

# Appendix A– Abridged List of Major Federal and State Laws, Regulations, and Policies

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**List of Abbreviations and Acronyms**

	§, §§	Section, Sections
<b>A</b>	AB	Assembly Bill
	AHPA	Archaeological and Historic Preservation Act
	ANSI	American National Standards Institute
	ARPA	Archaeological Resources Protection Act of 1979
	art.	article
	ASME	American Society of Mechanical Engineers
<b>B</b>	BMP	best management practices
<b>C</b>	C	Celsius
	CAAQS	California Ambient Air Quality Standards
	CAFE	Corporate Average Fuel Economy Standards
	CAL FIRE	California Department of Forestry and Fire Protection
	Cal/OSHA	California Occupational Safety and Health Act
	Caltrans	California Department of Transportation
	CARB	California Air Resources Board
	CCAA	California Clean Air Act
	CCC	California Coastal Commission
	CDFW	California Department of Fish and Wildlife
	CESA	California Endangered Species Act
	CEQA	California Environmental Quality Act
	CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
	CFR	Code of Federal Regulations
	CGS	California Geologic Survey
	ch.	chapter
	CNEL	community noise equivalent level
	CO <sub>2</sub>	carbon dioxide
	CO <sub>2</sub> e	carbon dioxide equivalent
	CRHR	California Register of Historical Resources
	CSLC	California State Lands Commission
	CWA	Clean Water Act
<b>D</b>	dBA	A-weighted decibel
	div.	division
<b>E</b>	EFH	essential fish habitat
	EO	Executive Order
	et al.	and others

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	et seq.	and following
<b>F</b>	FCAA	Federal Clean Air Act
	Fed. Reg.	Federal Register
	FEMA	Federal Emergency Management Agency
<b>G</b>	GHG	greenhouse gas
<b>H</b>	HAPs	hazardous air pollutants
	hp	horsepower
<b>K</b>	kW	kilowatt
<b>L</b>	L <sub>dn</sub>	day-night average sound level
<b>M</b>	MARPOL	International Convention for the Prevention of Pollution from Ships
	MISA	Marine Invasive Species Act
	MMPA	Marine Mammal Protection Act
	MMT	million metric tons
	MOTEMS	Marine Oil Terminal Engineering and Maintenance Standards
	MPA	Marine Protected Area
	mpg	miles per gallon
	MRZ	Mineral Resource Zone
	MSA	Magnuson-Stevens Fishery Conservation and Management Act
<b>N</b>	NAAQS	National Ambient Air Quality Standards
	NHPA	National Historic Preservation Act of 1966
	NHTSA	National Highway Traffic Safety Administrative
	NMFS	National Marine Fisheries Service
	NO <sub>x</sub>	nitrogen oxides
	NPDES	National Pollutant Discharge Elimination System
	NPS	National Park Service
	NRHP	National Register of Historic Places
	NTIS	National Technical Information Service
<b>O</b>	OSHA	Occupational Safety and Health Administration
<b>P</b>	P.L.	Public Law
	PCBs	polychlorinated biphenyls
	PERP	Portable Equipment Registration Program
	PM	particulate matter
	PM <sub>10</sub>	particulate matter less than 10 micrometers
	PM <sub>2.5</sub>	particulate matter less than 2.5 micrometers
	ppm	parts per million
	Pub.	Public
<b>R</b>	RCRA	Resource Conservation and Recovery Act
	RWQCB	Regional Water Quality Control Board
<b>S</b>	SAFE	safer affordable fuel-efficient

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	SB	Senate Bill
	SCAB	South Coast Air Basin
	SHPO	State Historic Preservation Officer
	SLCP	short-lived climate pollutant
	SRA	State Responsibility Area
	Stat.	statute
	subd.	subdivision
	SWPPP	Stormwater Pollution Prevention Plan
	SWRCB	State Water Resources Control Board
<b>T</b>	tit.	title
	TMDL	total maximum daily load
	TSCA	Toxic Substances Control Act
<b>U</b>	U.S.	United States
	U.S.C.	United States Code
	USEPA	U.S. Environmental Protection Agency
	USFWS	U.S. Fish and Wildlife Service
<b>V</b>	v.	versus

## 1 **A.1 Introduction**

2 Appendix A identifies major federal and state laws, regulations, and policies  
3 potentially applicable to the Bandwidth IG, LLC San Francisco Bay Fiber Optic  
4 Cable Project.<sup>1</sup>

## 5 **A.2 Multiple Environmental Issues**

### 6 **A.2.1 Federal**

#### 7 **Coastal Zone Management Act (42 U.S.C. § 4321 et seq.)**

8 The Coastal Zone Management Act recognizes a national interest in coastal  
9 zone resources and in the importance of balancing competing uses of those  
10 resources, giving full consideration to aesthetic, cultural and historic, ecological,  
11 recreational, and other values as well as the needs for compatible economic  
12 development. Pursuant to the Act, coastal states develop and implement  
13 comprehensive coastal management programs, authorities and enforceable  
14 policies, and coastal zone boundaries, among other elements. The Act also  
15 gives state coastal management agencies regulatory control (“federal  
16 consistency” review authority) over federal activities and federally licensed,  
17 permitted or assisted activities, if the activity affects coastal resources; such  
18 activities include military projects at coastal locations and outer continental  
19 shelf oil and gas leasing, exploration and development. The California Coastal  
20 Commission (CCC) and San Francisco Bay Conservation and Development  
21 Commission coordinate California’s federally approved coastal management  
22 programs and federal consistency reviews within their respective jurisdictions.

### 23 **A.2.2 State**

#### 24 **California Environmental Quality Act (Pub. Resources Code § 21000 et seq.)**

25 The California Environmental Quality Act (CEQA) requires state and local  
26 agencies to identify significant environmental impacts of their actions and to  
27 avoid or mitigate those impacts, if feasible. A public agency must comply with  
28 CEQA when it undertakes an activity defined by CEQA as a “project” that must  
29 receive some discretionary approval (i.e., the agency has authority to deny the  
30 requested permit or approval) which may cause either a direct physical  
31 change, or a reasonably foreseeable indirect change, in the environment.

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<sup>1</sup> Environmental issue areas are found in California Environmental Quality Act Guidelines Appendix G: [chrome-extension://efaidnbmnnnibpcajpcgicfindmkaj/https://www.califaep.org/docs/2022\\_CEQA\\_Statue\\_and\\_Guidelines.pdf](https://www.califaep.org/docs/2022_CEQA_Statue_and_Guidelines.pdf)













## Appendix A – Major Federal and State Laws, Regulations, and Policies

1 August 2, 2018, the National Highway Traffic Safety Administrative (NHTSA) and  
2 USEPA proposed to amend the fuel efficiency standards for passenger cars and  
3 light trucks and establish new standards covering model years 2021 through  
4 2026 by maintaining the current model year 2020 standards through 2026 (Safer  
5 Affordable Fuel-Efficient [SAFE] Vehicles Rule). On September 19, 2019, USEPA  
6 and NHTSA issued a final action on the One National Program Rule, which is  
7 consider Part One of the SAFE Vehicles Rule and a precursor to the proposed  
8 fuel efficiency standards. The One National Program Rule enables USEPA/NHTSA  
9 to provide nationwide uniform fuel economy and GHG vehicle standards,  
10 specifically by (1) clarifying that federal law preempts state and local tailpipe  
11 GHG standards, (2) affirming NHTSA's statutory authority to set nationally  
12 applicable fuel economy standards, and (3) withdrawing the California Clean  
13 Air Act (CCAA) preemption waiver to set state-specific standards.

14 USEPA and NHTSA published their decisions to withdraw California's waiver and  
15 finalize regulatory text related to the preemption on September 27, 2019 (84  
16 Federal Register [Fed. Reg.] 51310). California, 22 other states, the District of  
17 Columbia, and two cities filed suit against Part One of the SAFE Vehicles Rule on  
18 September 20, 2019 (California et al. v. United States Department of  
19 Transportation et al., 1:19-cv-02826, U.S. District Court for the District of  
20 Columbia). On October 28, 2019, the Union of Concerned Scientists,  
21 Environmental Defense Fund, and other groups filed a protective petition for  
22 review after the federal government sought to transfer the suit to the D.C. Circuit  
23 (Union of Concerned Scientists v. National Highway Traffic Safety  
24 Administration). Opening briefs for the petition are currently scheduled to be  
25 completed on November 23, 2020. The lawsuit filed by California and others is  
26 stayed pending resolution of the petition.

27 USEPA and NHTSA published final rules to amend and establish national CO<sub>2</sub> and  
28 fuel economy standards on April 30, 2020 (Part Two of the SAFE Vehicles Rule)  
29 (85 Fed. Reg. 24174). The revised rule changes the national fuel economy  
30 standards for light duty vehicles from 50.4 mpg to 40.5 mpg in future years.  
31 California, 22 other states, the District of Columbia filed a petition for review of  
32 the final rule on May 27, 2020. The fate of the SAFE Vehicles Rule remains  
33 uncertain in the face of pending legal deliberations.

### 34 **A.5.2 State**

#### 35 **California Clean Air Act of 1988**

36 The CCAA requires all air districts in the State to endeavor, achieve and  
37 maintain State ambient air quality standards for ozone, carbon monoxide, sulfur  
38 dioxide, nitrogen dioxide, and PM. CARB sets air quality standards for the State  
39 at levels to protect public health and welfare with an adequate margin of

1 safety. The California Ambient Air Quality Standards (CAAQS) are generally  
2 stricter than national standards for the same pollutants; California also has  
3 standards for sulfates, hydrogen sulfide, vinyl chloride, and visibility-reducing  
4 particles. The CAAQS describe adverse conditions (i.e., pollution levels must be  
5 below these standards before a basin can attain the standard). Air quality is  
6 considered in “attainment” if pollutant levels are continuously below or equal to  
7 the standards and violate the standards no more than once each year. The  
8 1992 CCAA Amendments divide ozone nonattainment areas into four  
9 categories of pollutant levels (moderate, serious, severe, and extreme) to which  
10 progressively more stringent requirements apply. CARB also regulates toxic air  
11 contaminants (pollutants that result in harmful health effects, but are not  
12 specifically addressed by air quality standards) using air toxic control measures.

### 13 **California Air Resources Board Programs, Regulations, and Standards**

- 14 • **California Diesel Fuel Regulations** (Title 13 of California Code of Regulations  
15 [13 CCR] §§ 2281-2285; 17 CCR § 93114). In 2004, the CARB set limits on the  
16 sulfur content of diesel fuel sold in California for use in on-road and off-road  
17 motor vehicles. Harbor craft and intrastate locomotives were later included  
18 by a 2004 rule amendment (CARB 2005a). Under this rule, diesel fuel used in  
19 motor vehicles except harbor craft and intrastate locomotives has been  
20 limited to 500 parts per million (ppm) sulfur since 1993. The sulfur limit was  
21 reduced to 15 ppm beginning September 1, 2006. Diesel fuel used in harbor  
22 craft in the SCAB also was limited to 500 ppm sulfur starting January 1, 2006,  
23 and was lowered to 15 ppm sulfur on September 1, 2006. Diesel fuel used in  
24 intrastate locomotives (switch locomotives) was limited to 15 ppm sulfur  
25 starting on January 1, 2007.
- 26 • **California Diesel Risk Reduction Plan.** CARB has adopted several regulations  
27 that are meant to reduce the health risk associated with on- and off-road  
28 and stationary diesel engine operation. This plan recommends many control  
29 measures with the goal of an 85 percent reduction in diesel particulate  
30 matter emissions by 2020. The regulations noted below, which may also serve  
31 to significantly reduce other pollutant emissions, are all part of this risk  
32 reduction plan.
- 33 • **Commercial Harbor Craft Regulation** requires upgrades to Tier 2 or Tier 3  
34 standards to reduce diesel particulate matter and NOx emissions from diesel  
35 engines used on commercial harbor craft (e.g., tugboats, crew and supply  
36 vessels, work boats, barges, dredges) operated in California Regulated  
37 Waters (internal waters, estuarine waters, ports and coastal waters within  
38 24 nautical miles of the coast)
- 39 • **Emission Standards for On-Road and Off-Road Diesel Engines.** Similar to the  
40 USEPA for on-road and off-road emissions described above, the CARB has

1 established emission standards for new on-road and off-road diesel engines.  
2 These regulations have model year based emissions standards for NOx,  
3 hydrocarbons, carbon monoxide, and PM.

4 • **Heavy Duty Diesel Truck Idling Rule – Heavy Duty Diesel Truck Idling**  
5 **Regulation.** This CARB rule became effective February 1, 2005, and prohibits  
6 heavy-duty diesel trucks from idling for longer than 5 minutes at a time, unless  
7 they are queuing and provided the queue is located beyond 100 feet from  
8 any homes or schools (CARB 2006).

9 • **In-Use Off-Road Vehicle Regulation** (13 CCR § 2449). The State has also  
10 enacted a regulation to reduce diesel particulate matter and criteria  
11 pollutant emissions from in-use off-road diesel-fueled vehicles. This regulation  
12 provides target emission rates for PM and NOx emissions from owners of fleets  
13 of diesel-fueled off-road vehicles, and applies to off-road equipment fleets of  
14 three specific sizes, as follows:

- 15 - Small Fleet – Fleet or municipality with equipment totaling less than or  
16 equal to 2,500 hp, or municipal fleet in lower population area, captive  
17 attainment fleet, or non-profit training center regardless of horsepower.
- 18 - Medium Fleet – Fleet with equipment totaling 2,501 to 5,000 hp.
- 19 - Large Fleet – Fleet with equipment totaling more than 5,000 hp, or all State  
20 and federal government fleets regardless of total hp.

21 The target emission rates for these fleets are reduced over time. Specific  
22 regulation requirements:

- 23 - Limit on idling, requiring a written idling policy, and disclosure when selling  
24 vehicles;
- 25 - Require all vehicles to be reported to CARB (using the Diesel Off-Road  
26 Online Reporting System) and labeled;
- 27 - Restrict the adding of older vehicles into fleets starting on January 1, 2014;  
28 and
- 29 - Require fleets to reduce their emissions by retiring, replacing, or  
30 repowering older engines, or installing Verified Diesel Emission Control  
31 Strategies (i.e., exhaust retrofits). (CARB 2014)

32 • **Ocean-Going Vessels Fuel Standards.** After January 1, 2014, ocean-going  
33 vessels within California Regulated Waters must use fuel with a maximum fuel  
34 sulfur content of 0.1 percent (using cleaner marine distillate fuels in larger  
35 ocean-going vessels reduces diesel particulate matter, NOx, and sulfur oxide  
36 emissions).

- 1 • **Off-Road Mobile Sources Emission Reduction Program.** The CCAA mandates  
2 that CARB achieve the maximum degree of emission reductions from all off-  
3 road mobile sources (e.g., construction equipment, marine vessels, and  
4 harbor craft) to attain state ambient air quality standards. Tier 2, Tier 3, and  
5 Tier 4 exhaust emissions standards apply to off-road equipment. In addition,  
6 CARB fleet requirements specify how equipment that is already in use can be  
7 retrofitted to achieve lower emissions using the CARB-verified retrofit  
8 technologies. USEPA standards for marine compression-ignition engines  
9 address NOx and diesel particulate matter emissions, depending on engine  
10 size and year of manufacture. Tier 2 standards for marine engines were  
11 phased in for model years 2004 to 2007, and Tier 3 standards were phased in  
12 for currently available technologies to reduce NOx and PM, starting in 2009.
- 13 • **Statewide Portable Equipment Registration Program.** The Portable Equipment  
14 Registration Program (PERP) establishes a uniform program to regulate  
15 portable engines and portable engine-driven equipment units (CARB 2005b).  
16 Once registered in the PERP, engines and equipment units may operate  
17 throughout California without the need to obtain individual permits from local  
18 air districts, if the equipment is located at a single location for no more than  
19 12 months.
- 20 • **Advanced Clean Truck Regulation:** CARB adopted the Advanced Clean  
21 Truck Regulation in June 2020 to accelerate a large-scale transition of zero-  
22 emission medium-and-heavy-duty vehicles. The regulation requires the sale of  
23 zero-emission medium-and-heavy-duty vehicles as an increasing percentage  
24 of total annual California sales from 2024 to 2035. By 2035, zero-emission  
25 truck/chassis sales would need to be 55 percent of Class 2b – 3 truck sales,  
26 75 percent of Class 4 – 8 straight truck sales, and 40 percent of truck tractor  
27 sales. By 2045, every new medium-and-heavy-duty truck sold in California will  
28 be zero-emission. Large employers including retailers, manufacturers, brokers,  
29 and others are required to report information about shipments and shuttle  
30 services to better ensure that fleets purchase available zero-emission trucks.

### 31 **Health and Safety Code**

- 32 • **Sections 25531-25543** set forth changes in four areas: (1) provides guidelines  
33 to identify a more realistic health risk; (2) requires high-risk facilities to submit  
34 an air toxic emission reduction plan; (3) holds air pollution control districts  
35 accountable for ensuring that plans achieve objectives; and (4) requires  
36 high-risk facilities to achieve their planned emission reductions
- 37 • **The Air Toxics Hot Spots Information and Assessment Act** (§ 44300 et seq.)  
38 provides for the regulation of over 200 toxic air contaminants. Under the act,  
39 local air districts may request that a facility account for its toxic air  
40 contaminant emissions. Local air districts then prioritize facilities based on

1 emissions; high priority designated facilities must submit a health risk  
2 assessment.

### 3 **Coastal Act Chapter 3 Policies (see *Multiple Environmental Issues*)**

4 Section 30253, subdivision (c) requires that new development shall be consistent  
5 with requirements imposed by an air pollution control district or CARB as to each  
6 development.

## 7 **A.6 Biological Resources**

### 8 **A.6.1 Federal**

#### 9 **Federal Endangered Species Act (7 U.S.C. § 136, 16 U.S.C. § 1531 et seq.)**

10 The Federal Endangered Species Act, which is administered in California by the  
11 U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service  
12 (NMFS), provides protection to species listed as threatened or endangered, or  
13 proposed for listing as threatened or endangered. When applicants propose  
14 projects with a federal nexus that “may affect” a federally listed or proposed  
15 species, the federal agency must (1) consult with the USFWS or NMFS, as  
16 appropriate, under Section 7, and (2) ensure that any actions authorized,  
17 funded, or carried out by the agency are not likely to jeopardize the continued  
18 existence of any endangered or threatened species or result in the destruction  
19 or adverse modification of areas determined to be critical habitat. Section 9  
20 prohibits the “take” of any member of a listed species.

- 21 • **Take** – To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or  
22 collect, or to attempt to engage in any such conduct
- 23 • **Harass** – An intentional or negligent act or omission that creates the likelihood  
24 of injury to a listed species by annoying it to such an extent as to significantly  
25 disrupt normal behavior patterns that include, but are not limited to,  
26 breeding, feeding, or sheltering
- 27 • **Harm** – Significant habitat modification or degradation that results in death or  
28 injury to listed species by significantly impairing behavioral patterns such as  
29 breeding, feeding, or sheltering

#### 30 **Fish and Wildlife Coordination Act of 1958**

31 This Act requires that whenever a body of water is proposed to be controlled or  
32 modified, the lead agency must consult with the state and federal agencies  
33 responsible for fish and wildlife management (e.g., USFWS, California  
34 Department of Fish and Wildlife (CDFW), and National Oceanic and



1 Atmospheric Administration). The Act allows for recommendations addressing  
2 adverse impacts associated with a proposed project, and for mitigating or  
3 compensating for impacts on fish and wildlife.

4 **Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801**  
5 **et seq.)**

6 The Magnuson-Stevens Fishery Conservation and Management Act (MSA)  
7 governs marine fisheries management in Federal waters. The MSA was first  
8 enacted in 1976 and amended by the Sustainable Fisheries Act of 1996 and the  
9 Magnuson-Stevens Fishery Conservation and Management Reauthorization Act  
10 in 2007. Amendments require the identification of Essential Fish Habitat (EFH) for  
11 federally managed species and the implementation of measures to conserve  
12 and enhance this habitat. Any project requiring Federal authorization, such as a  
13 U.S. Army Corps of Engineers permit, is required to complete and submit an EFH  
14 Assessment with the application and either show that no significant impacts to  
15 the essential habitat of managed species are expected or identify mitigations to  
16 reduce those impacts. Under the MSA, Congress defined EFH as “those waters  
17 and substrate necessary to fish for spawning, breeding, feeding, or growth to  
18 maturity” (Title 16 of the United States Code [16 U.S.C.] § 1802(10)). The EFH  
19 provisions of the MSA offer resource managers a means to heighten  
20 consideration of fish habitat in resource management. Federal agencies shall  
21 consult with the NMFS regarding any action they authorize, fund, or undertake  
22 that might adversely affect EFH (§ 305(b)(2)).

23 **Marine Mammal Protection Act (16 U.S.C. § 1361 et seq.)**

24 The Marine Mammal Protection Act (MMPA) is designed to protect and  
25 conserve marine mammals and their habitats. It prohibits takes of all marine  
26 mammals in the United States. (including territorial seas) with few exceptions.  
27 The Act defines “take” as hunt, capture, or kill, or attempt to harass, hunt,  
28 capture, or kill any marine mammal.” “Harassment” is defined as any act of  
29 pursuit, torment, or annoyance that has the potential to injure a marine  
30 mammal or marine mammal stock in the wild; or has the potential to disturb a  
31 marine mammal or marine mammal stock in the wild by causing disruption of  
32 behavioral patterns, including, but not limited to, migration, breathing, nursing,  
33 breeding, feeding, or sheltering.

34 The NMFS may issue a take permit under Section 104 if the activities are  
35 consistent with the purposes of the MMPA and applicable regulations at Code  
36 of Federal Regulations, Title 50, Part 216 (50 CFR Part 216). The NMFS must also  
37 find that the manner of taking is “humane” as defined in the MMPA. If lethal  
38 taking of a marine mammal is requested, the applicant must demonstrate that  
39 using a non-lethal method is not feasible. In 1994 a simplified process for

1 obtaining “small take” exemptions was added for unintentional taking by  
2 incidental harassment only. Under this process, incidental take of small numbers  
3 of marine mammals by harassment can be authorized for periods of up to  
4 1 year.

### 5 **Migratory Bird Treaty Act (16 U.S.C. § 703-712)**

6 This Act prohibits the take, possession, import, export, transport, selling, purchase,  
7 barter, or offering for sale, purchase, or barter, of any migratory bird, their eggs,  
8 parts, and nests, except as authorized under a valid permit (50 CFR 21.11). The  
9 USFWS issues permits for take of migratory birds for activities such as scientific  
10 research, education, and depredation control, but does not issue permits for  
11 incidental take of migratory birds.

### 12 **National Invasive Species Act (33 CFR, Part 151, Subpart D)**

13 This Act was originally passed in 1990 as the Nonindigenous Aquatic Nuisance  
14 Prevention and Control Act [16 U.S.C. § 4701-4751] and reauthorized, renamed  
15 and expanded in 1996. Under its provisions, the U.S. Coast Guard requires ballast  
16 water management (i.e., exchange) for vessels entering U.S. waters from outside  
17 the 200-nautical-mile U.S. Exclusive Economic Zone. The original Act was  
18 established to: (1) prevent unintentional introduction and dispersal of  
19 nonindigenous species into waters of the United States through ballast water  
20 management and other requirements; (2) coordinate and disseminate  
21 information on federally conducted, funded, or authorized research, on the  
22 prevention and control of the zebra mussel and other aquatic nuisance species;  
23 (3) develop and carry out control methods to prevent, monitor, and control  
24 unintentional introductions of nonindigenous species from pathways other than  
25 ballast water exchange; (4) understand and minimize economic and ecological  
26 impacts of established nonindigenous aquatic nuisance species; and (5)  
27 establish a program of research and technology development and assistance  
28 to states in the management and removal of zebra mussels.

### 29 **Executive Orders (EO)**

- 30 • **EO 11990** requires federal agencies to provide leadership and take action to  
31 minimize the destruction, loss or degradation of wetlands, and to preserve  
32 and enhance the natural and beneficial values of wetlands. Each agency,  
33 to the extent permitted by law, must (1) avoid undertaking or providing  
34 assistance for new construction located in wetlands unless the head of the  
35 agency finds there is no practical alternative to such construction or the  
36 proposed action includes all practical measures to minimize harm to  
37 wetlands that may result from such use; (2) take into account economic,  
38 environmental and other pertinent factors in making this finding; and (3)

1 provide opportunity for early public review of any plans or proposals for new  
2 construction in wetlands.

- 3 • **EO 13112** requires federal agencies to use authorities to prevent introduction  
4 of invasive species, respond to and control invasions, and provide for  
5 restoration of native species and habitat conditions in invaded ecosystems;  
6 also established the Invasive Species Council, which prepares a National  
7 Invasive Species Management Plan that details and recommends  
8 performance-oriented goals and objectives and measures of success for  
9 federal agencies
- 10 • **EO 13158** requires federal agencies to (1) identify actions that affect natural  
11 or cultural resources that are within a Marine Protected Area (MPA); and (2)  
12 in taking such actions, to avoid harm to the natural and cultural resources  
13 that are protected by a MPA.
- 14 • **EO 13186** sets forth responsibilities of federal agencies to protect migratory  
15 birds.

#### 16 **Other**

- 17 • **Bald and Golden Eagle Protection Act** makes it illegal to import, export, take,  
18 sell, purchase or barter any bald eagle or golden eagle or parts thereof.
- 19 • **Clean Water Act and Rivers and Harbors Act** (see *Hydrology and Water*  
20 *Quality section*)
- 21 • **Coastal Zone Management Act** (see *Multiple Environmental Issues*)
- 22 • **Estuary Protection Act (16 U.S.C. § 1221-1226)** authorizes federal agencies to  
23 assess the impacts of commercial and industrial developments on estuaries.

#### 24 **A.6.2 State**

##### 25 **California Endangered Species Act (Fish & Game Code, § 2050 et seq.)**

26 The California Endangered Species Act (CESA) provides for the protection of  
27 rare, threatened, and endangered plants and animals, as recognized by the  
28 CDFW, and prohibits the taking of such species without its authorization.  
29 Furthermore, the CESA provides protection for those species that are designated  
30 as candidates for threatened or endangered listings. Under the CESA, the CDFW  
31 has the responsibility for maintaining a list of threatened species and  
32 endangered species (Fish & Game Code, § 2070). The CDFW also maintains a list  
33 of candidate species, which are species that the CDFW has formally noticed as  
34 under review for addition to the threatened or endangered species lists. The  
35 CDFW also maintains lists of Species of Special Concern that serve as watch lists.  
36 Pursuant to CESA requirements, an agency reviewing a proposed project within

1 its jurisdiction must determine whether any State-listed endangered or  
2 threatened species may be present in the project site and determine whether  
3 the proposed project will have a significant impact on such species. The CDFW  
4 encourages informal consultation on any proposed project that may affect a  
5 candidate species. The CESA also requires a permit to take a State-listed species  
6 through incidental or otherwise lawful activities (§ 2081, subd. (b))

### 7 **Marine Life Protection Act (Fish & Game Code, §§ 2850–2863)**

8 These regulations require that the CDFW: be notified of activities that would  
9 interfere with the natural flow of, or substantially alter, the channel, bed, or bank  
10 of a lake, river, or stream; determines if the activity may substantially adversely  
11 affect an existing fish and wildlife resource; and issue a Streambed Alteration  
12 Agreement if applicable.

13 Pursuant to this Act, the CDFW established and manages a network of MPAs to,  
14 among other goals, protect marine life and habitats and preserve ecosystem  
15 integrity. For the purposes of MPA planning, California was divided into five  
16 distinct regions (four coastal and San Francisco Bay) each of which had its own  
17 MPA planning process. The coastal portion of California's MPA network is now in  
18 effect statewide; options for a planning process in San Francisco Bay have been  
19 developed for consideration at a future date. The Marine Life Protection Act  
20 establishes clear policy guidance and a scientifically sound planning process for  
21 the siting and design of MPAs such as:

- 22 • State Marine Reserves, which typically preclude all extractive activities (such  
23 as fishing or kelp harvesting)
- 24 • State Marine Parks, which do not allow any commercial extraction
- 25 • State Marine Conservation Areas, which preclude some combination of  
26 commercial and/or recreational extraction

### 27 **Other relevant California Fish and Game Code Sections and Programs/Plans**

- 28 • **Section 1900 et seq.** (California Native Plant Protection Act) is intended to  
29 preserve, protect, and enhance endangered or rare native plants in  
30 California. Under § 1901, a species is endangered when its prospects for  
31 survival and reproduction are in immediate jeopardy from one or more  
32 causes. A species is rare when, although not threatened with immediate  
33 extinction, it is in such small numbers throughout its range that it may  
34 become endangered. The Act includes provisions that prohibit taking of  
35 listed rare or endangered plants from the wild and a salvage requirement for  
36 landowners.

- 1 • **Sections 3503 & 3503.5** prohibit take and possession of native birds' nests and  
2 eggs from all forms of needless take and provide that it is unlawful to take,  
3 possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-  
4 of-prey) or to take, possess, or destroy the nests or eggs of any such bird  
5 except as otherwise provided by this Code or any regulation adopted  
6 pursuant thereto.
- 7 • **Sections 3511** (birds), **4700** (mammals), **5050** (reptiles and amphibians), &  
8 **5515** (fish) designate certain species as "fully protected;" such species, or  
9 parts thereof, may not be taken or possessed at any time without permission  
10 by the CDFW.
- 11 • **Section 3513** does not include statutory or regulatory mechanism for  
12 obtaining an incidental take permit for the loss of non-game, migratory birds.
- 13 • **California Aquatic Invasive Species Management Plan** provides a framework  
14 for agency coordination and identifies actions to minimize harmful effects of  
15 aquatic invasive species.

16 **Marine Invasive Species Act (Pub. Resources Code § 71200 et seq.) (AB 433;**  
17 **Stats. 2003, ch. 491)**

18 Originally passed in 2003 and amended several times, the purpose of the Marine  
19 Invasive Species Act (MISA) is to move towards eliminating the discharge of  
20 nonindigenous species into waters of the state or waters that may impact waters  
21 of the state, based on the best available technology economically achievable.  
22 MISA requires mid-ocean exchange or retention of all ballast water and  
23 associated sediments for all vessels 300 gross registered tons or more, U.S. and  
24 foreign, carrying ballast water into the waters of the state after operating  
25 outside state waters. For all vessels 300 gross register tons or more arriving at a  
26 California port or place carrying ballast water from another port or place within  
27 the Pacific Coast Region, the Act mandates near-coast exchange or retention  
28 of all ballast water. MISA also requires completion and submission of Ballast  
29 Water Reporting Form 24 hours in advance of each port of call in California,  
30 annual submittal of the Hull Husbandry Reporting Form, the keeping of a ballast  
31 management plan and logs, and the application of "Good Housekeeping"  
32 Practices designed to minimize the transfer and introduction of invasive species.  
33 Compliance with MISA is the responsibility of vessel owners/operators. The  
34 California State Lands Commission has regulatory authority to manage and  
35 enforce MISA.

36 **Coastal Act Chapter 3 Policies (see *Multiple Environmental Issues*)**

- 37 • **Section 30230** – Marine resources shall be maintained, enhanced, and where  
38 feasible, restored. Special protection shall be given to areas and species of  
39 special biological or economic significance. Uses of the marine environment

- 1 shall be carried out in a manner that will sustain the biological productivity of  
2 coastal waters and that will maintain healthy populations of all species of  
3 marine organisms adequate for long-term commercial, recreational,  
4 scientific, and educational purposes.
- 5 • **Section 30231** – The biological productivity and the quality of coastal waters,  
6 streams, wetlands, estuaries, and lakes appropriate to maintain optimum  
7 populations of marine organisms and for the protection of human health shall  
8 be maintained and, where feasible, restored through, among other means,  
9 minimizing adverse effects of waste water discharges and entrainment,  
10 controlling runoff, preventing depletion of ground water supplies and  
11 substantial interference with surface water flow, encouraging waste water  
12 reclamation, maintaining natural vegetation buffer areas that protect  
13 riparian habitats, and minimizing alteration of natural streams.
  - 14 • **Section 30232** – Protection against the spillage of crude oil, gas, petroleum  
15 products, or hazardous substances shall be provided in relation to any  
16 development or transportation of such materials. Effective containment and  
17 cleanup facilities and procedures shall be provided for accidental spills that  
18 do occur.
  - 19 • **Section 30233** – applies in part to development activities within or affecting  
20 wetlands and other sensitive areas, identifies eight allowable uses, requires  
21 projects be the least environmentally damaging feasible alternative, and  
22 where applicable, requires feasible and appropriate mitigation.
  - 23 • **Section 30240** – (a) Environmentally sensitive habitat areas shall be protected  
24 against any significant disruption of habitat values, and only uses dependent  
25 on those resources shall be allowed within those areas. (b) Development in  
26 areas adjacent to environmentally sensitive habitat areas and parks and  
27 recreation areas shall be sited and designed to prevent impacts which  
28 would significantly degrade those areas, and shall be compatible with the  
29 continuance of those habitat and recreation areas.

30 **Other**

- 31 • **California Department of Food and Agriculture's California Noxious and**  
32 **Invasive Weed Action Plan** seeks to prevent and control noxious and invasive  
33 weeds.
- 34 • **Wetlands Conservation Policy** – no net loss of wetland acreage; long-term  
35 gain in the quantity, quality, and permanence of California's wetlands.

1 **A.7 Commercial and Recreational Fishing**

2 **A.7.1 Federal**

3 There are no major federal laws, regulations, and/or policies potentially  
4 applicable to this Project.

5 **A.7.2 State**

6 **Coastal Act Chapter 3**

7 Coastal Act Chapter 3 policies applicable to this issue area are:

- 8 • **Section 30234** states: Facilities serving the commercial fishing and  
9 recreational boating industries shall be protected and, where feasible,  
10 upgraded. Existing commercial fishing and recreational boating harbor  
11 space shall not be reduced unless the demand for those facilities no longer  
12 exists or adequate substitute space has been provided. Proposed  
13 recreational boating facilities shall, where feasible, be designed and located  
14 in such a fashion as not to interfere with the needs of the commercial fishing  
15 industry.
- 16 • **Section 30234.5** states: The economic, commercial, and recreational  
17 importance of fishing activities shall be recognized and protected.

18 **Fish and Game Code**

19 **Section 9002**, et seq., prohibits unlawful handling of legally set trap gear.

20 **Other**

- 21 • **California Commercial Fishing Laws and Licensing Requirements.**  
22 Commercial fishing is regulated by a series of laws passed by the Fish and  
23 Game Commission and issued each year in a summary document. Seasonal  
24 and gear restrictions within the various CDFW Districts, licensing instructions  
25 and restrictions, and species-specific fishing requirements are provided in the  
26 document. Most of the MPAs have commercial fishing restrictions (based on  
27 the designation of each area), which are also listed in the summary  
28 document.
- 29 • **California Ocean Sport Fishing Regulations.** Each year, the Fish and Game  
30 Commission issues regulations on the recreational fishing within the marine  
31 waters of the state, specifying the fishing season for species, size and bag  
32 limits, and gear restrictions, licensing requirements; a section on fishing  
33 restrictions within MPAs is also now included.

1 **A.8 Cultural Resources**

2 **A.8.1 Federal**

3 **Abandoned Shipwreck Act of 1987 (43 U.S.C. § 2101–2106) and National Park**  
4 **Service (NPS) Abandoned Shipwreck Act Guidelines**

5 The Abandoned Shipwreck Act asserts U.S. Government title to three categories  
6 of abandoned shipwrecks: those embedded in a state's submerged lands; those  
7 embedded in coralline formations protected by a state on its submerged lands,  
8 and those located on a state's lands that are included or determined eligible for  
9 inclusion in the National Register of Historic Places (NRHP). The law then transfers  
10 title for a majority of those shipwrecks to the respective states, and provides that  
11 states develop policies for management of the wrecks so as to protect natural  
12 resources, permit reasonable public access, and allow for recovery of  
13 shipwrecks consistent with the protection of historical values and environmental  
14 integrity of wrecks and sites.

15 The NPS has issued guidelines that are intended to: maximize the enhancement  
16 of shipwreck resources; foster a partnership among sport divers, fishermen,  
17 archeologists, sailors, and other interests to manage shipwreck resources of the  
18 states and the United States; facilitate access and utilization by recreational  
19 interests; and recognize the interests of individuals and groups engaged in  
20 shipwreck discovery and salvage.

21 **Archaeological and Historic Preservation Act**

22 The Archaeological and Historic Preservation Act (AHPA) provides for the  
23 preservation of historical and archaeological data that might be irreparably lost  
24 or destroyed as a result of (1) flooding, the building of access roads, the erection  
25 of workmen's communities, the relocation of railroads and highways, and other  
26 alterations of terrain caused by the construction of a dam by an agency of the  
27 United States or by any private person or corporation holding a license issued by  
28 any such agency; or (2) any alteration of the terrain caused as a result of a  
29 federal construction project or federally licensed project, activity, or program.  
30 This Act requires federal agencies to notify the Secretary of the Interior when  
31 they find that any federally permitted activity or program may cause irreparable  
32 loss or destruction of significant scientific, prehistoric, historical, or archaeological  
33 data. The AHPA built upon national policy, set out in the Historic Sites Act of  
34 1935, "...to provide for the preservation of historic American sites, buildings,  
35 objects, and antiquities of national significance...."



1 **Archaeological Resources Protection Act of 1979 (P.L. 96-95; 93 Stat. 712)**

2 The Archaeological Resources Protection Act (ARPA) states that archaeological  
3 resources on public or Indian lands are an accessible and irreplaceable part of  
4 the nation's heritage and:

- 5 • Establishes protection for archaeological resources to prevent loss and  
6 destruction due to uncontrolled excavations and pillaging;
- 7 • Encourages increased cooperation and exchange of information between  
8 government authorities, the professional archaeological community, and  
9 private individuals having collections of archaeological resources prior to the  
10 enactment of this Act;
- 11 • Establishes permit procedures to permit excavation or removal of  
12 archaeological resources (and associated activities) located on public or  
13 Indian land; and
- 14 • Defines excavation, removal, damage, or other alteration or defacing of  
15 archaeological resources as a "prohibited act" and provides for criminal and  
16 monetary rewards to be paid to individuals furnishing information leading to  
17 the finding of a civil violation or conviction of a criminal violator.

18 An anti-trafficking provision prohibits interstate or international sale, purchase, or  
19 transport of any archaeological resource excavated or removed in violation of  
20 a state or local law, ordinance, or regulation. ARPA's enforcement provision  
21 provides for criminal and civil penalties against violators of the Act. The ARPA's  
22 permitting component allows for recovery of certain artifacts consistent with NPS  
23 Federal Archeology Program standards and requirements.

24 **National Historic Preservation Act of 1966 (16 U.S.C. § 470 et seq.) and**  
25 **implementing regulations (Protection of Historic Properties; 36 CFR 800) (applies**  
26 **only to federal undertakings)**

27 Archaeological resources are protected through the National Historic  
28 Preservation Act (NHPA) and its implementing regulation (Protection of Historic  
29 Properties; 36 CFR 800), the AHPA, and the ARPA. This Act presents a general  
30 policy of supporting and encouraging the preservation of prehistoric and historic  
31 resources for present and future generations by directing federal agencies to  
32 assume responsibility for considering the historic resources in their activities. The  
33 State implements the NHPA through its statewide comprehensive cultural  
34 resource surveys and preservation programs coordinated by the California  
35 Office of Historic Preservation in the State Department of Parks and Recreation,  
36 which also advises federal agencies regarding potential effects on historic  
37 properties.











































































