

Appendix H2 Permitting Requirements Associated with SMMP Implementation

H2.1 Permitting for Project Construction

H2.1.1 State and Federal Permits

Several aspects of the recommended program will trigger both State and Federal involvement in the project. The key agencies involved in the permitting process are as follows.

USACE

In its regulatory capacity, USACE strives to “protect the Nation’s aquatic resources, while allowing reasonable development through fair, flexible, and balanced permit decisions” (USACE 2005). USACE derives its primary regulatory authority from two Federal laws: the Federal Clean Water Act and the River and Harbors Act. Under these two Acts, USACE regulates activities that impact the “waters of the United States”.

The necessary USACE permits can be secured in two ways: a nationwide permit or an individual permit. Nationwide permits are generally faster and easier to obtain, but they only apply to specific activities as laid out in the permit (San Francisco Bay Area Joint Aquatic Resource Permit Application (JARPA) 2004). If an individual permit is required, a lengthier permit processing time will be necessary since this type of permit requires the preparation of a Public Notice and a 30 day period for public comment. Either type of permit will require the submittal of a maintenance plan, a jurisdictional determination, and an alternatives analysis.

During the permit review process, USACE consults with the USEPA, USFWS, and the NOAA NMFS to ensure all environmental impacts and regulations are considered (CERES 2005).

USFWS and NMFS

The mission of the USFWS is to “protect and enhance fish and wildlife, and their habitats, throughout the nation” (JARPA 2004). Similarly, the NMFS’s mission is to “conserve living marine resources while managing their use for the greatest benefit to the nation” (JARPA 2004). USFWS focuses on the effects of projects on all non-marine fish and wildlife resources. NMFS has the primary responsibility for protecting marine mammals and marine, estuarine and anadromous fish and shellfish. Together, the USFWS and the NMFS administer the Federal Endangered Species Act. These agencies will need to be consulted if the project is thought to have an impact on any listed threatened or endangered species.

Under the Federal Endangered Species Act, permission from USFWS and/or NMFS is required prior to “taking” any endangered species or its habitat. This permission can be obtained in two ways: a permit under Section 10 of the Federal Endangered Species Act or a consultation under Section 7 of the Federal Endangered Species Act. A Section 10 permit is required only when there is no other Federal involvement in the project. Otherwise, a Section 7 consultation is generally completed as part of the permitting process for USACE or another involved Federal agency.

San Francisco Bay Area RWQCB

The mission of the SWRCB is to “preserve, enhance and restore the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations” (SWRCB 2005). The RWQCBs conduct the planning, permitting and enforcement activities to meet that mission. The activities for this watershed plan lie within the jurisdiction of the RWQCB.

The RWQCB issues three primary types of permit: Section 401 water quality certifications, NPDES permits, and waste discharge requirements. Under Section 401 of the Federal Clean Water Act, any activity that is subject to a permit from a Federal agency must be certified by the appropriate State agency that the activity also meets all State water quality standards. In California, the RWQCB is responsible for issuing these certifications. A Section 401 certification will be required for projects requiring permits from USACE, a Federal agency. Prior to issuing a Section 401 certification the RWQCB must review a final environmental document prepared under CEQA.

In addition, the RWQCB, with the oversight of the USEPA, is responsible for granting Clean Water Act NPDES permits. Stormwater runoff in the Valley is currently regulated under the Alameda Countywide Clean Water Program NPDES Municipal Stormwater Permit. This permit will continue to cover discharges to city storm drain systems and water quality impacts of storm drain discharges into SMMP streams and arroyos. The RWQCB also issues General Construction Activity Stormwater Permits under the NPDES program. These permits are required for any construction activity that disturbs more than one acre of land, or for programs where the project components disturb less than one acres of land but more than one acre is disturbed throughout the program. The general permit requires the site owner to notify the State, to prepare and implement a Stormwater Pollution Prevention Plan, and to monitor the effectiveness of the plan. The clearing, excavation, and grading required for regional detention storage projects will require this permit for any stormwater discharges occurring from the construction of these program components.

Finally, the RWQCB regulates the discharge of waste that could affect the quality of the waters of the State under the authority of the California Porter-Cologne Water Quality Control Act. The RWQCB issues Waste Discharge Requirements (WDRs) for any activity that generates dredged material, fill or any other discharge that may directly or indirectly impact the “waters of the State”. The “waters of the State” are defined more broadly than the “waters of the United States” and include any surface water or groundwater within the boundaries of the State. Generally, any action requiring a Section 401 Water Quality Certification is exempt from waste discharge requirements.

California Department of Fish and Game

The California Department of Fish and Game (CDFG) protects California’s fish, wildlife and plant species and their habitat to maximize their ecological value and their value for human enjoyment. Under the Fish and Game Code Section 1602, any person, State or local government agency, or public utility is required to provide official notification to CDFG before undertaking any activity that will significantly change any river, stream, or lake. This notification is the first step in the process to obtain a Streambed Alteration Agreement, which is required to conduct the proposed work. Modifications subject to this type of agreement include diverting or obstructing flow, changing the streambed, channel or bank, or using material from a streambed for any purpose. Unlike with the permitting requirements for USACE, any waterway within California, natural or constructed, is part of the jurisdiction of the CDFG.

Prior to issuing a Streambed Alteration Agreement, a final environmental document under CEQA must be submitted. Official documentation from CDFG indicates that a permit application can be submitted and approved but that the final permit will be held until the CEQA documentation is finalized.

Additional Permitting Requirements

The above descriptions list the primary agencies that will have regulatory influence construction of SMMP projects. However, further investigation should be conducted during the implementation phase for each project to ensure that all permitting requirements are met. Special attention should be given to Executive Order 11990 Protection of Wetlands and the California State Lands Commission land use lease.

Executive Order 11990 covers any project that is located on Federal land, sponsored by a Federal agency or receiving Federal funding that may affect wetlands. It requires that Federal agencies avoid initiating or assisting projects that involve construction in wetlands unless there is no practicable alternative to the construction and that steps to minimize harm to wetlands are taken.

A California State Lands Commission Land Use lease is required for any project “in State-owned areas waterward of the ordinary high water mark as it last existed naturally, before artificial influences, in waterways that are subject to tidal action, or the ordinary low-water mark before artificial influences, in water ways that are not subject to tidal action (California Association of Resource Conservation Districts (CARCD) 2002)”. According to Section 670 of the California Civil Code, the State owns all land below tide water.

H2.2 Permitting for Stream Maintenance

This section outlines the anticipated steps Zone 7 will need to take to establish a multi-year RSMP and obtain multi-year State and Federal permits and approvals. Specifically, this section will:

- Provide an overview of the components of a successful multi-year RSMP.
- Identify the supporting documents needed for multi-year RSMP approval.
- Outline necessary approvals and/or permits.
- Outline the relationship between the multi-year RSMP and the SMMP.

H2.2.1 Routine Stream Maintenance Program Report

The establishment of a multi-year RSMP report is necessary to receive approval from the San Francisco Regional RWQCB to conduct stream maintenance on a multi-year scale. The multi-year RSMP should be a guideline for all of Zone 7’s routine stream and channel maintenance activities such as sediment removal, vegetation management, bank protection, and minor maintenance activities (SCVWD 2001b). Its main goal should be to establish policies to maintain Zone 7’s streams and channels so that they meet the flood protection, water supply, water quality, habitat and environment, and recreation goals established in the SMMP. The scope and type of maintenance activities included in the multi-year RSMP should be based on Zone 7’s historical routine maintenance activities. However, the multi-year RSMP should modify historical practices to incorporate BMPs developed for SMMP projects, mitigation requirements, and a process for reporting maintenance activities to regulatory agencies. The development of a multi-year RSMP is an essential step in obtaining multi-year permits from the RWQCB and the USACE.

The development of a successful multi-year RSMP will depend on establishing clear, obtainable objectives for the program. The objectives outlined in SCVWD’s stream maintenance plan provide a good model for Zone 7’s program and include:

1. Standardizing practices and protocols for routine sediment removal, vegetation management, and bank protection in and around the streams and related facilities.
2. Identifying cost-effective routine stream maintenance practices and protocols.
3. Ensuring routine stream maintenance activities reflect the agency’s policies of environmental protection and stewardship.
4. Avoiding or minimizing adverse environmental effects, to the extent practical, and encouraging preservation and restoration
5. Establishing cost effective and economically-practical compensatory mitigation for environmental impacts from routine stream maintenance activities.

6. Establishing practices and protocols that optimize operational flexibility and allow the integration of lessons learned and improvements in BMPs.

Incorporating these objectives into Zone 7's multi-year RSMP report will ensure that routine stream maintenance practices are conducted in an efficient, consistent, and environmentally-sensitive manner. The multi-year RSMP should demonstrate a comprehensive programmatic approach to stream maintenance activities so that the appropriate multi-year permits and approvals can be secured and the multi-year RSMP can be implemented.

H2.2.2 Supporting Documents for an Multi-Year RSMP

In order to obtain the necessary approvals and permits described for the multi-year RSMP, Zone 7 will likely be required to prepare several additional supporting documents. A summary of typical documents that may be required is included in Table 1. The documentation necessary to implement a multi-year RSMP for Zone 7 may vary dependent on regulatory requirements and historical practices of Zone 7.

Current Zone 7 maintenance activities, which are being conducted under the 1998 Memorandum of Understanding (MOU) between the CDFG and Zone 7, may provide a basis for several of the supporting documents required to implement a multi-year RSMP (Z7 Maintenance Manual; CDFG 1998). The relationship between each supporting document and current Zone 7 activities is also included in Table 1

Table 1: Supporting Documents

Document	Purpose	Existing Zone 7 Documentation
Maintenance Program EIR	As required by the CEQA, an EIR would need to be prepared to evaluate the potential environmental impacts of the multi-year RSMP and determine methods to mitigate these impacts. The multi-year RSMP EIR would provide the basis for the National Marine Fisheries Service (NMFS) and USFWS biological opinions.	A MEIR has been prepared as part of the SMMP but it applies only to capital projects and only certain sections of the MEIR are applicable to the multi-year RSMP.
BMP Manual for RSMP Activities	The BMP Manual should identify stream maintenance practices that will minimize impacts to the beneficial uses of the waters and streams covered under the multi-year RSMP. It would establish practices to ensure that resources are protected as much as possible during maintenance activities. BMPs included in the manual should provide specific guidelines for the implementation of the general routine maintenance activities described in the multi-year RSMP. BMPs may fall into the following categories: • Process and Protocols • Watershed Restoration and Management • Protection of Listed Species and Species of Concern • Fisheries Protection and Enhancement • Maintenance Site Dewatering • Minimization of Erosion • Preservation and Replacement of Riparian and Shaded Riverine Habitat • Wetlands Protection • Use and Management of Herbicides • Hazardous Material Management and Control • Additional Work Site Management Practices	None (BMPs can be developed based on those implemented for SCVWD's stream maintenance plan).
Mitigation Monitoring and Reporting Program	This monitoring and reporting program should outline a comprehensive plan for implementing the mitigation measures identified in the multi-year RSMP EIR to maximize the benefits of each measure. It would verify the implementation of these mitigation measures in compliance with the CEQA Guidelines Section 15097. The plan should also include mitigation monitoring and reporting guidelines.	The findings in the multi-year RSMP EIR would provide the basis for this report.

Sediment Characterization Plan	The purpose of the sediment characterization plan should be to define the composition of sediments for acceptance by landfills, determine suitability for reuse, provide data for evaluation of alternate long-term disposal/reuse options, provide basis for a self-monitoring program.	Zone 7 currently conducts sediment characterization under the 1998 MOU. The Sediment Characterization Plan could be based on the current sediment characterization methods.
Water Quality Self-Monitoring Program and Sampling Plan	The purpose of the Water Quality Self-Monitoring Program and Sampling Plan should be to verify compliance with the effluent and receiving water limitations, and to collect water quality data at selected sites that can be used to guide future projects and long-term permitting efforts. This plan should include procedures for record keeping and reporting.	Water quality monitoring is currently required under the Alameda County-wide Clean Water Program's NPDES permit. This program may be able to be adapted for the multi-year RSMP Water Quality Self-Monitoring Program and Sampling Plan.
Regulatory Reporting Plan	This report should describe the contents and protocols for all ongoing reporting to regulatory agencies that will be required by the multi-year RSMP and the multi-year permits for stream maintenance activities (SCVWD 2003b). Reporting may include: • Annual Notification of proposed work • Sediment Characterization Plan • Self Monitoring Water Quality Report(s) • Post-Construction Report • Quarterly Reports (CDFG) • Pesticide and Herbicide Reports • Bank Protection Design Reports • Lessons Learned Reports • 5-Yr Program Assessment Report	Current reporting procedures may continue but the specific reporting plan must be based on the regulatory requirements of the multi-year permits.
Stream Maintenance Biological Assessment	The Stream Maintenance Biological Assessment will be prepared under the Section 7 of the Federal Endangered Species Act to determine whether a proposed major construction activity under the authority of a Federal action agency is likely to adversely affect listed species, proposed species, or designated critical habitat. The assessment would characterize the conditions of streams through surveys, develop an understanding of potential impacts of stream maintenance on these conditions, and form the basis for the NMFS and USFWS Biological Opinions.	The findings in the multi-year RSMP EIR would serve as the basis for this report.

These additional documents are based on the experience of SCVWD establishing a multi-year stream maintenance program and do not necessarily include all documents that will be required for Zone 7 to establish a similar program. Prior to developing their stream maintenance program and the supporting documents, SCVWD underwent several activities to help clear the way for permitting, including:

- Periodic water quality and sediment monitoring
- Historical maintenance records

- Watershed/Capital Improvement Plans
- Habitat conservation plans

Zone 7 will need to assess their existing programs to determine what documentation will be necessary to launch the multi-year RSMP. This section should act as a guideline for Zone 7 in assessing their needs and establishing a multi-year RSMP but is not sufficient in and of itself to obtain the necessary permits to implement a multi-year maintenance plan.