# CHAPTER 10

# Special General Plan Considerations

*All statutory references are to the California Government Code unless otherwise noted.*

A number of state and federal statutes and regulatory programs can have a direct bearing on the general plan and need to be considered in any general plan process. For example, the California Coastal Act requires each community within the coastal zone to prepare a local coastal program (LCP), including a coastal land use plan. The Surface Mining and Reclamation Act (SMARA) requires cities and counties containing minerals of regional or statewide significance to adopt policies protecting mineral resources from incompatible uses. The California Integrated Waste Management Act requires counties, with the concurrence of a majority of the cities containing a majority of the incorporated county population, to prepare and adopt solid waste management plans. The Alquist-Priolo Earthquake Fault Zoning Act requires cities and counties with designated fault zones to limit new development within those zones. The Airport Land Use Commission Law requires cities and counties to amend their general plans to conform with adopted airport land use plans.

Regional transportation planning laws require an identification of regional transportation and road projects and provide a basis for obtaining federal and state funding. As part of this, Congestion Management Plans (CMPs) must be prepared within each of the 31 California counties containing an urbanized area. Although these CMPs are not necessarily prepared by local planning agencies, because they affect the transportation system they will directly affect local planning efforts.

Environmental regulations have a direct impact on the location, intensity, and types of land uses that may be allowed. Just as a general plan should reflect regional planning efforts, it should recognize pertinent state and federal environmental regulations. The California and Federal Endangered Species Acts prohibit the killing, harming, or harassing of endangered species of plants and animals, except under limited circumstances and with express permission from the Department of Fish and Game and the U.S. Fish and Wildlife Service. The state and federal Clean Air Acts mandate regional air quality planning through air quality management and air pollution control districts, as well as enforceable air basin regulations to reduce the production of specified air pollutants. The federal Clean Water Act empowers the U.S. Army Corps of Engineers to review and regulate land use activities that would fill or otherwise disturb jurisdictional wetlands.

This chapter summarizes the key points of the major statutes and programs that relate to and impact the planning process. It should not be considered a substitute for reading the full texts of the laws and any other related materials that fully explain their provisions and requirements. Not everything mentioned in this chapter is relevant to every community. However, when a particular law or program is relevant to your jurisdiction, you should be aware of its requirements and incorporate them into your planning process from the outset.

## CALIFORNIA COASTAL ACT

The California Coastal Act of 1976 (Public Resources Code §30000, et seq.) was enacted to "protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources" (Public Resources Code §30001.5). The Coastal Act applies to the coastal zone, a strip along the California coast generally "extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea" (Public Resources Code §30103). The actual coastal zone boundary is delineated on a set of maps adopted by the Legislature and located at the Coastal Commission's San Francisco office. The coastal zone excludes the area of jurisdiction of the San Francisco Bay Conservation and Development Commission. The Coastal Act otherwise applies to all those portions of cities (charter and general law) and counties that lie within the coastal zone (*70 Ops.Cal.Atty.Gen. 220 (1987)*).

The Coastal Commission regulates development within portions of the coastal zone and oversees coastal planning efforts along the entire coast. The Act's policies (Public Resources Code §30200, et seq. and §30702, et seq.) are implemented through cooperative action between the Commission and local governments. A central feature of this joint action is the local coastal

program (LCP). With certain exceptions, development within the coastal zone is subject to a coastal development permit issued either by a local government pursuant to a certified LCP or, where no certified LCP exists, by the Coastal Commission. A city or county that lacks a certified LCP surrenders a good deal of planning authority within the coastal zone.

Each city or county lying in whole or in part within the coastal zone is supposed to prepare an LCP for that part of its jurisdiction within the zone. However, any local government may request, in writing, that the commission prepare an LCP for them (Public Resources Code §30500(a)). An LCP adopted by the local government may be certified by the Coastal Commission as advancing the policies of the Coastal Act. Until an LCP has been certified, the local government cannot take over the issuance of coastal development permits (Public Resources Code §30519(a) and §30600(d)). Decisions made under an LCP may be appealed to the Commission (Public Resources Code §30603). The Commission retains permanent jurisdiction over development on coastal zone tidelands, submerged lands, and public trust lands (Public Resources Code §30519(b)).

An LCP consists of a coastal land use plan, (i.e., portions of a city's or county's general plan), zoning ordinance, zoning district maps, and where required, other programs necessary to implement the Coastal Act. In addition, it must contain a specific public access component to assure that maximum public access to the coast and public recreation areas is provided (Public Resources Code §30500).

The Coastal Act provides that the precise content of each LCP shall be determined by the local government, consistent with §30501, in full consultation with the Commission and with full public participation (Public Resources Code §30500(c)). The Commission's methodology for preparing LCPs can be found at Title 14, Division 5.5 of the California Code of Regulations, §13506 through §13514.

Amendments to certified LCPs must be submitted to the Commission for review and, in the case of major amendments, certification (*70 Ops.Cal.Atty.Gen. 220 (1987)*). LCP amendments that are minor in nature or that require rapid or expeditious action are reviewed by the Commission's executive director (Public Resources Code §30514; Title 14 of the California Code of Regulations, §13554 and §13555).

The Coastal Act has special requirements for the coastal zone portions of the ports of Hueneme, Long Beach, and Los Angeles and the San Diego Unified Port District. Rather than preparing LCPs, these ports must prepare master plans and have them certified by the Coastal Commission (Public Resources Code §30711 and §30714). With certain exceptions, each development within a port requires a development permit and must conform to the port's master plan (Public Resources Code §30715(a) and §30715.5). The cities and counties that have these ports within their jurisdictions must, for informational purposes, incorporate the master plan into their LCPs (Public Resources Code §30711(a)).

### Useful Definitions: **California Coastal Act**

**Land Use Plan**: The relevant portions of a local government's general plan or local coastal element that are sufficiently detailed to indicate the kinds, location, and intensity of land uses; the applicable resource protection and development policies; and, where necessary, a listing of implementing actions (Public Resources Code §30108.5)

**Local Coastal Element**: That portion of a general plan applicable to the coastal zone that may be prepared by local government pursuant to the California Coastal Act, or any additional elements of the local government's general plan prepared pursuant to §65303 of the Government Code, as the local government deems appropriate. (Public Resources Code §30108.55)

**Local Coastal Program**: A local government's land use plans, zoning ordinances, zoning district maps, and, within sensitive coastal resources areas, other implementing actions, that, when taken together, meet the requirements of and implement the provisions and policies of the California Coastal Act at the local level. (Public Resources Code §30108.6)

### Relation to the General Plan

Coastal cities and counties are subject to both planning and zoning laws and the California Coastal Act. Ideally, an LCP links Coastal Act policies to local planning. The contents of coastal land use plans overlap some of the required provisions of general plans. For instance, the Coastal Act requires policies concerning diking, dredging, filling, and shoreline structures (Public Resources Code §30233 and §30235), while planning and zoning law does not. Conversely, planning and zoning law requires the general plan to address noise, while the Coastal Act does not. To simplify implementation, coastal zone communities should integrate

both sets of requirements into a coherent and internally consistent local general plan

There are many ways to integrate the general and coastal plan policies. Some communities have adopted coastal elements within their general plans. Another option is to incorporate coastal plan policies, plan proposals, and standards directly into the general plan's land use, open-space, and conservation elements. A third option is to adopt a specific plan or community plan for urbanized areas within the coastal zone. A community plan focuses the general plan's policies on coastal issues. A specific plan may also do that, as well as enact coastal land use regulations.

If a jurisdiction wants to submit its general plan as part of the LCP, it must describe how coastal policies are addressed therein. In many cases, new coastal plans or elements will be needed to address the Coastal Act's specific requirements. In order to encourage the general plan amendments necessary to preparing a certified LCP, such actions do not count toward the limit of four general plan amendments per year (65358(d)).

A general plan need not be parcel-specific. The Coastal Act, however, specifies that coastal land use plan provisions be sufficiently detailed to indicate the kind, location, and intensity of land uses (Public Resources Code §30108.5). According to the Coastal Commission's legal staff, this standard may require that the coastal land use plan specify the principal permitted use, the specific conditional uses, and the specific standards that will be used in reviewing development proposals for the various land use categories.

Pursuant to Public Resources Code §30108.5 and §30108.55, a coastal land use plan is incorporated into the community's general plan, therefore it must be consistent with the rest of the plan. For instance, proposed development within the coastal zone must conform to community-wide policies for concerns not prescribed by the Coastal Act, such as noise. Likewise, development proposed within the coastal zone that would be permissible elsewhere within the community may be subject to unique policy considerations under the Coastal Act. For example, a commercial development within the coastal zone may need to provide visitor-serving commercial uses rather than, or in addition to, general commercial uses.

There is a special situation where a community has a certified coastal land use plan but has not prepared the necessary implementing measures to obtain full LCP certification. If such communities adopt general plan amendments without updating the land use plan (through amendments that must be certified by the Coastal Commission), discrepancies may arise between land uses and densities authorized under the general plan and those authorized in the coastal land use plan. If the general plan and coastal land use plan diverge significantly, problems will arise when a project applies to the Commission for a coastal development permit. Communities may avoid these problems by reviewing all general plan amendments affecting the coastal zone for consistency with their coastal land use plan. Communities can more efficiently control their planning process and obtain the authority to issue coastal development permits locally by completing their LCPs and seeking full certification from the Coastal Commission.

### Housing Requirements in the Coastal Zone

In 1981 the Legislature deleted housing policies from the Coastal Act and established within the Government Code special requirements for the protection and provision of low- and moderate-income housing within the coastal zone (§65590). These requirements supplement housing element requirements. They apply only to cities and counties whose LCPs were certified on or after January 1, 1982. Any amendments to the housing provisions in previously certified LCPs must be consistent with the 1981 requirements (§65590(f)).

Section 65588, subdivisions (c) and (d), states that when coastal jurisdictions update their housing elements, they must document the number of low- and moderate-income housing units converted or demolished and the number of replacement units provided. This helps the locality determine whether affordable housing stock in the coastal zone is being protected and provided as required by §65590.

## SURFACE MINING AND RECLAMATION ACT

The Surface Mining and Reclamation Act (SMARA) is California's answer to two seemingly contradictory demands—the need for a continuing supply of mineral resources and the assurance that the significant adverse impacts of surface mining will be mitigated. SMARA requires that local governments address mineral recovery activities at two levels: through direct regulation of mining operations (including reclamation) and through planning policies that harmonize the mineral resource needs of the state and region with the maintenance of local environmental quality. SMARA also contains strong policies for the conservation of known mineral deposits in the face of competing development so that they will be available for extraction and use.

SMARA requires cities and counties to adopt ordinances in accordance with state policy for the review and approval of reclamation plans and for the issuance of permits to conduct surface mining operations (Public Resources Code §2774). With certain exceptions, issuance of a surface mining permit is conditional upon approval of a reclamation plan and financial assurances for reclamation (Public Resources Code §2770). Local ordinances adopted to implement this requirement must be reviewed and certified by the State Mining and Geology Board for conformity with state law and the Board's policies and procedures (Public Resources Code §2774.3 and §2774.5). *California Surface Mining and Reclamation Policies and Procedures*, available from the California Geological Survey, describes SMARA in detail.

**Classification/Designation**

SMARA establishes a two-step mineral lands inventory process called "classification-designation," intended to ensure that important mineral deposits are identified and protected for continued and further extraction.

*Classification*

During the classification phase, the State Geologist prepares a geological inventory of selected important mineral commodities within defined study regions. The objectives of a classification report include identifying the market area of the commodity, projecting the future needs for the commodity within the study region, and geologically classifying the lands within the region as to the presence or absence of mineral resources. Classification is based solely on geological factors and does not consider existing land uses. The priority by which areas are classified is based upon an evaluation of which potential mineral lands are most likely to be converted to uses that are incompatible with mining or that would preclude mining.

Under SMARA and the Board's 1979 Guidelines, the State Geologist classified mineral areas as one of four Mineral Resource Zones (MRZ) or a Scientific Zone (SZ):

- MRZ-1: Areas where adequate information indicates that no significant mineral deposits are present or where it is judged that little likelihood exists for their presence.
- MRZ-2: Areas where adequate information indicates that significant mineral deposits are present or where it is judged that a high likelihood for their presence exists.
- MRZ-3: Areas containing mineral deposits the significance of which cannot be evaluated from available data.
- MRZ-4: Areas where available information is inadequate for assignment to any other MRZ zone.
- SZ: Areas containing unique or rare occurrences of rocks, minerals, or fossils that are of outstanding scientific significance shall be classified in this zone.

As the classification of each area is completed and approved, the state board sends copies of the State Geologist's report and maps classifying the mineral lands to the affected cities and counties. Within twelve months of receiving the maps and report, the city or county must, as part of its general plan, adopt mineral resource management policies that:

- Recognize the mineral classification information, including the classification maps, transmitted to it by the Board.
- Assist in the management of land uses that affect areas of statewide and regional significance.
- Emphasize the conservation and development of identified significant mineral deposits. (Public Resources Code §2762(a))

Proposed city or county policies must be submitted to the Board for review and comment prior to adoption. The same is true of any subsequent amendments to these policies. If a use is proposed that might threaten the potential recovery of minerals from an area that has been classified MRZ-2, the city or county must specify its reasons for permitting the use, provide public notice of those reasons, and forward a copy of its statement of reasons to the State Geologist and the Board (Public Resources Code §2762(d)).

*Designation*

In contrast to classification, which disregards land use, the purpose of designation is to identify those deposits that are of prime importance to the future needs of the study region and that are available from a land use perspective. Designation fine-tunes the findings of the classification report.

Following a public hearing and consultation with the affected cities and counties, the State Mining and Geology Board may designate all or part of the areas classified MRZ-2 or SZ as areas containing significant mineral resources of statewide or regional significance. As is the case following state classification, the Board

must transmit a report of its action to the affected city or county. Within twelve months of receiving this report, the city or county must:

- Recognize and include in its general plan the designated areas of statewide or regional significance transmitted to it by the Board.
- Develop and adopt policies for the management of land use of areas classified MRZ-2 or SZ and designated by the Board as areas of statewide and regional significance to protect those areas from premature development incompatible with mining.
- Emphasize the conservation and development of mineral deposits designated by the Board to be of statewide or regional significance.

Prior to adopting its mineral resource management policies, the city or county must submit them to the Board for review and comment. It must also submit subsequent amendments prior to adoption (Public Resources Code §2762(c)).

While SMARA describes the classification and designation process as two separate steps, designation usually closely follows classification. Thus, a city or county

## Useful Definitions: **Surface Mining and Reclamation Act**

**Area of Regional Significance**: An area that has been designated by the State Mining and Geology Board pursuant to Public Resources Code §2790 that is known to contain a deposit of minerals that are of prime importance in meeting future area mineral needs and that, if developed in a non-compatible use, would result in the permanent loss of regionally significant minerals.

**Area of Statewide Significance**: An area that has been designated by the State Mining and Geology Board pursuant to Public Resources Code §2790 that is known to contain a deposit of minerals that are of prime importance to meeting the future needs of the state and that, if developed with non-compatible uses, could result in the loss of minerals that are of statewide significance.

**Compatible Land Uses**: Land uses inherently compatible with mining and/or that require a minimum public or private investment in structures and land improvements and that may allow mining because of the relative economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, very low density residential, geographically extensive but low-impact industrial, recreational, agricultural, silvicultural, grazing, and open-space. (California Code of Regulations, Title 14, §3675)

**Incompatible Land Uses**: Land uses inherently incompatible with mining and/or that require public or private investment in structures, land improvements, and landscaping and that may prevent mining because of the greater economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, high-density residential, low-density residential with high unit value, public facilities, geographically limited but impact intensive industrial, and commercial. (California Code of Regulations, Title 14, §3675)

**Minerals**: "Any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum." (California Code of Regulations, Title 14, §3501)

**Reclamation**: "… the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a usable condition which is readily adaptable for alternate land uses and create no danger to public health or safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization, or other measures." (Public Resources Code §2733)

**Surface Mining Operations**: "…all, or any part of, the process involved in the mining of minerals on mined lands by removing the overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations shall include, but are not limited to: (a) In place distillation or retorting or leaching; (b) The production and disposal of mining waste; and (c) Prospecting and exploring activities." (Public Resources Code §2735)

should have to amend its general plan only once to incorporate the information and policies for both the classification and the designation.

### Relation to the General Plan

An affected city or county must amend its general plan to recognize classification or designation information, assist in the management of land uses that affect areas with minerals of statewide and regional significance, and adopt policies that emphasize the conservation and extraction of identified mineral deposits (Public Resources Code §2762). The land use, conservation, and open-space elements are the most common locations for such policies. Alternatively, several jurisdictions have adopted mineral resources elements.

The criteria to be used by affected cities and counties in developing their own mineral resource management policies are laid out by the State Mining and Geology Board (California Code of Regulations, Title 14, §3676). Local policies should include:

- A summary of the data and analysis provided in the classification and/or designation reports, incorporation of Public Resources Code §2710, et seq., and state policy by reference (together with maps of the identified mineral deposits), or incorporation by reference of the classification and/or designation reports and maps.
- Policies that recognize the mineral information transmitted by the state Board, assist in the management of land uses affecting areas of regional and statewide significance, and emphasize the conservation and development of the identified mineral deposits.
- Implementation measures, including:
  - Reference in the general plan to the location of identified mineral deposits and a discussion of those areas targeted for conservation and possible future resource extraction.
  - Use of maps to clearly delineate identified mineral deposits and those areas targeted for conservation and possible future resource extraction.
  - At least one of the following:
    1. Special purpose overlay zones, mineral resource/open-space zoning, or any other appropriate zoning that identifies the presence of mineral deposits and restricts the encroachment of incompatible land uses in those areas that are to be conserved.
    2. Requirements for recording notice of the presence of identified mineral deposits in the chain of property title.
    3. Conditions placed upon incompatible land uses within and next to any areas containing identified mineral deposits for the purpose of mitigating any significant land use conflicts.

Once policies have been incorporated into the general plan to protect areas containing minerals of regional or statewide significance, all of the city's or county's land use decisions affecting the designated areas must be in accordance with those policies. When making land use decisions involving identified mineral deposits, the jurisdiction must consider the importance of the mineral resource to the market region for deposits of regional significance or to the state and the nation for deposits of statewide significance rather than simply their importance within the jurisdiction (Public Resources Code §2763).

If a city or county intends to approve a use that would threaten the potential to extract minerals from an area designated as either of regional or statewide significance, the city or county must submit a statement specifying its reasons to the State Mining and Geology Board (Public Resources Code §2762 and §2763). Unless the project is subject to CEQA, which has its own public notice requirements, the city or county must also provide notice of the availability of this statement, make the statement available for public review for at least 60 days, and hold a public hearing for the purpose of receiving public comments. Prior to approving the use, the agency must evaluate all comments received and make a written response to each explaining its reasons for approval (Public Resources Code §2762(a)).

#### *Undesignated lands*

Public Resources Code §2764 requires that when an area has not been designated as having mineral deposits of statewide or regional significance and where the local jurisdiction has not adopted mineral resource policies in its general plan, the local agency must amend its general plan or the applicable specific plan or adopt a new specific plan whenever so requested by the operator of an existing surface mine or other interested person (the party requesting the designation is responsible for paying its estimated cost).

The affected city or county must "plan for future land uses in the vicinity of, and access routes serving, the [existing] surface mining operation in light of the

importance of the minerals to their market region as a whole, not just their importance to the lead agency's area of jurisdiction" (Public Resources Code §2764). Evaluations prepared for the purpose of making amendments to the general plan or adopting a new specific plan must be sent to the State Geologist and the Mining and Geology Board.

When adopting such amendments or a new specific plan, the city or county must make written findings relative to the compatibility of the land uses and access routes to the continuing surface mining operation. If the land uses and access routes are not compatible with the continuation of surface mining, the city or county must also state why incompatible uses are to be provided for in the face of the regional importance of the operation (Public Resources Code §2764).

## CALIFORNIA INTEGRATED WASTE MANAGEMENT ACT

In 1989, the state comprehensively revised its approach to solid waste management and established the goal of reducing the state's production of solid waste by 25 percent by 1995 and 50 percent by 2000. The California Integrated Waste Management Act of 1989 (Public Resources Code §40000, et seq.) codified this approach.

At the state level, the Integrated Waste Management Board ensures that the Act is enforced (Public Resources Code §40400, et seq.). The Board reports annually to the Legislature on the progress of the integrated waste management program, writes local waste management planning guidelines, and provides technical assistance to local agencies. The Act gives the Integrated Waste Management Board authority to oversee local waste management programs.

Each county must prepare a Countywide Integrated Waste Management Plan (CIWMP) promoting the policies of the Act and establishing local waste management policies to be adopted cooperatively by the county and its cities. The CIWMP must provide a summary of the significant waste management problems facing the county, an overview of the specific steps that its local agencies will take to meet the goals of the Act, and a statement of countywide goals and objectives relative to waste management. These plans and the related elements are intended to complement, but stand separate from, the local general plan. References to "element" in the Act are not intended to mean a general plan element.

Upon completion, each element of the CIWMP must be submitted to the Integrated Waste Management Board for review and approval or disapproval (Public Resources Code §41800). Once it has been approved by the Board, each jurisdiction shall review its source reduction and recycling element or the countywide integrated waste management plan at least once every five years to correct any deficiencies in the element or plan (Public Resources Code §41822). If any revisions are made, they must also be submitted to the Board for approval or disapproval. In addition, each year after approval of a jurisdiction's source reduction and recycling element, household hazardous waste element, nondisposal facility element, or countywide siting element and summary plan, the jurisdiction must submit a progress report to the Board (Public Resources Code §41821 and §41821.1).

The CIWMP is, in effect, a cooperative statement of policies by the county and its cities (or a regional agency and its constituent counties and cities) regarding solid waste management issues of countywide or regional concern; the need for solid waste collection systems, processing facilities, and marketing strategies; and the development of multi-jurisdictional arrangements for marketing recyclable materials. To the extent possible, the CIWMP mediates conflicts and inconsistencies among individual city source reduction and recycling elements. The CIWMP must include:

- The county's and all cities' source reduction and recycling elements.
- The county's and all cities' household hazardous waste elements.
- The countywide siting element.
- The county's and all cities' nondisposal facility elements. (Public Resources Code §41750)

The countywide siting element and any amendments to it must be approved by the county board of supervisors and by the councils of a majority of the cities containing a majority of the county's population (Public Resources Code §41760). Upon receiving the draft countywide siting element and summary plan, or amended countywide siting element and summary plan for consideration, a city must ratify or reject it within 90 days. Failure to act within that time period constitutes approval.

### Countywide Siting Element

The county must prepare a countywide siting element describing the areas to be developed as disposal or transformation facilities (Public Resources Code §41700). The siting element must be consistent with the development and implementation of the individual county and city source-reduction and recycling elements. The countywide siting element must contain:

- Goals and policies for the environmentally safe transformation or disposal of solid waste that cannot be reduced, recycled or composted.
- An estimate of the total capacity that will be needed for a 15-year planning period to handle solid wastes generated within the county that cannot be reduced, recycled or composted.
- A statement of the remaining combined capacity of existing solid waste transformation and disposal facilities at the time that the element was prepared or revised.
- Identification of specific areas for new or expanded solid waste transformation or disposal facilities, consistent with the applicable county or city general plan. This is only required if the county determines that existing capacity will be exhausted within the 15-year planning horizon.
- For elements submitted or revised on or after January 1, 2003, a description of the actions taken to solicit public participation by the affected communities, including, but not limited to, minority and low-income populations.

### Source Reduction and Recycling Elements

The county and each of its constituent cities must prepare their own source reduction and recycling elements (Public Resources Code §41000, et seq., for cities and §41300, et seq., for counties). These elements must:

- Identify the constituents of solid waste by volume and weight, type of material, and source.
- Describe the methods, including recycling and composting, by which the jurisdiction will reduce the amount of solid waste being generated.
- Identify and describe projected costs, revenues, and revenue sources necessary to implement the element.
- Describe existing handling and disposal practices for special wastes such as asbestos and sewage sludge.

### Useful Definitions: **Integrated Waste Management Act**

**Disposal Facility**: Any facility or location where the disposal of solid waste occurs (Public Resources Code §40121).

**Disposal Site**: The place, location, tract of land, area, or premises in use, intended to be used, or that has been used for the landfill disposal of solid wastes, including a solid waste landfill (Public Resources Code §40121).

**Hazardous Waste**: A waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may either: (a) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (b) Pose a substantial present or potential hazard to human health or environment when improperly treated, stored transported, or disposed of, or otherwise managed (Public Resources Code §40141).

**Recycling**: The process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste and returning them to the economic mainstream in the form of raw material for products which meet the quality standards to be used in the marketplace (Public Resources Code §40180).

**Solid Waste**: All putrescible and nonputrescible solid, semisolid, and liquid wastes, including: garbage; trash; refuse; paper; rubbish; ashes; industrial wastes; demolition and construction wastes; abandoned vehicles and parts thereof; discarded home and industrial appliances; dewatered, treated, or chemically fixed sewage sludge that is not hazardous waste; manure, vegetable, or animal solid and semisolid wastes; and other discarded solid and semisolid wastes (Public Resources Code §40191). Solid waste does not include hazardous waste.

**Solid Waste Facility**: A disposal facility, disposal site, or solid waste transfer/processing station (Public Resources Code §40194).

**Source Reduction:** Any action that causes a net reduction in the generation of solid waste. This includes, but is not limited to: reducing the use of nonrecyclable materials; replacing disposable materials and products with reuseable materials and products; reducing packaging; reducing the amount of yard wastes generated; establishing garbage rate structures with incentives to reduce the amount of wastes that generators produce; and increasing the efficiency of the use of paper, cardboard, glass, metal, plastic, and other materials in the manufacturing process. Source reduction does not include steps taken after the material becomes solid waste or action that would impact air or water resources in lieu of land (Public Resources Code §40196).

The source reduction, recycling, and composting components of the element must contain specific action programs as well as schedules for meeting the Act's diversion goals. The source reduction component must also identify and evaluate programs and economic incentives to reduce the use of non-recyclable materials, and to replace disposable materials and products with reusable materials and products.

### Household Hazardous Waste Elements

The county and its cities must each prepare and adopt a household hazardous waste element identifying a program for the safe collection, treatment, and disposal of hazardous wastes generated by residences that should be separated from the rest of the solid waste stream. (Public Resources Code §41500 for cities and §41510 for counties).

### Nondisposal Facility Elements

The county and its cities each must prepare and adopt a nondisposal facility element (Public Resources Code §41730 for cities and §41731 counties). This element describes any new solid waste facilities and expansions of existing solid waste facilities needed to implement the jurisdiction's source reduction and recycling element. Facilities that will recover or recycle at least five percent of the total volume of materials they receive must be included in the element. Transfer stations that recover less than five percent of the volume of materials received for reuse or recycling must be included in the element, but those portions of the element are not subject to Board approval.

### Relation to the General Plan

Sound planning practice suggests close coordination of waste management planning with local general plans. General plans contain information, assumptions, and projections that should serve as the basis for county waste management planning. General plans, for example, project future population growth and economic activity and designate areas proposed for residential, commercial, industrial, agricultural, and institutional land uses. General plans also contain information regarding transportation routes, existing land uses, and environmental conditions. This information is critical to developing estimates in the integrated waste management plans.

The countywide siting element of the CIWMP and the land use elements of the affected city and county general plans are the primary vehicles for planning the location of solid waste disposal or transformation sites. The siting element must correlate with local general plans. Accordingly, all siting elements submitted to the Integrated Waste Management Board as part of a CIWMP must contain a resolution from each affected city and the county stating that any area identified for location of new or expanded facilities is consistent with the applicable general plan (Public Resources Code §41720). Furthermore, the Act establishes standards for determining consistency (Public Resources Code §41702).

A siting element may tentatively reserve an area for a new or expanded waste facility even though the area is not consistent with the applicable general plan. However, the designation will not become permanent unless the affected city or county expressly finds that the area is consistent with its plan. The designation will not become permanent if the affected agency finds that the area should not be used for a facility (Public Resources Code §41710-§41712).

The land use element is required to designate future locations for solid waste disposal facilities (§65302(a)). Similarly, the countywide siting element must identify and reserve sites for the establishment or expansion of solid waste transformation or disposal facilities consistent with applicable city or county general plans (Public Resources Code §41702).

An area is consistent with the city or county general plan when the adopted general plan complies with state planning law, the area being reserved for a new or expanding solid waste facility is located in or adjacent to an area designated for that use on the applicable general plan, and the land uses authorized in the area adjacent or near the area being reserved for a solid waste transformation or disposal facility are compatible with the establishment or expansion of such a facility. (Public Resources Code §41702)

The law provides no direction for what constitutes compatible land uses or how much area around a site is subject to the compatibility requirement. Cities and counties, therefore, must make their own determinations. Their land use elements should contain goals, objectives, and policies addressing the question of compatibility. When developing policies for allowable uses near solid waste facilities, cities and counties should pay special attention to particularly sensitive uses such as schools, hospitals and health care facilities, residential development, and commercial and office developments.

## COUNTY HAZARDOUS WASTE MANAGEMENT PLANS

A county may, at its discretion, prepare and adopt a hazardous waste management plan (HWMP) for managing all hazardous wastes produced in the county (Health and Safety Code §25135, et seq.). State law

creates a strong incentive for doing so by giving the state authority to supersede local land use powers over the siting and permitting of new hazardous waste facilities if the county does not have an approved HWMP (Health and Safety Code §25199, et seq.). As a result, most counties have adopted a HWMP.

County hazardous waste management planning is a cooperative effort. The county, the cities within the county, the public, and industry jointly develop a county or regional HWMP. The HWMP must discuss the volume of the waste stream, existing and projected additional facilities, facility siting policies, and implementation actions, among other things (Health and Safety Code §25135.1(d)). In addition, it may include a description of any other local programs the county determines to be necessary to provide for the proper management of hazardous wastes.

A HWMP must be prepared with the assistance of a locally appointed advisory committee (Health and Safety Code §25135.2) and it must be adopted by the sponsoring county. In addition, it must be approved by a majority of the cities within the county that contain a majority of the population of the incorporated area. The plan must be submitted to the state Department of Health Services for review and final approval before it becomes effective. The state will review the plan for its compliance with statute and the Department of Health Services' guidelines for preparing and adopting hazardous waste management plans (Health and Safety Code §25135.5 and §25135.7). The schedules for preparing and adopting an HWMP are specified in Health and Safety Code §25135.6 and §25135.7.

### Relation to the General Plan

The HWMP must either be incorporated by reference into a county's general plan or a county must enact an ordinance requiring that all applicable zoning, subdivision, conditional use permit, and variance decisions be consistent with its HWMP (Health and Safety Code §21135.7(b)). Obviously, consistency with the land use element is important in order to avoid policy conflicts. The safety element may also be involved if, for example, the element addresses hazardous waste handling and transport.

## ALQUIST-PRIOLO EARTHQUAKE FAULT ZONING ACT

The Legislature originally enacted the Alquist-Priolo Act in 1972 (Public Resources Code §2621, et seq.) to assure that homes, offices, hospitals, public buildings, and other structures for human occupancy are not built on active faults. The Act requires a geological investigation before a local government can approve most development projects in the vicinity of known earthquake faults.

The State Geologist maps earthquake fault zones along the traces of known potentially and recently active major faults. These zones usually are one-quarter mile or less in width (Public Resources Code §2622). The State Geologist periodically revises these maps and designates new zones as studies identify hazardous faults. Before the zones are designated officially by

### Useful Definitions: **Earthquake Fault Zoning Act**

**Active Fault**: A fault that has had surface displacement within Holocene time (approximately the past 11,000 years). (California Code of Regulations, Title 14, §3601(a))

**Fault Trace**: The line formed by the intersection of a fault and the earth's surface. It is the representation of a fault as depicted on a map, including maps of earthquake fault zones. (California Code of Regulations, Title 14, §3601(b))

**Project**: Any of the following (Public Resources Code §2621.6):

- Any subdivision of land that is subject to the Subdivision Map Act (Division 2, commencing with §66410, of the Government Code), and that contemplates the eventual construction of structures for human occupancy.
- Structures for human occupancy, with the exception of:
  - Single-family wood frame dwellings to be built on parcels of land for which geologic reports have been approved pursuant to the provisions of paragraph (1) of this subdivision.
  - A single-family wood frame dwelling not exceeding two stories when such dwelling is not part of a development of four or more dwellings. A mobilehome whose body width exceeds eight feet is considered to be a single-family wood frame dwelling not exceeding two stories.

**Structure for Human Occupancy:** Any structure used or intended for supporting or sheltering any use or occupancy, which is expected to have a human occupancy rate of more than 2,000 person hours per year. (California Code of Regulations, Title 14, §3601(e))

the Mining and Geology Board, preliminary maps are sent to all affected cities, counties, and state agencies for review and comment (Public Resources Code §2622). Within 90 days of final approval of an earthquake fault zones map by the Board, the State Geologist must send copies to affected cites and counties. The Board provides specific policies and criteria to guide cities and counties in implementing the law.

The affected city or county must inform the public of the locations of all designated earthquake fault zones. Disclosure can be made by reference in general plans, specific plans, property maps, or other appropriate local maps (Title 14, California Code of Regulations, §3603(b)). The city or county must also adopt procedures for reviewing and approving permits for new buildings located within fault zones. For example, before the city or county can approve a project within an earthquake fault zone, the applicant must submit a registered geologist's report describing any possibility of a surface rupture. If the city or county finds that no undue hazard exists, it can waive the requirement for a geologic report with the approval of the State Geologist (Public Resources Code §2623).

The California Geological Survey's *Fault-Rupture Hazard Zones in California* contains guidelines for evaluating hazards, a suggested outline for geologic reports on faults, and other useful items.

### Relation to the General Plan

The Alquist-Priolo Act states that its purpose is to provide for "the adoption and administration of zoning laws, ordinances, rules, and regulations by cities and counties in implementation of the general plan." (Public Resources Code §2621.5). The Act's provisions should be reflected in the plan's land use, safety, and open-space elements. As with other planning issues, the Alquist-Priolo program should be addressed at three levels: data and analysis, policy; and implementation.

The data on the State Geologist's maps, including the approximate location of the faults and the boundaries of the earthquake fault zones, should be transferred to the hazard maps already included in the general plan. The general plan should incorporate Alquist-Priolo Act policies restricting building within fault zones. A city or county may also establish policies and criteria more restrictive than those of the Act or adopted by the State Mining and Geology Board. Implementation may occur through disclosure requirements as well as through zoning and subdivision requirements.

## SEISMIC HAZARDS MAPPING ACT

The Seismic Hazards Mapping Act (Public Resources Code §2690, et seq.) complements the Alquist-Priolo Act by requiring the State Geologist to compile maps identifying seismic hazard zones—those areas that during an earthquake are susceptible to ground shaking, landslides, or liquefaction. Where official seismic hazard maps exist, cities and counties must require that the developer prepare a geotechnical report delineating any seismic hazard and proposing mitigation measures before they may approve any project in a seismic hazard zone (Public Resources Code §2697). The minimum level of mitigation for a project should be to reduce the acceptable risk of ground failure in an earthquake to a level that does not cause the collapse of buildings for human occupancy (note that this level would not preclude ground failure or major damage to structures short of collapse). Further, before real estate may be sold, the seller must disclose to the prospective buyer the existence of a seismic hazard zone. To view official seismic hazard maps, go to the website for the Seismic Hazards Mapping Program within the Department of Conservation's California Geological Survey at www.conservation.ca.gov/cgs.

### Relation to the General Plan

The Seismic Hazards Mapping Act specifically requires cities and counties to take into account the information available in seismic hazard maps when

#### Useful Definitions: **Seismic Hazards Mapping Act**

**Acceptable Level of Risk**: The level that provides reasonable protection of the public safety, though it does not necessarily ensure continued structural integrity and functionality of the project. (California Code of Regulations, Title 14, §3721)

**Project:** The same meaning as in the Alquist-Priolo Earthquake Fault Zoning Act, except as follows:

- A single-family dwelling otherwise qualifying as a project may be exempted by the city or county having jurisdiction.
- "Project" does not include alterations or additions to any structure within a seismic hazard zone that do not exceed either 50 percent of the value of the structure or 50 percent of the existing floor area of the structure. (Public Resources Code §2693)

preparing their safety elements and when adopting or revising land use planning regulations such as zoning (Public Resources Code §2699). Policies may also be included in the open-space and land use elements when not redundant. The State Mining and Geology Board's *Guidelines for Evaluating and Mitigating Seismic Hazards* offers useful suggestions for compliance.

## COBEY-ALQUIST FLOODPLAIN MANAGEMENT ACT

This act encourages local governments to plan, adopt, and enforce floodplain management regulations (Water Code §8400, et seq.). Where a federal flood control project report has been issued designating floodway boundaries, the Department of Water Resources or the State Reclamation Board will not appropriate money in support of the project unless the applicable agency has enacted floodplain regulations. Those regulations must provide that:

- Construction of structures in the floodway that may endanger life or significantly reduce its carrying capacity shall be prohibited.
- Development will be allowed within the "restrictive zone" between the floodway and the limits of the floodplain as long as human life and the carrying capacity of the floodplain are protected. (Water Code §8410)

### Relation to the General Plan

The Act supports restrictive general plan policies and zoning provisions with respect to floodplain management. Policies and programs providing for protection and prevention of community flood hazards should be incorporated into the safety element. Further, floodways and floodplain boundaries should be designated and a consistent land use designation given to affected lands in the land use element (including its diagram).

## AIRPORT LAND USE COMMISSION LAW

Each county containing one or more public use airport is required to either establish an airport land use commission (ALUC) or, in cooperation with affected cities and Caltrans' Division of Aeronautics, adopt processes and designate an alternative agency for the purpose of preparing an airport land use plan for each such airport (Public Utilities Code §21670 and §21670.1). Adjoining counties may also establish an inter-county ALUC when there is an airport that straddles county lines (Public Utilities Code §21670.4). The airport land use plan (ALUP) provides for the orderly growth of each public use airport over a 20-year span and minimizes land use conflicts over height and noise with the surrounding area. The ALUP may include building height restrictions, specify allowable land uses, and determine building standards (including soundproofing) within the planning area of each airport.

Public Utilities Code §21674 empowers the ALUC to do the following:

- Assist local agencies in ensuring compatible land uses in the vicinity of all new airports and in the vicinity of existing airports to the extent that the land in the vicinity of those airports is not already devoted to incompatible uses.
- Coordinate planning at the state, regional, and local levels so as to provide for the orderly development of air transportation while at the same time protecting the public health, safety, and welfare.
- Prepare and adopt an ALUP pursuant to Public Utilities Code §21675.
- Review the plans, regulations, and other actions of local agencies and airport operators pursuant to Public Utilities Code §21676.

The ALUC does not, however, have the power to regulate airport operations.

Until an ALUC adopts an ALUP, a city or county considering a project within the vicinity of a public-use airport must submit the proposal to the ALUC for review and approval. (Public Utilities Code §21675.1) In effect, the ALUC is making land use decisions in place of the city or county during this period. Projects may only be approved when the ALUC finds that it is making progress toward completing its plan, the action will probably be consistent with that plan, and there is little probability that the project will interfere with the future plan, even if the action is ultimately inconsistent with that plan. If a project is denied by the ALUC, the city's or county's legislative body may overrule that decision by a two-thirds vote if it makes findings that doing so is consistent with the purpose of ALUCs (Public Utilities Code §21670).

In some counties that choose not to establish an ALUC or delegate its duties, the county and affected cities can prepare an ALUP for each airport and adopt processes for the amendment of general and specific plans to be consistent with the comprehensive ALUPs. These processes are subject to review and ratification by Caltrans' Division of Aeronautics. Other exceptions to the rule on establishing an ALUC are described in Public Utilities Code §21670.1.

### Relation to the General Plan

Once an ALUP has been adopted, pertinent city and county general plans and other local land use and building regulations must be made consistent with it unless the city council or county board of supervisors votes by a two-thirds majority to overrule the ALUC and makes specific findings to justify not amending their regulations and plans (Public Utilities Code §21676). The findings must show that the action of the legislative body:

- Provides for the orderly development of each public use airport and the area surrounding such airports in such a manner as to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Public Utilities Code §21669 (Title 21, California Code of Regulations, §5000, et seq.) and prevent the creation of new noise and safety problems.
- Protects public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that such areas are not already devoted to incompatible uses (Public Utilities Code §21670 and §21676(b)).

Subsequent changes to the general plan, specific plans, zoning ordinance, or building regulations affecting areas covered by an ALUP must also be referred to the ALUC before being adopted by the city or county (Public Utilities Code §21676(b)). The ALUC has 60 days to determine whether the proposed action is consistent with the airport land use plan. If the ALUC determines that the proposed action is inconsistent with its plan, the city council or board of supervisors must either modify the proposed action or overrule the ALUC's determination by a two-thirds vote after a public hearing. Where an alternative approach to airport land use planning has been approved by the Division of Aeronautics, consistency protocols will be established by the county and affected cities and ratified by the Division.

ALUPs apply to land use, noise, and other development issues that also are addressed in the local general plan. The local general plan should incorporate, at least in summary form, essential background data from the ALUPs, such as information regarding safety zones and areas affected by aircraft noise. The noise contours for each airport in the planning area should be part of the noise element.

The general plan should contain development policies, plan proposals, and standards for land use and development around airports, including:

- Policies consistent with the purposes of the Airport Land Use Commission Law.
- Land use designations specifying allowable uses that are compatible with identified hazards and noise problems.
- Standards for building heights that minimize hazards from aircraft.
- Standards for noise insulation at least as rigorous as those required by the state and the airport land use plans.
- Objective criteria for determining when it may be appropriate to override the recommendations of the land use commission or alternative body in accordance with the policies of Public Resources Code §21670.

The *California Airport Land Use Planning Handbook,* prepared by the Division of Aeronautics, is the state's primary reference for airport land use planning. The publication discusses the requirements of the state statutes, overriding findings, noise compatibility planning, safety aspects of airport planning, height restrictions, and airport master plans. CEQA specifically requires use the *California Airport Land Use Planning Handbook* (Public Resources Code §21096).

## CORTESE-KNOX-HERTZBERG LOCAL GOVERNMENT REORGANIZATION ACT OF 2000

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKHA) establishes procedures for local government changes of organization, including a city incorporation, annexation to a city or special district, and consolidation of cities or special districts (§56000, et seq.).

The Local Agency Formation Commission (LAFCO) of each county is the agency with the authority and responsibility to regulate these activities. LAFCOs have numerous powers under CKHA, but those of primary concern are the power to act on local agency boundary changes and to adopt spheres of influence (SOIs) for local agencies.

Incorporation is the formation, creation, and establishment of a city with corporate powers (§56043). Incorporation must be initiated by voter petition, followed by a study and approval process supervised by the LAFCO.

Annexation is the inclusion, attachment, or addition of territory to a city or district (§56017). Annexation is a type of boundary change that increases the jurisdictional area of a city or special district. Annexation may be initiated by voter petition or by resolution of the governing body of a city or special district.

A sphere of influence is a plan for the probable physical boundaries and service area of a city or district, as determined by the LAFCO (§56076). This plan serves as a basis for making future annexation decisions and is intended to provide for orderly growth and development. Annexation of land outside the SOI is generally not allowed.

LAFCOs are subdivisions of the state. They have no authority to dictate the land use policies of cities and counties and no direct land use control. However, CHKA assigned LAFCOs a prominent role in regional planning issues by charging them to consider a wide range of land use and growth factors when acting on matters under their jurisdiction. A LAFCO has broad statutory responsibility to facilitate planned, orderly, efficient patterns of urban development; preserve agricultural lands; and discourage urban sprawl. LAFCO decisions must balance the competing needs for affordable housing, economic opportunities, and the preservation of natural resources. Because of this, some consider LAFCOs to be the state's only true regional growth management agencies.

By making decisions about the extent of the geographic area over which a local government or special district may control planning and development, the LAFCO can exert great influence over the extent and rate of growth and development both locally and regionally.

### Relationship to the General Plan

LAFCO actions have a direct bearing on general plans, especially those of cities, through the LAFCO's direct role as an approval authority and indirect role as a commenting agency.

A community that desires to incorporate must receive LAFCO approval after a public process that weighs numerous factors, including fiscal balance, housing needs, and natural resource protection. The LAFCO establishes the new city's SOI at the time of incorporation or shortly thereafter. In addition, the LAFCO must review and update SOIs every five years, which means that it periodically considers whether the city's or district's growth warrants changes to the physical limits of its ultimate service area. A city or district may apply to the LAFCO for an amendment to the SOI but approval is subject to review based on LAFCO policy objectives. As discussed in Chapter 1, the SOI frequently serves as a starting point for the city or county planning area.

A city must receive approval from the LAFCO to annex land to the city. By law, the LAFCO must require as a condition of annexation that a city prezone the territory to be annexed (§56375(a)). Prezoning may take place prior to an application for annexation or at the same time as the annexation proposal. The LAFCO may review the type and intensity of development that is proposed for the area to be annexed before making its decision.

In making any of the above decisions, the LAFCO must review applicable local general plan policies and development proposals to ensure that LAFCO objectives for efficient development are achieved and that legal findings can be made. Local general plan policies may need to be reconciled with LAFCO policies in order for the city or district to receive LAFCO approval. The LAFCO, for instance, may be unable to approve an annexation or SOI amendment if those actions could be construed to encourage sprawl development on prime agricultural land.

LAFCOs also have an important role in consultation on local general plans. State planning law requires cities and counties to refer their general plans to the LAFCO before adopting or amending the general plan (§65352). LAFCOs act as both lead agency and responsible agency when making CEQA determinations.

LAFCOs can have a powerful influence on local land use planning decisions through participation in city and county general plan processes. On one hand, LAFCOs must consider consistency with local general plans when making boundary decisions, but LAFCOs also have the ability to influence the nature of those general plans through active participation in their creation.

A LAFCO has responsibilities under the California Environmental Quality Act (CEQA) that require it to act as either a lead agency or responsible agency. The LAFCO serves as the lead agency under CEQA for incorporations and establishment of SOIs and is therefore responsible for conducting the appropriate environmental review. The LAFCO acts as a CEQA responsible agency for annexations and prezoning actions, with the city serving as the lead agency. In its capacity as a responsible agency, the LAFCO must consult with the affected city and county prior to giving its approval. In either case the consistency of the proposed action with the general plan is an important CEQA consideration.

LAFCOs should be an integral participant in regional growth and planning forums. Local and regional planners should involve the LAFCO in any discussions regarding long range planning issues.

## REGIONAL TRANSPORTATION PLANNING

Transportation planning is much more than mapping future freeway alignments. It involves planning for various modes of transportation, complex traffic modeling, conformity with air quality standards, congestion management, and many other factors. Regional transportation planning is a complex field populated by multitudinous state and federal laws and regulations. Effective in 1998, California revised its local transportation planning process to give greater authority to regional transportation planning agencies and to specify that most state transportation funds allocated through the regional transportation planning process must go to regional projects (Chapter 622, Statutes of 1997). The following is a brief discussion of the major points, but is not intended to be a comprehensive review of the requirements and processes involved in this branch of planning.

State law requires each of California's Regional Transportation Planning Agencies (RTPAs) to prepare a Regional Transportation Plan (RTP) and a Regional Transportation Improvement Program (RTIP) that coordinate and balance the regional transportation system, addressing such topics as highways, railroads, mass transportation, bicycle and pedestrian facilities, aviation facilities, and ships (§65080, et seq.).

The RTP and the RTIP, as part of the California Transportation Commission's process of selecting projects for the State Transportation Improvement Program (STIP), establish the basis for state funding of local and regional transportation projects. Federal law also requires an RTP as a prerequisite to funding such projects. Under federal requirements, a Transportation Improvement Program (TIP) identifies individual projects that may be eligible for available funding.

Most of the state's regional councils of government function as RTPAs (most are also designated as Metropolitan Planning Organizations under federal law). The Metropolitan Transportation Commission and the Tahoe Regional Planning Agency are designated as the RTPAs for the nine-county San Francisco Bay Area and the Lake Tahoe region, respectively. The RTPAs coordinate with the public, advocacy groups, local governments, transit operators, congestion management agencies, air quality districts, Caltrans and other state agencies, and federal transportation and environmental protection agencies when preparing their plans and programs.

Pursuant to §65080, et seq., the RTP must include:

- A policy element setting out the area's transportation objectives and policies, consistent with the financial element.
- An action element describing the programs and actions necessary for specified agencies to implement the plan over its 20-year lifespan and integrating county congestion management programs.
- A financial element summarizing the cost of plan implementation, including a comparison of available revenues to expected costs, and recommendations for the allocation of funds and development of new revenue sources. The element is based on Caltrans' four-year estimate of available state and federal funding.

Each RTPA whose planning area includes a primary air carrier airport must include within its RTP an airport ground access improvement program (§65081.1). The program must address the development and extension of mass transit lines to the airport.

The RTIP identifies and prioritizes specific transportation projects within the region on a five-year schedule, updated every two years (§65082). A project study must be done for each project included in the RTIP (§14527(f)). The RTIP is submitted to Caltrans and the California Transportation Commission, which consider it for inclusion in the STIP. The Commission may reject an RTIP that does not meet Commission guidelines or that is not cost-effective, but cannot reject individual projects within an RTIP. Projects included in the STIP are eligible for state funding of project planning, programming, and monitoring.

State law provides that 25 percent of the funds made available through the STIP must be programmed and expended for interregional improvements (the Interregional Transportation Improvement Program, or ITIP) and mandates that 75 percent go to regional improvements (the RTIPs) (Streets and Highways Code §164(a)). The STIP must specify the funding for permits and environmental studies, planning, right-of-way acquisition, and construction for each project in the program (§14529).

Under state law, each county containing an urbanized area must establish a congestion management agency (CMA) to prepare and adopt a congestion management plan (CMP) (§65089, et seq.). The CMP establishes programs for mitigating the traffic impacts of new development, including deficiency programs where congestion is extreme, and monitoring the performance of system roads relative to established Level of Service standards. The CMP is expected to link land use, transportation, and air quality concerns. At a minimum it must include all state highways and all principal arterial roads.

The CMP must contain the following components:

- An element defining the CMP transportation system and Level of Service (LOS) standards for the highway portion of the system.
- A performance element evaluating system performance across several modes.
- A travel demand element.
- A program for analyzing the impact of land use decisions.
- A seven-year capital improvement program. (§65089)

In addition to these components, the CMA must develop a traffic database for use in a countywide traffic model.

CMPs are integrated into the RTP's action element and their projects are included in the RTIP. If the CMA finds that a local agency has not complied with the adopted CMP, it must so inform the State Controller and California Transportation Commission. The state will then withhold the local agency's share of state transportation funds.

A county may exempt itself from the CMP requirements when a majority of the cities and county representing a majority of the population of the county adopt resolutions of exemption (§65088.3). In that case, the requirements for incorporating the CMP into the RTIP do not apply (§65082(f)).

Federal law also imposes transportation planning requirements. The Federal Clean Air Act imposes "conformity" requirements on transportation planning, programming, and projects in non-attainment areas under federal air quality standards. RTPs must be project-specific, cover at least a 20-year timeframe, and reflect reasonably expected fiscal restraints and ability to either meet emission budgets in the federal EPA-approved air quality plan (State Implementation Plan, or SIP) or demonstrate lower emissions with the proposed projects than without. Transportation Improvement Programs (TIPs) must implement the projects from the RTP in the TIP timeframe or a new 20-year conformity analysis must be prepared and the RTP amended to reflect the revisions to the transportation system that differs from the prior RTP approval. Regionally significant transportation projects and all transportation projects that receive federal funding must demonstrate through the environmental review process (NEPA and/or CEQA) that they come from a conforming RTP and TIP, will not create a "hot spot" for certain types of emissions, and will not interfere with implementing transportation control measures. All transportation projects that receive federal funding must either do the conformity analysis or demonstrate that they are exempt from conformity requirements. Federal transportation enabling legislation generally offers flexible funding of a multimodal range of projects, including projects specifically targeted to air quality improvements such as the funded through the Congestion Mitigation and Air Quality (CMAQ) program.

### Relation to the General Plan

The policies and plan proposals contained in the land use and circulation elements should reflect the RTP and RTIP. Clearly, transit standards, congestion management measures, proposed facilities, and transportation-related funding may directly affect land use patterns and capital improvements. Although there is no explicit requirement that the RTP and RTIP be consistent with local general plans, good practice dictates that cities and counties should address these regional goals, policies, and programs to the extent they are relevant. The city or county should consult with the RTPA and CMA when updating or adopting a circulation element or when considering changes to the land use element that would involve traffic or transportation issues.

## ENDANGERED SPECIES LAWS

Although there are several laws and regulations that protect animals and plants in California (see Other Laws), the two that have the most impact are the federal Endangered Species Act (ESA) and the California Endangered Species Act (CESA).

Enacted in 1973, the federal Endangered Species Act (16 USC §1531, et seq.) is one of the most powerful environmental laws to date. The United States Supreme Court has described the ESA as "the most comprehensive legislation for the preservation of endangered species ever enacted by any nation...The plain intent of Congress was to halt and reverse the trend toward species extinction, whatever the cost" (*Tennessee Valley Authority v. Hill, (1973) 437 U.S. 153, 180,184 (1973)*). The purpose of the act is not only to protect endangered and threatened species and the ecosystems upon which they depend, but also to facilitate the recovery of these species (16 USC §1531(b)).

The California Endangered Species Act (Fish and Game Code §2050, et seq.), was first enacted in 1970 and substantially revised in 1984. The revised act was modeled after the ESA and is intended to provide additional protection to endangered and threatened species in California. The CESA does not supersede the ESA, but rather operates in conjunction with it. Species may be listed as endangered or threatened under one act and not

the other, or under both acts, in which case the provisions of the act that provides greater protection for the species in question applies (16 USC §1535(f)).

### Jurisdiction

The Secretary of the Interior and the Secretary of Commerce (acting through the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, respectively) are responsible for the administration of the ESA. The Secretary of Commerce has jurisdiction over all but a few marine species. The Secretary of the Interior is responsible for all other species (16 USC §1532(15) and §1533(a)(2); 50 CFR §402.01(b)). The term "Secretary" as used in this section refers to the Secretary who has jurisdiction over the species in question.

Under the CESA, the California Fish and Game Commission is responsible for the listing of species (Fish and Game Code §2070) and the California Department of Fish and Game (DFG) is responsible for administering and enforcing all other aspects of the Act.

### Listing

The cornerstone of both the ESA and the CESA is the listing of species. Once a species is placed on either the endangered or threatened list it is granted the substantial protections of the Act (see Prohibitions below). In California, CESA protections are also extended to those species that the Fish and Game Commission has formally noticed as a candidate species (Fish and Game Code §2085).

Several factors are considered in the decision to place a species on the list, including the current status of the species and the nature of the threat (50 CFR §424.10, §424.11; 14 California Code of Regulations §670.1(b)). Listing decisions must be based on the best available scientific data and the status of listed species must be reviewed every five years to determine if the conditions leading to the original listing are still present (16 USC §1533(c)(2)(A); Fish and Game Code §2077). Economic impacts are not taken into consideration in the listing process (16 USC §1533(b)(1)(A)).

Both the ESA and the CESA provide that individuals, organizations, or other agencies may petition the administering agency to add, delete, or change the listing status of any species (16 USC §1533(b); Fish and Game Code §2071). Both acts also contain emergency listing provisions, allowing normal listing procedures to be bypassed and a species to be immediately placed on the endangered or threatened list if there is a serious risk of the species becoming extinct before other adequate measures can be taken (16 USC §1533(b)(7); Fish and Game Code §2076.5).

### Critical Habitat

Under the federal ESA, in addition to listing a species, the Secretary is required to designate critical habitat. This may include areas of land, water, and air space required by a listed species for its survival and recovery. Although critical habitat may be designated on private or state lands, activities on these lands are not restricted by the ESA unless direct harm to a listed species would result or a federal agency is involved, directly or indirectly, in the activity. If a federal agency is involved, the activities can proceed only if the Secretary determines that they will not result in the destruction or adverse modification of the habitat (16 USC §1536(a); see Agency Consultation section on the next page).

Economic impacts are considered when designating critical habitat. The Secretary may exclude any area from critical habitat determination if he finds, based on the best scientific and commercial data available, that the benefits of such an exclusion outweigh the benefits of inclusion and the exclusion will not result in the extinction of the species concerned (16 USC §1533(b)(2)).

### Recovery Plans

Besides listing and the designation of critical habitat under the ESA, the Secretary is also responsible for the development and implementation of recovery plans (16 USC §153(f)(1)). The intention of these plans is not only to stem the decline of the species, but also to facilitate its recovery. Either single species or multi-species plans may be prepared, but the Secretary is required to give priority to those endangered or threatened species that are most likely to benefit from such plans, especially those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity (16 USC §1533(f)(1)(A)).

Recovery plans must contain the following:

- A description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species.
- Objective, measurable criteria that, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list.
- Estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal. (16 USC §1533(f)(1)(B)).

### Prohibitions

The ESA makes it illegal to import, export, take, possess, purchase, sell, deliver, or transport any endangered fish or wildlife species (16 USC §1538(a)(1)). With respect to endangered plants, the prohibitions are the same, except that take prohibitions apply only to areas under federal jurisdiction or when done in knowing violation of any law or regulation of any state or in the course of any violation of a state criminal trespass law (16 USC §1538(a)(2)). Threatened species of fish, wildlife, and plants have similar, but slightly weaker, protections (50 CFR §17.31, §17.71).

The CESA provides similar protections to endangered and threatened species, making it illegal to import, export, take, possess, purchase, or sell any endangered or threatened species (Fish and Game Code §2080). Additionally, the CESA extends these protections to candidate species (Fish and Game Code §2085).

Although both the ESA and the CESA prohibit the taking of a listed species, a significant difference lies in their definitions of take. The broader ESA definition includes the terms harass and harm (see Glossary). The Fish and Wildlife Service's regulatory definition of harm includes any action that "may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering." (50 CFR §17.3)

In contrast, CESA does not recognize habitat modification or degradation or any act as a taking unless it is the "proximate cause of death of an individual of a listed species or the natural and probable consequences of which would lead to the death of any listed species." The California Attorney General further clarified the relationship between habitat modification and taking in a May 15, 1995 opinion stating that unlike the ESA, the CESA "does not prohibit indirect harm to a state-listed endangered or threatened species by way of habitat modification." (*78 Ops. Cal.Atty Gen. 137 (1995)*).

### Agency Consultation

Both the ESA and CESA impose a number of procedural requirements to ensure that federal and state agencies do not carry out any actions that would jeopardize the continued existence of any listed species or result in the destruction or adverse modification of habitat essential to its existence.

Under Section 7 of the ESA, any federal agency proposing to authorize, fund, or carry out a major construction activity or any action that will "significantly affect the quality of the human environment" as referred to in the National Environmental Policy Act (NEPA) (42 USC §4332(2)(c)), must first inquire of the Secretary whether any federally listed species or designated critical habitat may be present in any area directly or indirectly affected by the proposed action (16 USC Section §1536(c)(1); 50 CFR §402.02, §402.12(c)). This is triggered by actions such as consideration of a Section 404 permit by the U.S. Army Corps of Engineers.

If any federally listed species or designated critical habitat may be present in the area, the agency must prepare a biological assessment to determine whether the action is likely to affect the species (16 USC §1536(c)(1); 50 CFR §402.12(d)(2)). The purpose of a biological assessment is threefold:

- To evaluate the effects of the action on listed and proposed species and critical habitat.
- To determine the need for consultation or conference with the Secretary.
- To achieve compliance with the ESA and the NEPA.

Biological assessments are combined with environmental review documents required by NEPA (16 USC §1536(c)(1); 50 CFR §402.06(a)). For instance, in cases where the agency's action may affect a federally listed species, both a biological assessment and an environmental impact statement (EIS) will be required and may be combined into one document (50 CFR §402.06(b)). However, a federal agency's compliance with other laws does not relieve the agency of its duty to comply with all other requirements of the ESA (50 CFR §402.06(a)).

If the biological assessment determines that the proposed federal agency action may affect the listed species, the agency must formally consult with the Secretary (16 USC §1536(a)(4); 50 CFR §402.12(k)(1)). During the formal consultation period all relevant information concerning the species and/or critical habitat must be reviewed, the proposed action's direct and indirect impacts must be evaluated, and the Secretary must formulate conservation recommendations concerning the species and/or critical habitat (50 CFR §402.14(g)).

After consultation between the parties is complete, the Secretary must provide the agency with a written biological opinion evaluating the proposed action's impact on the species or critical habitat (50 CFR §402.02). If the opinion finds that the proposed action may jeopardize the species' continued existence or de-

stroy or adversely modify critical habitat, the opinion must also include reasonable and prudent alternatives to the proposed action (16 USC §1536(b)(3)(A); 50 CFR §402.14(h)).

Section 10 of the ESA establishes a similar process for private projects that may result in the take of a special status species. Without an "incidental take permit" and habitat conservation plan issued under Section 10, the non-federal entity is liable for any take and may be prosecuted by the federal government.

The CESA has provisions for formal consultations under the CEQA process. Consultation is triggered when a state lead agency under CEQA proposes to authorize, fund, or carry out any project that is likely to jeopardize the continued existence of any state-listed species (Public Resources Code §21104.2). Formal consultation is typically initiated at the time the state lead agency has determined to prepare an EIR or a mitigated negative declaration under CEQA and is completed upon certification of the EIR or approval of the negative declaration.

**Exemptions**

Both the ESA and the CESA provide for a number of exemptions to the above prohibitions. The ESA contains provisions for incidental takings through the agency consultation process (16 USC §1536(b)(4); 50 CFR §402.14(i)(1)), takings in conjunction with cooperative agreements (16 USC §1535(g)(2)(A)), and the regulated taking of specific threatened species (16 USC §1533(d)). The ESA also provides economic hardship (16 USC §1539(b)(2); 50 CFR §17.23, §17.63, and §17.32(a)(1)); scientific (16 USC §1539(a)(1)(A); 50 CFR §17.22(a), §17.32(a), §17.62, and §222.308), and Endangered Species Committee exemptions (16 USC §1536(o)(1)).

For private, local, and state government projects that do not require any kind of federal agency involvement, the ESA also provides for incidental take permits (16 USC §1539(a)). These permits, issued in conjunction with an approved habitat conservation plan (see below), allow for the otherwise prohibited taking of a

## Useful Definitions: **Endangered Species**

**Candidate Species:** Under the CESA, any native species of fish, wildlife, or plant that the Fish and Game Commission has "formally noticed as being under review by the department for addition to either the list of endangered species or the list of threatened species, or a species for which the commission has published a notice of proposed regulation to add the species to either list." (Fish and Game Code §2068)

**Critical Habitat:** Under the ESA, "the specific areas within the geographical area occupied by the species… which are… essential to the conservation of the species and which may require special management considerations or protection; and specific areas outside the geographical area occupied by the species…upon determination by the Secretary [of the Interior] that such areas are essential for the conservation of the species." (16 USC §1532(5)(A))

**Endangered Species:** Any species that is in danger of extinction throughout all or a significant portion of its range. (16 USC §1532(6) and Fish and Game Code §2062)

**Federal Action Agency:** Any department, agency, or instrumentality of the U.S. proposing to authorize, fund, or carry out an action.

**Incidental Take:** "Any taking otherwise prohibited, if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity."(50 CFR §17.3)

**Species:** Under the ESA, "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature"(16 USC §1532). Under the CESA, "a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant." (Fish and Game Code §6072)

**Take:** Under the ESA, "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 USC §1532(19)). The CESA defines *take* as "[to] hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (Fish and Game Code §86)

**Threatened Species:** Any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. (16 USC §1532(20); Fish and Game Code §2067)

**Trustee Agency:** A state agency having jurisdiction over natural resources affected by a project that are held in trust for the people of California. The DFG is the trustee agency with regard to the fish and wildlife of the state and those plants designated as threatened or endangered. (CEQA Guidelines §15386)

species listed under the ESA if:

- The taking will be incidental.
- The applicant will, to the extent practical, minimize and mitigate the impacts of the taking and will ensure that adequate funding is available to do so.
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species.
- The applicant will ensure that other measures that are deemed necessary or appropriate by the Secretary will be provided (16 USC §1539(a)(2)(B); 50 CFR §17.22(b)(2), §17.32(b)(2)).

To help minimize and mitigate the impacts of the anticipated take, the incidental take permit applicant must submit a Habitat Conservation Plan (HCP). HCPs vary in size, scope, and the activities that they address, from small-scale, single-species plans to large, multi-species, multi-jurisdictional arrangements. Regardless of size, all HCPs must contain the following:

- The likely impacts of the proposed take.
- The steps the applicant will undertake to monitor, minimize, and mitigate such impacts, the funding that will be made available to implement these steps, and the procedures to deal with any unforeseen circumstances.
- Any alternatives to the taking that the applicant considered and why they were rejected.
- Any additional measures the Secretary requires to be addressed. (16 USC §1539(a)(2)(A); 50 CFR §17.22(b)(1)(iii) and §17.32(b)(1)(iii)(c))

Pursuant to CESA, DFG may similarly excuse state agencies, other agencies or individuals from the incidental take of an endangered, threatened, or candidate species through the consultation process. The Department may, under Fish and Game Code §2081, issue permits or memoranda of understanding (MOU) that authorize individuals, public agencies, universities, zoological gardens, and scientific or educational institutions to import, export, take, or possess any endangered species, threatened species, or candidate species for scientific, educational, or management purposes.

DFG's authority to issue §2081 permits for incidental take is specified in subdivision (b) of that section. The department may issue permits when the incidental take:

- Is in conjunction with an otherwise lawful activity.
- Is minimized and fully mitigated.
- The permit is consistent with DFG regulations.
- The applicant commits to adequate funding of mitigation and monitoring compliance and effectiveness.

No permit can be issued where it would jeopardize the continued existence of the species.

### Farm and Ranch Activities

The CESA contains special provisions for the take of species in the course of ranch or farm activities (Article 3.5 (commencing with §2086) of Chapter 1.5 of Division 3 of the Fish and Game Code). Until December 31, 2002, the accidental take of candidate, threatened, or endangered species resulting from inadvertent or ordinary negligent acts that occur on a farm or a ranch in the course of otherwise lawful routine and ongoing agricultural activities is not prohibited (Fish and Game Code §2087). Further, Fish and Game Code §2086 directs DFG to adopt regulations (to be developed in cooperation with the Department of Food and Agriculture and other interested parties) for locally designed, voluntary programs for habitat conservation on farms and ranches. The programs must: (1) include management practices to avoid or minimize the take of species while enhancing habitat; (2) be based on the best available scientific information; (3) be consistent with CESA; (4) be designed to be flexible enough to encourage participation; and (5) contain provisions allowing farmers or ranchers to withdraw from the program without penalty. DFG would be required to reauthorize such programs every five years.

### Other Laws

In California there are several additional laws and regulations that, directly and indirectly, protect fish, wildlife, and plant species, including the National Forest Management Act, the Marine Mammal Protection Act, the Migratory Bird Treaty Act, Section 404 of the Clean Water Act, the California Native Plant Protection Act, the California Z'Berg/Nejedly Forest Practice Act of 1973, certain provisions of the Fish and Game Code, and local and state government land use and permitting processes.

### Natural Community Conservation Planning Act

Enacted in 1991, the Natural Community Conservation Planning Act (NCCPA) represents a shift from the traditional single-species protection approach to a broader, multi-species approach centered on ecosys-

tems. The Act is intended to minimize the conflicts between land use development and endangered species protection by protecting species and their habitats in advance of listing and encouraging cooperation between often competing interests.

The NCCPA (Fish and Game Code §2800) achieves these goals through the development and implementation of Natural Community Conservation Plans (NCCPs). These plans, which may be undertaken by local, state, and federal agencies independently or in cooperation with other persons, identify and provide for regional or areawide protection and perpetuation of natural wildlife diversity while allowing compatible and appropriate development and growth. The plans are required to provide comprehensive management and conservation of multiple wildlife species and may include any wild animals, birds, plants, amphibians, and related ecological communities, including the habitat that the wildlife depends upon.

Plan implementation often includes, but is not limited to, the following elements:

- **Conservation Strategy**—The strategy might include such techniques as habitat reserve assembly or watershed management designed to promote biodiversity; provide for high likelihoods for persistence for covered species and ecosystem function, and provide for no net loss of habitat values from the present, taking into account management and enhancement. This means no net reduction in the ability of the planning region involved to maintain viable populations of target or indicator species over the long term.
- **Adaptive Management**—Adaptive management allows for changes in management strategies that may be necessary to reach long-term goals. This recognizes that environmental conditions and scientific information evolve over time.
- **Monitoring**—Implementation of the plan includes a monitoring program to ensure that data will be properly collected, analyzed, and used to adjust management strategies as appropriate, and to measure compliance with plan implementation mechanisms and biological performance.

NCCPA requirements do not supplant the requirements of the ESA and the CESA. NCCPs are required to be developed and implemented consistent with the ESA, CESA, NEPA, and CEQA (Fish and Game Code §2825(a)(6), (b)). Compliance with the NCCPA, however, is designed to meet some of the requirements of these other laws. For instance, the approval of an NCCP constitutes authority to take any identified species whose conservation and management is provided for in the plan, whether or not the species is listed under the ESA or CESA (Fish and Game Code §2830).

*Pilot program*

Begun in late 1991, the NCCPA pilot program known as the Coastal Sage Scrub Natural Community Conservation Plan (CSS NCCP) focuses on the coastal sage scrub habitat area of Southern California. The area is home to the endangered California gnatcatcher and approximately 90 other potentially threatened or endangered species of plants and animals. The planning area covers over 6,000 square miles and includes large portions of Orange, San Diego, and Riverside counties and smaller portions of Los Angeles and San Bernardino counties. Approximately 60 local government jurisdictions, scores of landowners and developers, state and federal wildlife authorities, and environmental groups are actively participating in the program.

The program's goal is the development and implementation of 10 to 15 subregional NCCPs within the CSS planning area and will include the acquisition of lands, the creation of conservation banks, and the incorporation of habitat conservation plans (HCPs). Achievements of the pilot program include:

- The San Diego Multiple Species Conservation Program (MSCP), a 582,000-acre habitat plan that establishes a 172,000-acre preserve system, protecting 85 species and 23 vegetation types.
- The Orange County Central Coastal NCCP Subregional Plan, a 37,380-acre wildlife preserve that includes 12 major habitat types and 39 sensitive plant and animal species;
- The Poway HCP/NCCP Subarea Plan, a 25,000 acre plan, establishing a 13,300 acre Mitigation Area and providing incidental take coverage for 43 species.
- The San Diego Gas and Electric Company (SDG&E) NCCP Subarea Plan, providing a combination of land, easements, mitigation measures, and habitat connectivity in areas where little natural habitat remains. The plan project covers 110 species and extends south from southern Orange County to the Mexican Border.

### Official Policy on Conservation Banks

In April 1995, the California Secretary for Resources and the Secretary for Environmental Protection established the Official Policy on Conservation Banks. Built

on the concept of mitigation banking, which has been used in California since the mid-1970s, the policy officially recognizes mitigation banking and provides a state-sanctioned approach to the establishment and maintenance of these banks.

A conservation bank is a parcel or series of parcels of land whose natural resource values—habitat types or species present—are sold or traded as credits to individuals, firms, or agencies that are required under law to compensate for adverse environmental impacts of a development or other activity. These credits fund habitat restoration at the site of the conservation bank and provide a permanent endowment for operation of the bank as a wildlife preserve.

Any individual or entity, public or private, can establish a conservation bank. There is no minimum or maximum size for the bank. However, the bank and each of its subparcels, if it contains any, must be large enough to be self sustaining or be part of a larger conservation strategy that has a "reasonable expectation of being accomplished." (Policy Section 3).

Although the creation of the banks is established pursuant to a regulatory agreement between the bank developer and the appropriate regulatory agency (Policy Section 2), the price of credits and the financial arrangements surrounding their sale are determined by bankers and buyers.

Before selling bank credits, a proposed conservation bank should be approved by the appropriate resource management agency(s). Basic elements in any approvable bank proposal should include, but are not limited to:

- Identification of a bank manager.
- Identification of the geographical boundaries of the bank and the service area of the bank.
- Provision for fundamental property protection measures (e.g., fencing some or all of the bank property if deemed appropriate, control of off-road vehicle use, etc.).
- Provisions for the resolution of current or prospective land use conflicts involving the bank lands (e.g., rights-of-way issues, existing use issues, adjacent land-use issues, etc.).
- Provisions requiring an annual report by the bank manager to be submitted to the appropriate regulatory agency(s).

### Natural Diversity Database

The Natural Diversity Database (NDDB) is a computerized inventory of information on the general location and condition of California's sensitive populations of plants, animals, and natural communities, including all federal and state listed plants and animals and all species that are candidates for listing.

The NDDB, which was initiated by the Nature Conservancy in 1979 and incorporated into the Department of Fish and Game's Natural Heritage Division in 1981, is used by developers, local government planners, state and federal agencies, and conservation groups to determine where declining species and natural communities are located and if planned projects will affect them. The information is also used to identify biologically rich areas that can be targeted for protection through land conservation actions.

As of April 1994, the NDDB contained over 22,800 records for nearly 1,200 native species and natural communities. The data for the NDDB comes from several different sources. Locational information comes from private consultants, biologists from other state and federal agencies, academicians, and DFG field biologists.

Information from the NDDB is made available in three formats:

- Text, which can be generated by 7.5 minute quad, 1:100,000 scale map, by county or custom area.
- Overlay, computer generated for any scale base map.
- Rarefind2, a microcomputer database application program that can include the entire state or be customized to include just one or several counties.

Information may be obtained from the California Department of Fish and Game, Wildlife and Habitat Data Analysis Branch, 1807 13th Street, Suite 202, Sacramento, CA 95814, (916) 322-2493 or www.dfg.ca.gov/whdab.

### Relation to the General Plan

The requirements of the various endangered species laws affect the general plan in two ways. First, the plan should include objectives, policies, principles, plan proposals, and standards to address the preservation and protection of any endangered, threatened, or candidate species. Most often these will be located within the conservation, open-space, and land use elements.

Section 65302(d) requires that the general plan include a conservation element for "the conservation, development, and utilization of natural resources including fisheries [and] wildlife" (see Conservation Element in Chapter 4). Development policies concerning the preservation and protection of endangered, threat-

ened, or candidate species should therefore be addressed within this element, including the promotion of congruency and cooperation with the management plans and policies of other agencies or organizations and recognition and implementation of enacted HCPs and NCCPs.

Development policies designed to protect endangered, threatened, or candidate species may also be included in the open-space element. Government Code §65560(b)(1) provides that land designated in the open-space element may include "open-space for the preservation of natural resources including areas required for the preservation of plant and animal life, including habitat for fish and wildlife species" (see Open Space Element in Chapter 4). Open-space development policies are often used to preserve and protect habitat or to provide land to mitigate for the destruction or adverse modification of habitat by development in other areas. As with the conservation element, congruency and cooperation with management plans and policies of other agencies or organizations should be part of the open-space element.

Areas designated for the preservation and protection of endangered, threatened, or candidate species, such as HCP and NCCP planning areas, conservation banks, and areas determined as critical habitat, should be identified within the land use element. Government Code §65302(a) requires that the land use element designate "the proposed general distribution and general location and extent of the uses of land" (see Land Use Element in Chapter 4). Other important wildlife habitats, such as migration routes, breeding grounds, and nesting areas for endangered, threatened, or candidate species may also be identified. The evaluation and regulation of these areas, as well as the impacts to endangered, threatened, or candidate species from new development allowed by the plan, should also be addressed.

The second way in which endangered species laws may affect the general plan is through CEQA requirements. Adopting or amending a general plan or an element of a general plan is a project under CEQA (see Chapter 7). According to §15064(a)(1) of the CEQA Guidelines, "if there is substantial evidence, in light of the whole record before the lead agency, that a project may have a significant effect on the environment, the agency shall prepare a draft EIR." A project is usually considered to have a significant effect on the environment if it will substantially affect an endangered, rare, or threatened species of animal or plant or the habitat of the species. Where a significant effect is found to exist, CEQA obligates the city or county to incorporate mitigation measures into the policies of the general plan (Public Resources Code §21081.6). The city or county must also adopt a reporting or monitoring program for ensuring compliance with these mitigation measures. The CEQA process should be informed by existing HCPs and similar plans.

## WETLANDS PROTECTION

Wetlands are the subject of federal, state, and local regulation due to their importance as a natural resource and the historic loss of a large percentage of California's pre-European era wetlands. Wetlands represent important wildlife habitat, are natural filters of water contaminants, and act to regulate the temperature and levels of water bodies including bays, estuaries, and river deltas. Wetland regulations are implemented by a number of agencies, and are typically triggered by development proposals.

### Federal Regulatory Programs

The Clean Water Act provides federal agencies the authority to monitor and restrict discharges of pollution into waters of the United States. Under §404 of this act, the U.S. Army Corps of Engineers regulates by permit the placement of fill or dredged material into water bodies (broadly interpreted to include wetlands). The U.S. Army Corps of Engineers also has permitting authority pursuant to §10 of the federal Rivers and Harbors Act.

Other federal acts that influence wetland regulations include the federal ESA, the National Environmental Policy Act (NEPA), the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Coastal Zone Management Act. The requirements are triggered by projects undertaken or funded by federal agencies that often involve wetlands. Projects affecting wetlands in the coastal zone must be consistent with the Coastal Zone Management Act. The Act requires state agencies to adopt management programs for coastal resources. The ESA is particularly pertinent where wetlands provide habitat for endangered species.

The distinction between federal and state programs is not always clear cut. The next section discusses regulatory activities established under federal law but operated by state agencies in addition to regulatory programs established solely under state law.

### State Regulatory Programs

California's wetlands conservation policy includes the goal to achieve no overall net loss and a long-term

## Agencies with Wetlands Jurisdiction

**Federal Agencies**

**U.S. Fish and Wildlife Service (USFWS)**
(www.usfws.gov)
Responsible for the implementation of the Endangered Species Act. Actions under §404 of the Clean Water Act where endangered species may be present in wetland habitat requires consultation with the USFWS.

**U.S. Army Corps of Engineers**
(www.usace.army.mil)
Authorized under §404 of the Clean Water Act to regulate the placement of dredged or fill material into wetlands. Delineates wetlands under its jurisdiction.

**U.S. Environmental Protection Agency**
(www.epa.gov)
Enforcement and commenting authority under §404 of the Clean Water Act, the Endangered Species Act, and the National Environmental Policy Act concerning wetlands and habitat protections.

**Other federal agencies with indirect wetlands authority:**
National Marine Fisheries Service
Natural Resources Conservation Service
National Park Service

**State Agencies**

**California Coastal Commission**
(www.coastal.ca.gov)
Permitting authority pursuant to the Coastal Act and the Public Resources Code for projects within the coastal zone, including permit requirements involving wetlands and associated habitat.

**California Department of Fish and Game**
(www.dfg.ca.gov)
A Trustee Agency for California's natural resources with permitting authority for the alteration of water bodies, including wetlands under §1603 of the Fish and Game Code. Requirements for consultation under the California Endangered Species Act where wetland habitat supports rare, threatened, or endangered species.

**San Francisco Bay Conservation and Development Commission (BCDC)**
(www.bcdc.ca.gov)
The BCDC is the state coastal management agency for San Francisco Bay and has jurisdiction to administer the State McAteer-Petris Act pursuant to §66651, the San Francisco Bay Plan, and the Suisun Marsh Preservation Act. Its primary role is the protection, enhancement, and restoration of wetlands. All projects proposed in tidal wetlands in the planning area require an approved BCDC permit.

**Delta Protection Commission (www.delta.ca.gov)**
Pursuant to Public Resources Code §29760 and the Delta Protection Act of 1992, the Delta Protection Commission's *Land Use And Resource Management Plan For The Primary Zone of the Delta* (February 23,1995), established policies and programs for the preservation and restoration of wetlands and associated habitat in a 500,000 acre area of central California. Local agencies within the planning area are required to maintain consistency between the policies of the management plan and their respective general plans.

**Other state agencies with indirect wetlands authority:**
State Water Resources Control Board/Regional Water Quality Control Boards
State Lands Commission
State Coastal Conservancy
Department of Water Resources
Wildlife Conservation Board
Department of Parks and Recreation

net gain in wetlands acreage and values. This goal is in part through combined federal and state agency implementation of §401 and §404 of the federal Clean Water Act, as well as through the California Coastal Act, the California Fish and Game Code, and the Porter-Cologne Water Quality Control Act. Additional restrictions are imposed under CESA and CEQA.

The Water Quality Certification Program is established by §401 of the federal Clean Water Act and is run by the individual states. Applicants for federal licenses or permits involving activities that may result in a pollutant discharge to national jurisdictional waters must seek state certification that any such discharge will comply with state and federal water quality stan-

dards. In California, certifications are issued by the State Water Resources Control Board (State Board) in close consultation with the Regional Water Quality Control Boards (Regional Boards). This is addressed in more detail in the water quality section that follows.

Another federal program managed by the states may also help protect wetlands. Point sources of pollution are regulated through Clean Water Act §402, National Pollutant Discharge Elimination System (NPDES), municipal storm water permits, and construction general permits. In California, these permits are issued by the Regional Boards and the State Board.

Not all regulatory programs originated at the federal level. California Water Code §13000, et seq., known as the Porter-Cologne Water Quality Control Act, establishes various regulatory authorities under which the State Board and the Regional Boards protect beneficial uses of surface and ground waters, including wetlands. Beneficial use categories listed in water quality control plans include uses of water related directly to wetlands protection. The water quality agencies may choose to regulate discharges to wetlands and other surface waters under the Clean Water Act program or by using their Porter-Cologne authorities.

The Coastal Act is implemented through the California Coastal Commission, which has jurisdiction over wetlands within the coastal zone. Pursuant to Public Resources Code §30233(a), the Coastal Commission requires that development within the coastal zone include measures that minimize or avoid adverse impacts to wetlands (see *Procedural Guidance for Evaluating Wetland Mitigation Projects in California's Coastal Zone*, California Coastal Commission, September 1995).

The Department of Fish and Game is a Trustee Agency with respect to the natural resources of California and, in particular, the wetland communities associated with lakes, rivers, and other water bodies. The Department's Fish and Game Code §1603 Stream Bed and Bank Alternation Agreements may allow for the modification of stream channels or banks provided that there is adequate mitigation or no net loss of wetlands. Projects involving wetlands habitat that supports rare, threatened, or endangered species are subject to review by DFG for consistency with CESA and the California Fish and Game Code.

For a detailed discussion of wetlands and pertinent regulations, see *Wetlands Regulation* in the Bibliography. For more information regarding specific programs, see the California Wetlands Information System via the Internet at http://ceres.ca.gov/wetlands

**Relation to the General Plan**

As a long-term plan for the physical development of the community, the general plan should reflect the value and importance of wetlands and their associated habitat. Wetlands are a natural resource that can be dramatically affected by the physical development within a planning area and should be an important consideration in the development of the general plan and its policies. Policies, especially those of the land use element, should proactively promote the identification and protection of wetlands.

Policies should address the preservation and protection of wetlands through the conservation and open-space elements or as a limitation on development in the land use element. Wetlands may be broadly identified in the general plan diagrams of the land use, open-space and conservation elements as natural resource communities or potential development constraints. This helps to inform landowners that their properties may be subject to the stringent requirements of federal wetlands laws.

Although the general plan should provide protective policies, it must also recognize that the precise delineation of wetlands and specific mitigation that will be applied to development projects lies within the statutory responsibilities of federal and state agencies such as the USFWS and DFG. Accordingly, the general plan should refrain from policies that dictate specific standards for replacement ratios and site-specific mitigation measures. Similarly, there is no need for the general plan to attempt to precisely delineate all wetlands—that will be done by the federal and state regulatory agencies. Where adoption of the general plan may adversely impact wetlands, protection and mitigation should be addressed by the CEQA document and mitigation measures identified. These measures must be incorporated into the policies of the general plan (Public Resources Code §21081.6).

The general plan may establish programs and general standards for the implementation of wetlands policy. For example, areas may be designated and set aside for wetlands banking purposes. Policies for open space and parks may also designate areas for the protection or revitalization of larger areas.

Adopting or amending a general plan is a project subject to CEQA and often requires the preparation and consideration of an EIR. The effect that the plan's policies and programs may have on wetlands must be taken into consideration in the plan EIR. Mitigation or alternatives selected to avoid, reduce, compensate for, or otherwise lessen the effects of the plan must be adopted as plan policies (Public Resources Code §21081.6).

## AIR QUALITY

California has 35 air pollution control districts (APCDs) and air quality management districts (AQMDs). These cover one or more counties and are governed by locally elected officials. These air districts have regulatory control over stationary sources of air pollutants such as industrial and manufacturing facilities. They are also responsible for local plans and programs to reduce emissions from transportation sources such as cars, trucks, motorcycles, and buses. In addition, air districts prepare air quality plans that specify how federal and state air quality standards will be met. In some areas, Councils of Government (COGs) also carry out certain components of air quality planning. In addition, COGs with transportation planning responsibilities must address air quality in order to ensure that regional transportation plans and programs conform to air quality plans.

The California Air Resources Board (ARB) sets standards for the amount of pollutants that can be emitted by new motor vehicles sold in California. California's strict motor vehicle emission standards have resulted in dramatic decreases in the amount of pollutants produced by motor vehicles throughout the state. Although these standards will continue to greatly improve air quality, especially in areas where motor vehicle emissions are a significant source of air pollution, continuing increases in population and driving partially offset the benefits of cleaner motor vehicles.

National ambient air quality standards (NAAQS) were established in 1970 by the federal Clean Air Act for six pollutants: carbon monoxide, ozone, particulates, nitrogen dioxide, sulfur dioxide, and lead. The Act requires states with air pollution exceeding NAAQS to prepare air quality plans demonstrating how the standards would be met. The federal Clean Air Act was amended in 1977 and again in 1990 to extend deadlines for compliance and the preparation of revised State Implementation Plans (SIPs).

The 1990 amendments also established categories of severity for non-attainment areas (from marginal to extreme). Air quality program requirements vary depending on the degree of severity. In 1994, the California Air Resources Board adopted a revised State Implementation Plan for ozone to meet the requirements of the 1990 amendments. The 1994 SIP is California's blueprint for achieving the federal ozone standards by the applicable dates (which vary for different parts of the state). It contains commitments to adopt regulations and implement programs that significantly reduce pollutants from stationary, mobile, and area sources to be implemented by federal, state, and local agencies. The U.S. EPA approved California's SIP in September of 1996.

In July 1997, U.S. EPA revised the NAAQS for ozone and total inhalable particulate matter (PM10). In addition, U.S. EPA also adopted new standards for fine particulate matter 2.5 microns in size and smaller (PM2.5). The creation of PM2.5 standards represents a significant increase in nationwide health protection from the smallest particles. The 1994 California SIP and local plans to reduce PM10 levels lay the foundation for meeting the new federal PM2.5 standard. Some areas may need additional emission reductions to meet this standard.

The 1988 California Clean Air Act (CCAA), which was amended in 1992 and again in 1996, requires attainment of California's ambient air quality standards, which are more health-protective than the national standards. In general, the CCAA requires regions whose air quality exceeds state standards to reduce pollutants by five percent or more per year or to implement all feasible measures to meet state air quality standards as expeditiously as possible.

In 2001, the CCAA was amended to require air districts with one million residents or more to ensure that not less than fifty percent of the funds for certain mobile source programs are expended in communities with the most significant exposure to air contaminants, including, but not limited to, low-income or minority communities, or both. Although this new requirement would only affect the five most populous air districts, the legislation includes language that encourages the other 30 districts with less than one million residents to expend these funds in a similar manner to the requirements of the largest districts. This requirement will expire on January 1, 2007.

### Relation to the General Plan

Land use and air quality are linked by automobile use. Over the past 30 years, the total number of vehicle miles traveled (VMT) in the state has increased at a much faster rate than population growth. Between 1970 and 1995, total annual VMT in California more than doubled, increasing from 103 billion miles to over 270 billion miles of travel per year. During the same time period, the state's population grew by about 60 percent, increasing from 20 to 32 million people. Relationships between land use patterns, traffic circulation, and accessibility can have an impact on the amount and type of travel, which in turn affects air quality. Urban design that reduces the need for vehicle trips or the distances people need to drive and that provides ready access to public transit, bike paths, and pedestrian facilities can have a positive impact on air quality.

Cities and counties have an opportunity to address air quality issues in their general plans, development and zoning ordinances, circulation systems, and other local programs. Especially important is the inclusion of strategies that are beneficial to air quality in the land use and circulation elements of the general plan. In addition, optional air quality elements may be adopted that include additional strategies and programs.

The staff at the California Air Resources Board has created a computer program called URBEMIS (Urban Emissions Model), which can be used to estimate emissions associated with land use development projects in California. For more information, go to the ARB's website at http://www.arb.ca.gov.

## WATER QUALITY

California is divided into nine water quality regions, each under the regulatory authority of a Regional Water Quality Control Board (RWQCB). Under §208 of the federal Clean Water Act Amendments of 1982, COGs or other regional agencies also carry out water quality planning in metropolitan areas. In all other areas, the state has assumed these responsibilities. Section 208 plans include control measures for improving water quality and institutional and financial mechanisms to implement the control measures for municipal and industrial wastewater, storm runoff, and similar sources. All permits for liquid waste discharge must be consistent with the plan. Only those water pollution control facilities consistent with the plan may receive federal grants.

The National Pollution Discharge Elimination System (NPDES) requires permits for point source pollution, such as that from sewage treatment plants, as well as non-point source pollution, essentially pollutants introduced by water runoff into streams, storm drains, and sewer systems. Although NPDES permitting is the responsibility of the State Water Resources Control Board and the RWQCBs, the nature of non-point source pollution necessitates local participation if polluted runoff is to be minimized.

Besides the federal plan, there are state water quality planning requirements. Each RWQCB must prepare a regional water quality control plan for its jurisdiction (Water Code §13240, et seq.). The plan is similar in function to the §208 document.

### Relation to the General Plan

Water quality is an issue that is required to be addressed in the conservation element. Water quality may also be addressed in an optional water element. Local general plans should incorporate water quality policies from regional plans to the extent that they are relevant. Policies may address wetlands and stream protection and stormwater runoff controls, for example. In addition, a general plan should reflect the water quality regulatory framework so that property owners, decision-makers, and the public have an accurate picture of the permitting requirements and development limitations that may exist as a result.

## DELTA PROTECTION ACT OF 1992

Recognizing the threat of potential urban and suburban encroachment to the Sacramento San Joaquin Delta, the Legislature enacted the Delta Protection Act of 1992. The Act established the Delta Protection Commission, a state entity to plan for and guide the conservation and enhancement of the natural resources of the Delta, while sustaining agriculture and meeting increased recreational demand. The Act defines a Primary Zone, which comprises the principal jurisdiction of the Delta Protection Commission, and a Secondary Zone. The Primary Zone includes approximately 500,000 acres of waterways, levees and farmed lands extending over portions of five counties: Solano, Yolo, Sacramento, San Joaquin and Contra Costa. The Secondary Zone is the area outside the Primary Zone but within the "Legal Delta." The Secondary Zone is not within the planning area of the Delta Protection Commission.

The Act provides broad authority to the Commission to plan for the stated legislatives goals of maintaining agricultural lands and natural resources in the Delta while increasing recreation opportunities and public access. The Act requires the Commission to prepare and adopt a long-term resource management plan for land uses within the Delta and enumerates certain goals to be addressed by the plan. The Act provides that local plans and decisions must be in conformance with the Commission's plan, and local decisions will be subject to appellate review by the Commission.

### Relation to the General Plan

Within 180 days of the adoption or amendment of the management plan by the Delta Protection Commission, all local governments shall submit to the Commission proposed amendments which will cause their general plan to be consistent with the resource management plan. Following approval of the amendments by the Commission, the local government must adopt the proposed amendments to the general plan within 120 days. Prior to amending their general plan, local government must make certain findings before approving any development projects within the Primary Zone. Amendment of the general plan by a local government in order to achieve consistency with the resource management plan is statutorily exempt from the California Environmental Quality Act (PRC §21080.22).