

# Permitting PBR-type Restoration Projects in California



**\*\*\*A Work in Progress...**

*This is just an introductory overview ~  
Please consult with the appropriate agency for the latest and most accurate  
information when applying for your projects*

# Why do we even need to get permits for PBR-type projects?

“We’re restoring habitat not destroying it, so why should they be regulated?”

## Great Variability of each project

- Site conditions & Location
  - Urban, rural, public lands, private lands, bridges nearby, farmland adjacent
- Application
  - Increase habitat complexity
  - Incised channel
  - Head-cut
  - Channelized stream
- Technique build
  - Each restoration contractor will likely have different approaches to applying PBR techniques in their build
  - Structures will have a variety of lifespans
- Contractor
  - Experience, vision, goals for project outcomes



# Some Environmental Laws underlying some of the Permits Required

\*\*\* Important to keep in mind when working with regulatory/permit agencies and people ~ They're upholding important conservation laws intended to protect the environment:

We're all on the Conservation Team together!!

## Federal

- Clean Water Act (CWA)
  - Section 404
  - Section 401
  
- Endangered Species Act (ESA)
  - Section 7
  - Section 10

## State

- California Fish and Game Code
  - Section 1602



# 1st Step after Concept Design:

Determine if there is a federal “nexus” on the project implementation (either Federal funding or on federal land (USFS or BLM) make it a federal project)

## **Non Federally-Funded Project Implementation**

(State partners can complete or assist w/ state permits)

### Potential Permits Required

- California Environmental Quality Act (CEQA)
- California Endangered Species Act (CESA)
- Lake and Streambed Alteration Agreement (LSAA)
- Habitat Restoration Enhancement Act (HREA)
- Clean Water Act (CWA)
  - Section 404
  - Section 401



## **Federally-Funded Project Implementation**

(Federal partners can complete or assist w/ federal permits)

### Potential Permits Required

- California Environmental Quality Act (CEQA)
  - California Endangered Species Act (CESA)
  - Lake and Streambed Alteration Agreement (LSAA)
  - Habitat Restoration Enhancement Act (HREA)
  - Clean Water Act (CWA)
    - Section 404
    - Section 401
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- National Environmental Protection Act (NEPA)
  - Endangered Species Act (ESA)
    - Section 7
    - Section 10
  - National Historic and Preservation Act (NHPA)
    - Section 106



## 2nd Step after Concept Design:

Organize Field Site Visit with Agency reps for their Recommendations & Guidance on the Design



Group Email an invite to ALL the permit agencies for a field site visit together

- Many benefit from hearing the feedback of other agencies on site
- Include very rough concept plans attached to email  
(You want them to know that their input will help determine more final draft concepts)

Conduct Site Visit and Note all recommendations made by agencies

- Take notes and make sure to incorporate their recommendations on:
  - Design details
  - Application details
  - Which permitting pathway that the project would be most efficient for their agency
  - Get any and all information from the agencies to design the project to address conservation and species concerns

# Brief Intro of Common PBR Project Permits

## Projects funded **without federal \$\$** and on **private/state lands** – and Which agencies to contact

### California Environmental Quality Act (CEQA)

- Lead agency needs to be identified (i.e. State or local governments – RCD's, Water Districts, CDFW, RWQCB)
- Small Habitat Restoration Categorical Exemption
  - If less than 5 acres of impact
- SRGO (Statewide Restoration General Order 0 RWQCB) – a Programmatic EIR ~ \*\*\*New Program
- SERP (Statutory Exemption Restoration Projects –CDFW)

### California Endangered Species Act (CESA) - CDFW

- Traditionally take of a state listed species, you would need an incidental Take permit (ITP)
- Restoration Management Permit (RMP) – only for restoration projects
- Consistency determination (for dual-listed species)

### Lake and Streambed Alteration Program - CDFW

- Lake and Streambed Alteration Agreement (LSAA) Permit
  - Standard Agreement (through EPIMS Online Permitting Portal) – for projects that done fit SHRP or SRGO

### Habitat Restoration Enhancement Act (HREA) – CDFW and Water Board

- Streamlined & Coordinated with RWQCB Small Habitat Restoration Program
- Bundles CEQA, CESA, LSAA, and 401 CWA

### Clean Water Act (CWA) - USEPA

- **Section 404 – Army Corps of Engineers**
  - Preconstruction Notification (PCN) Application Form
    - Nationwide Permit 27
- **Section 401 Certification – Regional Water Quality Control Board**
  - Notice of Intent (NOI)
  - Small Habitat Restoration General Order (SHRP)
    - If project impacts are less than 500 linear ft, and less than 5 acres
    - Coordinated with the CDFW Habitat Restoration Enhancement Act (HREA)



# Brief Intro of Common PBR Project Permits



## Projects funded with federal \$\$ or on federal lands - Which agencies to contact

### National Environmental Protection Act (NEPA)

- Lead agency needs to be identified to conduct (federal agencies only including USFS, USFWS, NRCS, etc.)
- Categorical Exclusion 516 DM 8.5 (If a checklist of criteria are met)

### Endangered Species Act (ESA) - USFWS

- **Section 7 – if federal \$\$ on project**
  - Federal agencies consult with the Services to ensure that actions they fund, authorize, permit, or otherwise carry out will not jeopardize the continued existence of any listed species or adversely modify designated critical habitats
  - Administered by U.S. Fish & Wildlife Service (terrestrial species and non-anadromous and marine aquatic species)
  - Administered by NOAA Fisheries (all listed marine and anadromous aquatic species)
- **Section 10**
  - individual or private citizen to “take” a listed species

### Lake and Streambed Alteration Program - CDFW

- Lake and Streambed Alteration Agreement (LSAA) Permit
  - Standard Agreement (through EPIMS Online Permitting Portal) – for projects that don’t fit SHRP or SRGO

### Habitat Restoration Enhancement Act (HREA) – CDFW and Water Board

- Streamlined & Coordinated with RWQCB Small Habitat Restoration Program
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# Brief Intro of Common PBR Project Permits



## Projects funded with federal \$\$ or on federal lands - Which agencies to contact (Contd)

### Clean Water Act (CWA) - USEPA

- **Section 404 – Army Corps of Engineers**
  - Preconstruction Notification (PCN) Application Form
    - Nationwide Permit 27 (NW27) typical permit for PBR-type restoration
  - “Reporting” only for NW27 permits
    - Project must have an agreement with one of the federal programs: USFWS, NRCS, USFS
- **Section 401 Certification – Regional Water Quality Control Board**
  - Notice of Intent (NOI)
  - Small Habitat Restoration General Order (SHRP)
    - If project impacts are less than 500 linear ft, and less than 5 acres
    - Coordinated with the CDFW Habitat Restoration Enhancement Act (HREA)

### National Historic and Preservation Act (NHPA)

- legislation intended to preserve historic and archaeological sites in the United States of America
- **Section 1067 – if federal \$\$ on project**
  - requires federal agencies to consider the impact of their actions on historic properties
  - Administered by all federal agencies



# *CalPBR Network Partners including you*

*can play an important role in  
working together with our permit agency staff  
to better refine and improve understanding of  
Process-Based Restoration projects;  
their short- and long-term benefits to habitats and species;  
and how best to work together to accomplish MORE*



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