** – if they provide fish and wildlife habitat
- **Lakes and ponds** – natural or artificial; size is a consideration

OTHER NATURAL RESOURCE LAWS – SPECIES & HABITATS

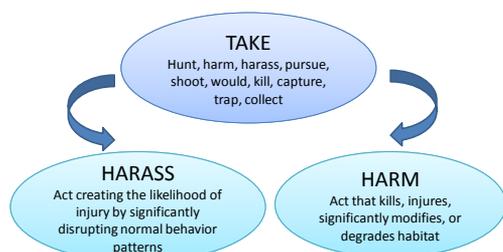
Federal Endangered Species Act

- **Purpose:** Protect and recover imperiled species and the ecosystems upon which they depend
- **Responsible Agency:**
 - NMFS (marine & anadromous species)
 - USFWS (all other species)

Section 9: Prohibited Acts

- **Prohibition:** All persons are prohibited from importing, exporting, *taking*, transporting, or selling fish and wildlife species listed as endangered under the federal ESA

Section 9: Prohibited Acts (cont.)



Section 9: Prohibited Acts (cont.)

- **Listed plants:** Take prohibition applies to fish and wildlife species only (limited protections for listed plants)
- **Threatened Species:** Section 9 protections discretionary
 - NMFS establishes “Section 4d Rule” prior to protections
 - USFWS has blanket policy that extends prohibitions to all species, unless otherwise provided by special rule

Exceptions to Section 9

- **Federal Agency Involvement (Section 7):**
 - No-Jeopardy Biological Opinion: As part of the federal agency formal consultation requirement under Section 7, statement authorizing the incidental take of listed species
- **No Federal Agency Involvement (Section 10):**
 - Section 10 Permits: scientific take permits and incidental take permits

ESA Section 7

- **Trigger:** Federal permit, authorization or funding that has the potential to affect federally-listed species or their habitat
- **Requirement:** Federal agency must use their existing authorities to conserve threatened and endangered species, and, in consultation with NFMS / USFWS, ensure their actions do not jeopardize listed species or destroy or adversely modify critical habitat.

Section 7: Consultation Processes

- Federal Agency prepares Biological Assessment
 - Informal Consultation
 - Formal Consultation
 - Conference

California Endangered Species Act

- Purpose: Where feasible, the state should conserve species threatened or endangered with extinction
 - State agency cannot cause jeopardy if reasonable and prudent alternatives exist
- Responsible Agency: CDFW

Prohibited Acts

- Endangered and Threatened Species (Section 2080): prohibition against commerce and taking
 - Take: action or attempt to “hunt, pursue, catch, capture, or kill”
 - Must be proximate cause of death of a listed species; does not include harm or harassment (see Attorney General’s opinion May 15, 1995)

Exceptions to Take Prohibition

- Section 2080.1: authorized take for joint federal / state-listed species with federal Section 7 or 10 authorization
- Section 2081(a): take for scientific education, or management purposes
- Section 2081(b): take incidental to otherwise lawful activities
- Note - take not authorized for “fully protected species” (except for scientific research)

Comparison of CESA and ESA

CESA	ESA
✓ Habitat not protected	✓ Habitat protected (harm)
✓ Take of individuals prohibited	✓ Take of individuals prohibited
✓ Same prohibitions for threatened and endangered species	✓ 4(d) rules allow reduced protections for threatened species
✓ Section 2081 Incidental Take Permit	✓ Section 7 Incidental Take Statement or Section 10 Incidental Take Permit
✓ Plants somewhat protected	✓ Plants protected only where federal action involved
✓ CEQA trigger for 2081 permit	✓ NEPA trigger for Section 10 permit

Marine Mammal Protection Act

- Purpose: To conserve and protect marine mammals
- Responsible Agency:
 - USFWS – manatees, polar bears, sea otters, walrus and dugongs
 - NMFS – all other marine mammals
- Trigger: *Incidental* “take” of any marine mammal in U.S. waters

Marine Mammal Protection Act

- **Permit Mechanisms:** (non-fishing related)
 - Letter of Authorization (LOA) –for incidental take of marine mammals not listed as depleted and where take would result in a “negligible impact”
 - Incidental Harassment Authorization (IHA) – “expedited” process for incidental take associated with “harassment” (e.g., noise)
 - No potential for serious injury or mortality *or*
 - Mitigation can minimize potential for serious injury or mortality
 - Must comply with NEPA & ESA

OTHER NATURAL RESOURCE LAWS – CULTURAL & TRIBAL RESOURCES

National Historic Preservation Act, Section 106

- **Purpose:** Reduce effects of federal actions on historic and cultural properties
- **Responsible Agency:**
 - Advisory Council on Historic Preservation (ACHP) (federal oversight)
 - California State Historic Preservation Officer (SHPO)
- **Requirement:** Federal agency must consider possible effects of actions on properties listed or eligible for listing on National Register of Historic Places (NRHP)

Section 106 Compliance Process

- Conduct preliminary inventory
 - Records search
 - Project site survey
- Evaluate eligibility for listing
 - Broad pattern of history
 - Associated with historic figure
 - Distinctive work of significant architectural style
 - Potential to yield information on history / prehistory
- Determine effect of action on resource
 - No effect
 - No adverse effect
 - Adverse effect

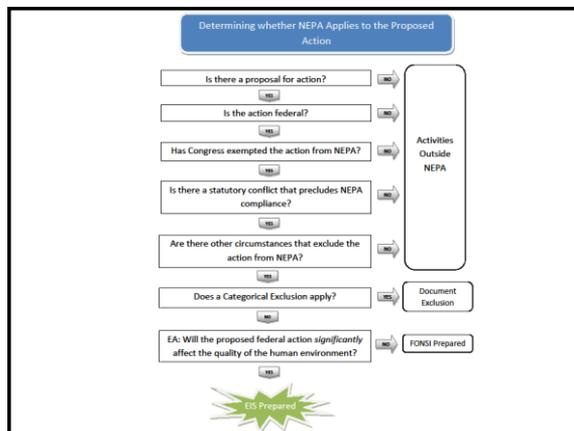
Section 106 Compliance Process (cont.)

- Consult with SHPO / ACHP
 - Mitigation requirements
 - Memorandum of Agreement
 - Alternative approaches

NEPA & CEQA

National Environmental Policy Act

- Applies to “major federal actions that may significantly affect the quality of the human environment”
- Types of federal *actions* subject to NEPA:
 - New and continuing federal activities financed, assisted, conducted, or approved by a federal agency
 - New or revised agency rules, regulations, plans, policies, procedures
 - Legislative proposals



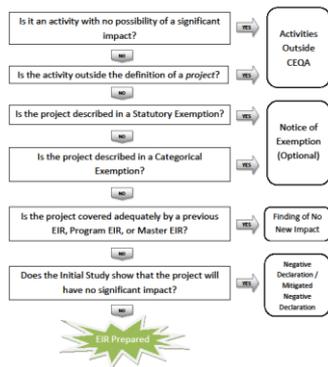
Types of NEPA Documents

- Environmental Assessment (EA)
 - To determine significance of effects
- Finding of No Significant Impacts (FONSI)
 - Decision document for an EA with no significant effects
 - “Mitigated FONSI”
- Environmental Impact Statement (EIS)
 - Prepared when federal action has the potential to significantly affect the quality of the human environment
 - “Record of Decision”

California Environmental Quality Act

- Applies to state and local discretionary actions
 - Activity directly undertaken by a public agency
 - Activity supported through public agency contracts, grants, subsidies, loans, or other assistance
 - Activity involving public agency issuance of a lease, permit, license, certification, or other entitlement
- Requires preparation of multi-disciplinary environmental impact analysis to inform agency decision

Screening for CEQA Applicability



Types of CEQA Documents

- Initial Study (IS)
 - To determine significance of impacts
- Negative Declaration (ND)
 - Decision document for an IS with no significant impacts
 - “Mitigated Negative Declaration (MND)”
- Environmental Impact Report (EIR)
 - Project
 - Program
 - Master
 - Joint
 - Tiered
 - Supplemental, Subsequent, or Addendum

Case study - Parsons Slough Project



- Planning and Design
- Public Outreach
- Funding
- Environmental Review and Permitting
- Implementation

Case study - Parsons Slough Project



- ➔ • Planning and Design
- Public Outreach
- Funding
- Environmental Review and Permitting
- Implementation

Planning and Design

- Organize yourself
- Organize your stakeholders

Planning and Design

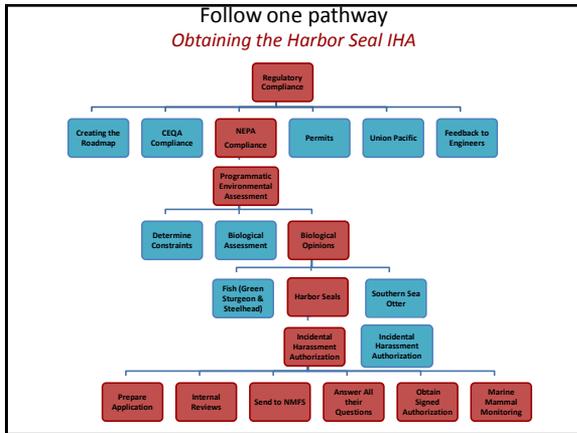
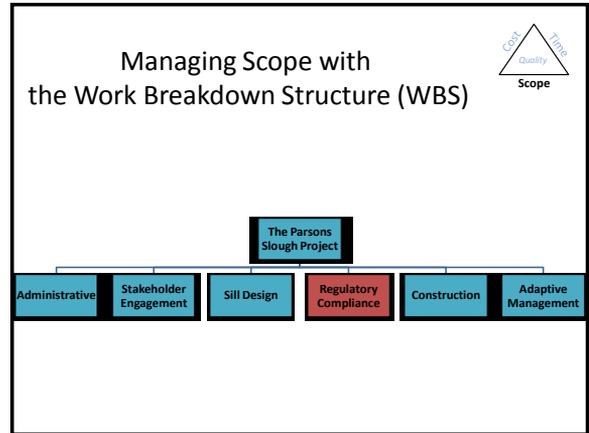
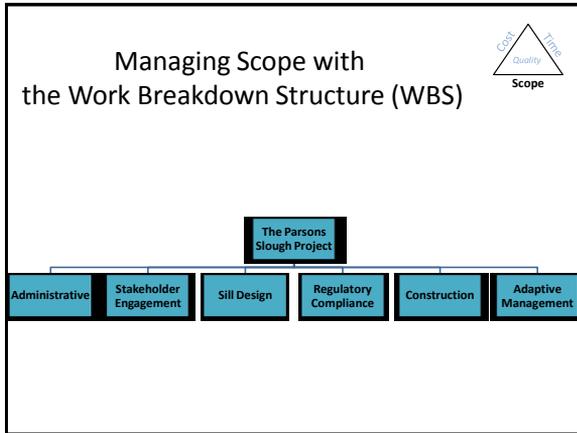
- ➔ • Organize yourself
- Organize your stakeholders

Managing the Triple Constraints of Projects



Choosing the best tools: Key Attributes of Project Management Tools

- Organize lots of information
- Provide a problem solving road map
- Set parameters for repeatable actions (reporting, check-in calls)
- Clarify roles and responsibilities
- Provide clear timelines and relationships between tasks
- Increase clear communication



- ### Planning
- Organize yourself
 - Organize your stakeholders

Strategic Planning Team

Role:
Primary decision-making body

STATE-FEDERAL PARTNERSHIP

- Elkhorn Slough National Estuarine Research Reserve (lead)

FEDERAL

- Monterey Bay National Marine Sanctuary
- National Marine Protected Areas
- U.S. Army Corps of Engineers
- U.S. Environmental Protection Agency
- U.S. Fish and Wildlife Service

STATE

- CA Coastal Commission
- CA Coastal Conservancy
- CA Department of Fish and Game
- CA State Parks
- Regional Water Quality Control Board

LOCAL

- Monterey County
- Moss Landing Harbor District

NON-PROFIT, ACADEMIC, CORPORATE

- CA State University Monterey Bay
- Central Coast Wetlands Group
- Elkhorn Slough Foundation
- Moss Landing Marine Laboratories
- San Francisco Estuary Institute
- The Nature Conservancy
- The Ocean Conservancy
- University of San Francisco
- Union Pacific Railroad

Technical Guidance: Science Panel

Who

- Biologists, hydrologists, geologists, marine chemists

Over 80 members

<ul style="list-style-type: none"> U.S. Geological Survey Stanford University Moss Landing Marine Laboratories U.S. Environmental Protection Agency U.S. Army Corps of Engineers University of California Santa Cruz University of California Davis U.S. Fish and Wildlife Service Okeanis Coastal Ocean Values Center 	<ul style="list-style-type: none"> Monterey Bay Aquarium Research Institute California State University Monterey Bay Monterey Bay National Marine Sanctuary Point Reyes Bird Observatory ES National Estuarine Research Reserve San Francisco State University California Department of Fish and Game California Coastal Commission Bay Modeling National Ocean Economics Program Cabrillo College National Marine Fisheries Service
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Case study - Parsons Slough Project



- Planning and Design
- ➔ • Public Outreach
- Funding
- Environmental Review and Permitting
- Implementation

Public & Stakeholder Outreach

- Identify stakeholders
- Categorize/prioritize stakeholders
- Develop outreach strategy
- Prepare outreach materials
- Set up meetings as needed
- Follow-up on stakeholder understanding or questions

Case study - Parsons Slough Project



- Planning and Design
- Public Outreach
- ➔ • Funding
- Environmental Review and Permitting
- Implementation

Funding

- Federal – www.grants.gov
- State – www.ca.gov/grants
- Local and private
- Most grants require match/ cost share

Case study - Parsons Slough Project



- Planning and Design
- Public Outreach
- Funding
- ➔ • Environmental Review and Permitting
- Implementation

Environmental Review & Permitting

- STEP 1: Baseline Surveys
 - Wetland delineation
 - Cultural resources assessment
 - Water quality monitoring data
 - Hydrologic modeling
 - Species-specific data
- How does this apply to our case-study?

Environmental Review & Permitting

- STEP 2: Develop Comprehensive Project Description
 - Project components
 - Construction methodologies
 - Schedule and duration
 - Access & staging
 - Involve engineer and resource specialists
- How does this apply to our case-study?

Environmental Review & Permitting

- STEP 3: Alternative Development
 - Range of “reasonable alternatives” (CEQA / NEPA)
 - Other Permit Considerations
 - “Least Environmentally Damaging Practicable Alternative” / Minimum fill alternatives
 - Avoidance of sensitive resources
 - Biological
 - Cultural
 - Public Access
- How does this apply to our case-study?

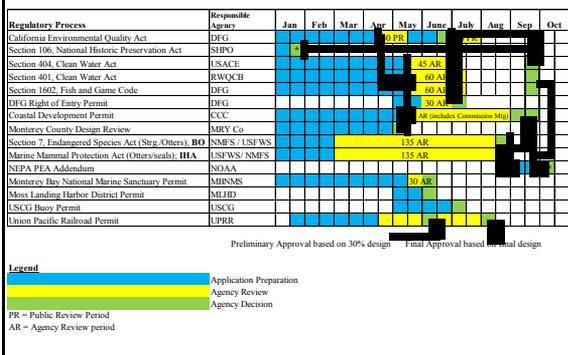
Environmental Review & Permitting

- STEP 4: Environmental Review Documents
 - CEQA / NEPA
 - Type of document required
 - Internal review process and timelines
 - Final decision making authority
 - Agency Coordination
 - NEPA / CEQA lead agencies
 - Other responsible agencies
- How does this apply to our case-study?

Environmental Review & Permitting

- STEP 5: Permitting
 - Determine project to permit
 - Environmental review considerations
 - Funding considerations
 - Permit “expiration” considerations
 - Identify necessary permits and authorizations
 - Don’t forget local or site-specific authorizations
 - Understand how permit authorizations relate and overlap
 - Understand dependencies
 - Understand project-specific review process → sequence & timing
 - Allow adequate time for review / approval
- How does this apply to our case-study?

Project Milestone Chart for Parsons Slough Project



Environmental Review & Permitting

- STEP 5: Permitting (cont.)
 - Prepare applications that best meet agency needs
 - Format / content
 - “Complete” applications
 - Facilitate coordinated review
 - Troubleshoot “glitches”
 - Reconcile conflicting conditions (as necessary)
 - Be diligent and persistent!
- How does this apply to our case-study?

Environmental Review & Permitting

- STEP 6: Project Approval
 - Track permit conditions
 - Consolidate into single location or table
 - Identify critical dates (e.g., in-water work windows)
 - Identify reporting requirements
 - Understand amendment process
- How does this apply to our case-study?

Case study - Parsons Slough Project



- Planning and Design
- Public Outreach
- Funding
- Environmental Review and Permitting
- ➔ • Implementation

Implementing Project BMPs - Construction



Implementing Project BMPs - Biological



Thank You

