

## U.S. Army Corps of Engineers, Sacramento District

### Section 408 Environmental Assessment Guidelines and Template Introduction

#### Introduction

This document is intended as a guide for preparing an environmental assessment (EA) for a U.S. Army Corp of Engineers (USACE) Sacramento District Section 408 action. Please note that this template is intended as a guide for preparing a “stand-alone” EA, not a joint NEPA/CEQA document. The text in **black** is standard language that we recommend including in the final product. The text in **[red]** should be replaced with project specific information. The text in **[purple]** is explanatory text and should be removed from the final product.

If you have any questions concerning your project, NEPA compliance, or the EA Guidelines and Template please contact Mr. Brian Luke, Natural Resources Specialist, at (916) 557-6629, Brian.J.Luke@usace.army.mil or Mr. Oren M. Ruffcorn, Biologist, at (916) 557-5173, Oren.M.Ruffcorn@usace.army.mil

The following websites and references provide useful information for preparation of NEPA documents:

40 CFR Parts 1500-1508: CEQ Regulations for Implementing the Procedural Provisions of NEPA, revised May 20, 2022.

<https://ceq.doe.gov/docs/laws-regulations/NEPA-Implementing-Regulations-Desk-Reference-2022.pdf>

33 CFR Part 230: Corps of Engineers Procedures for Implementing NEPA

Council on Environmental Quality. 1981. Memorandum to Agencies: Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations.

Council on Environmental Quality. 1997. Considering Cumulative Effects Under the National Environmental Policy Act.

Council on Environmental Quality. 2011. Memorandum for Heads of Federal Departments and Agencies: Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact.

Council on Environmental Quality. 2014. Memorandum for Heads of Federal Departments and Agencies: Effective Use of Programmatic NEPA Reviews.

Council on Environmental Quality. 2014. NEPA and CEQA: Integrating Federal and State Environmental Reviews.

National Marine Fisheries Service. 2012. Guidance on Cumulative Effects Analysis in Environmental Assessments and Environmental Impact Statements.

Plain Language Action and Information Network. 2011. Federal Plain Language Guidelines.

Solomon, R., Supulski, B., Kurtzman, J., Chaudet, M., and M. Smith. 2016. Cumulative Effects Analyses for NEPA Documents.

U.S. Department of Energy Office of NEPA Policy and Assistance. 2000. Clean Air Act General Conformity Requirements and the National Environmental Policy Act Process.

<https://www.energy.gov/nepa/guidance-and-requirements-table>

<https://ceq.doe.gov/laws-regulations/regulations.html>

<https://www.epa.gov/general-conformity>

<https://www.epa.gov/green-book>

## Common Pitfalls

- The text of an EA shall be no more than 75 pages, not including appendices.
- Use of the word “significant”; keep in mind that in a NEPA document the term has a specific legal meaning. Be very careful in how you use the word significant, ensure that you are using it in the correct context of a NEPA document. We recommend doing a word search for “significant” and carefully considering each use.
- Use of the word “mitigation”; the term mitigation can be used incorrectly and over-used in NEPA documents. We recommend reviewing the Council on Environmental Quality’s (CEQ) guidance on the appropriate use of mitigation and monitoring (CEQ 2020).
- Using California Environmental Quality Act (CEQA) definitions instead of NEPA definitions. Ensure that you understand and are using NEPA definitions in the EA instead of CEQA definitions, these are often quite different.
- Copy and pasting from a CEQA document when the document is strictly a NEPA document (this does not necessarily apply when the document is a joint NEPA/CEQA document). Keep in mind that NEPA and CEQA are two different laws and while the documents may be structurally similar, the wording used in a strictly NEPA document is typically quite different than in a CEQA document.
- Copy and pasting from other documents in general. Be sure to proofread your documents to ensure that there are no references to chapters, figures or appendices from a different document. While it is ok to re-use information from another document (a biological assessment for example) in your EA, make sure that this information is relevant to the EA and has been thoroughly proof-read.
- Style and formatting inconsistencies. It is important to maintain consistent formatting and style throughout the document; this is particularly relevant when multiple people are writing the document.
- Use of plain language. Keep the audience in mind, NEPA documents should be written for the general public and need to use plain language. The Federal Plain Language Guidelines are a useful resource for this.
- Background, summaries, and existing conditions are often too wordy. Keep information relevant and concise.
- Including resource evaluations that wouldn’t be affected by the project. While it is ok to list the resources that were considered, but would not be affected, it is not necessary to include long descriptions or evaluations of these resources.
- Explaining how the project **will** affect resources instead of how the project **would** affect resources. The use of “will” can be interpreted as pre-decisional, it is more appropriate to use the word “would”.

**TEMPLATE [FINAL or DRAFT] ENVIRONMENTAL ASSESSMENT**

**for the**

**[PROJECT NAME]**

Prepared for:  
U.S. Army Corps of Engineers  
Sacramento District  
1325 J Street  
Sacramento, CA 95814-2922

and

[Name, Title of Requester]  
[Company]  
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[Phone Number]  
[Email]

Prepared by:

[Name, Title]  
[Company]  
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[Date]

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**APPENDICES**

[The appendices should contain information that supports the analyses presented in the main body of the EA. Common appendices include air pollutant emissions analyses, records of Section 7, Section 106, and tribal consultations, public scoping record. Do not include biological assessments (BA) or cultural reports]

**LIST OF TABLES**

[Tables should be included as appropriate. Common information to be included as a table may include special status species present in the proposed project area, air quality data, etc. Tables should be placed in-text as close to their first citation as possible. The list of tables should be formatted using the same style as the table of contents.]

**LIST OF FIGURES**

[All EAs should include maps showing the vicinity and location of the proposed action. Other common figures include site photographs, habitat type maps, relevant plans and drawings, maps of construction or project elements, maps showing the geographic analysis areas for affected resources (e.g., a map showing the watershed that may be affected by the proposed action), etc. Figures should be placed in-text as close to their first citation as possible. The list of figures should be formatted using the same style as the table of contents.]

## LIST OF ACRONYMS AND ABBREVIATIONS

[Provide a list of all the acronyms and abbreviations used in the document. Please go through the document carefully (doing a search on parentheses can be effective) to locate. Additionally, please ensure that acronyms and abbreviations are introduced only once, and at the very first use, in the document. This is a very common pitfall in NEPA documents.]

[Acronym]

[Long Version]

|                 |  |
|-----------------|--|
| ARPA            | Archaeological Resources Protection Act                  |
| BMPs            | Best Management Practices                                |
| CalEEMod        | California Emissions Estimator Model                     |
| CO              | Carbon Monoxide  |
| CO <sub>2</sub> | Carbon Dioxide   |
| CEQ             | Council on Environmental Quality                         |
| CEQA            | California Environmental Quality Act                     |
| CFR             | Code of Federal Regulations                              |
| EA              | Environmental Assessment                                 |
| EC              | Engineering Circular                                     |
| EFH             | Essential Fish Habitat                                   |
| E.O.            | Executive Order  |
| ER              | Engineering Regulation                                   |
| FPPA            | Farmland Protection Policy Act                           |
| MSA             | Magnuson-Stevens Fishery Conservation and Management Act |
| NAAQS           | National Ambient Air Quality Standards                   |
| NEPA            | National Environmental Policy Act                        |
| NO <sub>2</sub> | Nitrogen Dioxide   |
| O&M             | Operations and Maintenance                               |
| O <sub>3</sub>  | Ozone  |
| PM              | Particulate Matter                                       |
| SIP             | State Implementation Plan                                |
| SMAQMD          | Sacramento Metropolitan Air Quality Management District  |
| SO <sub>2</sub> | Sulfur Dioxide   |
| TIP             | Tribal Implementation Plan                               |
| USACE           | United States Army Corps of Engineers                    |
| U.S.C.          | United States Code                                       |
| USEPA           | United States Environmental Protection Agency            |
| USFWS           | United States Fish and Wildlife Service                  |

## 1. PURPOSE AND NEED

### 1.1 INTRODUCTION

[Introduce the action that is triggering assessment under NEPA, this will typically be the request for a Section 408 permission. Recommended language is included below.]

In compliance with United States Code (U.S.C.) Title 33, Chapter 9, Subchapter 1, Section 408, the [Name of requester] (Requester) has requested permission through the [non-federal sponsor] (non-federal sponsor of the federally authorized project) from the U.S. Army Corps of Engineers (USACE) to alter the [Name of Federal project], an existing federal [type of project (e.g., flood risk management, restoration, navigation, dam, reservoir, non-federal hydropower)] project, authorized by [citation to original authorizing statute, for example Flood Control Act of 1917].

To address the potential environmental impacts of the proposed action, as required under the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), the [requester's name] has prepared this Environmental Assessment (EA) following the Council on Environmental Quality (CEQ), NEPA Regulations (40 CFR 1500-1508), revised May 20, 2022, USACE Engineer Regulation (ER) 200-2-2 (33 CFR 230), and Engineer Circular (EC) 1165-2-220.

### 1.2 33 U.S.C. SECTION 408 AUTHORITY AND GUIDANCE

The authority to grant permission for temporary or permanent use, occupation or alteration of any USACE federally authorized civil works project is contained in Section 14 of the Rivers and Harbors Appropriation Act of 1899, as amended, codified at 33 U.S.C. 408 (Section 408). Section 408 authorizes the Secretary of the Army, on the recommendation of the Chief of Engineers, to grant permission for the alteration or occupation or use of a USACE project if the Secretary determines that the activity will not be injurious to the public interest and will not impair the usefulness of the project. An alteration is defined as “any action by any entity other than USACE that builds upon, alters, improves, moves, obstructs, or occupies an existing USACE project” (EC 1165-2-220).” Section 408 authority only applies to alterations proposed within the lands and real property interests identified and acquired for the USACE project and to lands available for USACE projects under the navigation servitude. According to EC 1165-2-220 maintenance and repair activities conducted by non-federal sponsors on the USACE project for which they have operation and maintenance responsibilities do not require Section 408 permission but may require coordination or concurrence from the USACE district. The Secretary of Army’s authority under Section 408 has been delegated to the USACE Chief of Engineers. The USACE Chief of Engineers has further delegated the authority to the USACE Directorate of Civil Works, Division and District Engineers, and authorized District Engineers to further re-delegate the authority to Supervisory Division Chiefs depending upon the nature of the activity.

In EC 1165-2-220, USACE has issued policy and guidance for processing Section 408 requests. EC 1165-2-220 clarifies that a decision on a Section 408 request is a federal



action, and therefore subject to NEPA and other environmental compliance requirements.

### ***1.3 PURPOSE OF AND NEED FOR ACTION***

[The purpose of and need for action provides the foundation for the EA and the decision-making process; this section should summarize the need for action and list the project objectives (purpose). This section should provide the information that establishes the scope of the alternatives. The need should use objective facts to describe the on-the-ground conditions leading the requester/project proponent to propose action(s) within the project area.

We recommend that the purpose and need be kept conceptually separate, describe the need for the action and then describe the purpose of the action.

Be careful not to simply list the proposed project actions as the purpose. For example, an inappropriate purpose would be to “install a 2000-foot long steel irrigation pipeline from the Sacramento River to the north side of field 3A.” A more appropriate purpose would be “provide irrigation to the north side of field 3A.” A sound purpose should allow for different options/alternatives to achieve the objective.

Include reference to a vicinity and location map in this section. Specific site information should be saved for the affected environment sections, but enough information should be provided here (best provided using a map or maps) for the reader to understand the general location where the action is proposed. The location map(s) should include enough major landmarks (roads, towns, county boundaries, etc.) that a reader unfamiliar with the area could locate the proposed action area.]

### ***1.4 BACKGROUND INFORMATION***

[OPTIONAL SECTION, only include if there is relevant background information that cannot be described elsewhere. Be sure that any background information included is relevant to the EA analysis, avoid cutting and pasting large quantities of information from other documents.]

### ***1.4 SCOPE OF THE DECISION TO BE MADE***

[Summarize the decision to be made: issue (action) or deny (no action) a Section 408 permission for the proposed action.]

### ***1.5 COOPERATING AGENCIES***

[OPTIONAL SECTION, only include if there are cooperating agencies (these can be federal, state, tribal, or local) involved. If other agencies are involved, identify the lead federal agency and briefly describe how the other agencies are involved.]

### ***1.5 SCOPING AND ISSUES***

[Summarize the scoping/public involvement, including any scoping done by the requester as well as the public notice completed by USACE (see recommended language in black and red text below). This section should provide a summary, the full scoping record should be included as an appendix. The scoping record should include

any relevant scoping documents prepared by the requester as well as the public notice posted by USACE, any responses to this public notice that USACE received, as well as the response(s) to any public comments. As this EA will be adopted by USACE as a federal document, it is important to include a full record of USACE's public noticing process. If the USACE receives a number of comments to the federal public notice, we recommend including in the public scoping appendix a matrix/table of public comments and responses to comments (see appendix to this document for an example). Please note that the requester/requester's consultant is responsible for preparing the response(s) to public comments; however, these responses will be adopted by USACE as the agency response, therefore, it is important for the requester/requester's consultant to coordinate closely with USACE on this section.

Additionally, this section should identify and profile the major relevant issues and identify any issues considered but eliminated from further analysis. Keep in mind that an "issue" can be considered to be an effect (or a perceived effect, risk, or hazard) on physical, biological, social, or economic resources. In this section, avoid going into depth on the issues (detailed analysis of the issues should be saved for the Environmental Consequences), but instead introduce the readers to the relevant issues and frame the issues that will be discussed further in the Environmental Consequences. Include a statement of what the issue is (for example: Soil erosion leading to a decrease in water quality). Then provide a brief description of the issue (for example: Placement of riprap for bank stabilization along the Sacramento River might result in temporary, construction related soil erosion, leading to decreased water quality in the vicinity of the project area.). Finally, identify what indicators (remember, the effects analyses must be quantitative whenever practicable) will be used to measure the environmental consequences (for example: Potential effects of the alternatives will be estimated using suspended sediment as an indicator.)

Per NEPA requirements and USACE guidance in EC 1165-2-220, the Sacramento District prepared a public notice ([Appendix A]) describing the alternatives, the activities covered by the proposed action, and the potential environmental effects. This public notice was posted on the Sacramento District website from [date] through [date], and members of the public who had previously self-identified as having interest in USACE permitting actions in [applicable state and county(ies)], were notified by email of its location on the website and invited to comment.

## **2. ALTERNATIVES**

### **2.1 SUMMARY**

[An EA for a Section 408 action should only include two alternatives, the no action and the Requester's Preferred Alternative. It is not necessary to include a section describing alternatives considered but eliminated.

In addition to features to be constructed, the description should include the location of staging areas, borrow pits, haul routes, and other information necessary to determine direct and indirect effects of the proposed action's implementation, operation, and maintenance. Additionally, best management practices, monitoring, permitting actions,

and compliance with building codes should be included in the description of the alternative.

Throughout the Alternatives chapter, it is very important to use the word “would”, not “will.” Describe the alternative as it would be, using the word will is pre-decisional.]

This chapter both describes the alternatives and compares them in terms of their environmental impacts. Per CEQ NEPA guidance, only reasonable alternatives should be discussed in detail (40 CFR §1502.14). Additionally, EC 1165-2-220 clarifies that for Section 408, reasonable alternatives should focus on two scenarios: 1) no action and 2) action.

## ***2.2 NO ACTION ALTERNATIVE***

[The no action alternative is what would happen if USACE denied the Section 408 permission for the proposed action. There are two common meanings for “no action”: either continue present management activities without doing the proposed project, or don’t do anything at all. Be sure to tell the readers exactly which meaning of no action is used for the document. Keep in mind that under the no action alternative, environmental consequences will still occur because the environment is not static.]

## ***2.3 REQUESTER’S PREFERRED ALTERNATIVE***

[This section should be a complete description of the proposed action. This description should include all descriptions of all management requirements, mitigations/best management practices, monitoring, and maintenance. Make sure that any staging areas, access routes, borrow areas, spoils sites, etc. have been identified.]

# **3. AFFECTED ENVIRONMENT AND ENVIRONMENTAL CONSEQUENCES**

## ***3.1 SUMMARY***

[This is a good place to let the readers know that this chapter will discuss both the existing conditions in the analysis area and the environmental consequences of the alternatives. Additionally, give the readers an explanation of the organization of the chapter, particularly the order in which the relevant resources will be presented. Include a brief description of the area where the proposed action would take place, reference appropriate maps.]

### **3.1.1 Affected Environment and Environmental Consequences Summary**

[In this section, provide the reader with a summary of what the Affected Environment and Environmental Consequences are. Provide pertinent definitions and cite relevant guidance/regulations. See example text in black below.

The Affected Environment section should succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration, including the reasonably foreseeable environmental trends and planned actions in the area(s). The discussion should include the environmental impacts of the proposed action and the significance of those impacts. Do not include extraneous information that does not

provide context and a baseline for understanding the effects analysis for each resource. A common mistake is to include large quantities of information that do not help the reader understand the environmental effects.

For each resource be sure to stipulate the geographic analysis area that will be described in the Affected Environment and analyzed for effects in the Environmental Consequences section. Thus, the baseline area for each resource may often extend beyond the project area and will generally differ from resource to resource. For example, the geographic scope for water resources may be an entire watershed.

When analyzing effects in the Environmental Consequences section, discuss the cause-and-effect relationships behind the end issue. In other words, an action (cause) leads to effects that result in impacts (both adverse & beneficial) that the “public” (i.e., humans) cares about. When discussing effects, always tie them back to the issue that the public cares about. For example, public issues could be effects on the deer population, effects on the number of recreation days at a specific recreation site, effects on water quality within a given reach of a river, etc. Whenever possible, quantify the effects (e.g., acres of habitat lost, amount of sediment entering a stream, tons of CO<sub>2</sub> released, number of trees cut down, number of recreation days lost, etc.). Effects to most resources can and should be quantified. In the event that an effect can only be indicated as a trend (e.g., low, moderate, high), keep in mind that both quantifications and trends require careful explanation and interpretation. Quantification is preferred over trends, do not use trends when an effect can be quantified. If there are instances where the data are incomplete or unavailable, identify and explain this.

When using words such as “minor”, “substantial”, “short-term”, and long-term to consider the degree of effects these words must be defined. Without explanation these types of words have essentially no meaning. For example, short-term could mean three months to one person, and five years to another person. As previously mentioned, quantifiable terms are preferable over ambiguous words. For example, instead of stating “Project effects on air quality would be minor”, state that “The project would release 0.0003 tons of nitrogen dioxide (NO<sub>2</sub>), this is below de minimis standards. Additionally, with the implementation of minimization measures, the project would conform to the State Implementation Plan.”

Keep in mind that typically the No Action Alternative will have some sort of impact(s) on most resources. Many EAs make the mistake of simply stating that under the No Action Alternative there will be no effects. This is not sufficient; a meaningful effects analysis must be completed for the No Action Alternative as well as the Requester’s Preferred Alternative.

Be mindful of how the words “significant” and “significantly” are used in the document. In considering whether the effects of the proposed action are significant, agencies shall analyze the **potentially affected environment** and **degree of the effects** of the action (40 CFR 1501.3). In considering the potentially affected environment consider the specific action, the affected area (national, regional, or local) and its resources. In considering the degree of the effects consider the following, as appropriate to the specific action: (i) Both short- and long-term effects. (ii) Both beneficial and adverse

effects. (iii) Effects on public health and safety. (iv) Effects that would violate Federal, State, Tribal, or local law protecting the environment. One of the most common pitfalls is not devoting enough effort to identifying effects that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action that may affect a given resource within the geographic boundary that has been defined.

Do not set arbitrary significance thresholds for resources; significance thresholds are required by CEQA but should be avoided in a NEPA document. Also, keep in mind that NEPA and CEQA define significance differently. Be sure that you are using the NEPA definition and not conflating this with the CEQA definition, this is a common mistake that we see in NEPA documents prepared for Section 408 permissions in California. The 2014 CEQ publication titled *NEPA and CEQA: Integrating Federal and State Environmental Reviews*, provides useful information regarding the different definitions of significance.

Remember that adverse effects do not necessarily equal significant effects. For example, a project may have an adverse effect on a threatened species from an Endangered Species Act perspective; however, this effect may not be significant from a NEPA compliance perspective. Also, do not forget to disclose any beneficial effects of the proposed project.

Per CEQ regulations, mitigation includes avoiding, minimizing, rectifying, reducing or eliminating, and/or compensating for the impact. The Requester's Preferred Alternative should include all mitigations and the Environmental Consequences section should essentially describe the effectiveness of the mitigations. Keep in mind that NEPA and CEQA consider mitigation differently, ensure that you are using the NEPA definition of mitigation. We recommend reviewing CEQ's guidance on the use of mitigation and monitoring (CEQ 2011).

In addition to discussing the direct, indirect, and cumulative effects of an action, the Environmental Consequences section should cover any adverse effects that cannot be avoided and any irreversible and irretrievable commitments.]

CEQ guidance directs agencies to succinctly describe the environment of the area(s) to be affected by the alternatives and to then discuss the environmental impacts of the alternatives (40 CFR 1502). CEQ instructs agencies to avoid "useless bulk", keeping the description of the affected environment only as long as necessary to understand the effects of the alternatives (40 CFR 1502.15). Following this guidance, the affected environment will describe the existing conditions of the areas to be affected by the alternatives and will provide the baseline for the comparisons in the environmental consequences section.

The environmental consequences will discuss the environmental impacts of the Requesters Preferred Alternative and the No Action Alternative. Consideration will be given to the following and discussed as appropriate: (1) The environmental impacts of the proposed action and reasonable alternatives to the proposed action and the significance of those impacts. The comparison of the proposed action and reasonable alternatives shall be based on this discussion of the impacts. (2) Any adverse environmental effects that cannot be avoided should the proposal be implemented. (3)

The relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity. (4) Any irreversible or irretrievable commitments of resources that would be involved in the proposal should it be implemented. (5) Possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies, and controls for the area concerned. (6) Energy requirements and conservation potential of various alternatives and mitigation measures. (7) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures. (8) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures. (9) Means to mitigate adverse environmental impacts. (10) Where applicable, economic, and technical considerations, including the economic benefits of the proposed action. (40 CFR 1502.16). For the purposes of this document, the terms effects and impacts are synonymous and used interchangeably.

### 3.2 AIR QUALITY

#### [EXAMPLE.]

Air Quality is a standard section in EAs and has a number of pitfalls and misconceptions. One of the most common pitfalls is forgetting to mention the General Conformity rule and *de minimis* standards.

Air quality is determined by a variety of factors, including the locations of air pollutant sources, the amount of pollutants emitted, topography, and meteorological conditions, such temperature, wind speed, etc. The Clean Air Act of 1970, as amended (42 U.S.C. 7401 *et seq.*) regulates air emissions from stationary and mobile sources and authorizes the USEPA to establish National Ambient Air Quality Standards (NAAQS) to protect public health and welfare and to regulate emissions of hazardous air pollutants. The USEPA has established NAAQS for six criteria pollutants, lead, ozone (O<sub>3</sub>), carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), sulfur dioxide (SO<sub>2</sub>), and particulate matter (particulate matter smaller than 10 microns in diameter [PM<sub>10</sub>] and particulate matter smaller than 2.5 microns in diameter [PM<sub>2.5</sub>]). Additionally, the Clean Air Act requires that state, local, federal, and tribal governments implement the Act in partnership. States and tribes submit recommendations to the USEPA as to whether or not an area is attaining the NAAQS for criteria pollutants. Areas that meet or exceed the national standard for a pollutant are designated as "attainment" areas for that particular pollutant. Areas that do not meet the national standard for a pollutant are designated as "nonattainment" areas for that specific pollutant. A maintenance area is an area that was designated as nonattainment but has been re-designated to attainment and has an approved maintenance plan (40 CFR § 93.152). Nonattainment and maintenance areas are further classified as "marginal", "moderate", "severe", or "extreme". States and tribes are also responsible for developing state and tribal implementation plans (SIPs and TIPs respectively) to meet the national standards (USEPA 2017a).

The level of effort required to complete air quality analysis will depend on the nature and scope of your project. Minor projects probably need no more than a brief qualitative

discussion and identification of best management practices. Larger projects, particularly those in which there will be substantial ground disturbance, equipment operation, and input/export of fill, may require some level of modeling. SMAQMD has an Excel spreadsheet model developed for linear transportation projects that may be applicable to many projects. More complex undertakings may require modeling with URBEMIS or some other software. URBEMIS can be downloaded from the internet at no cost and has a relatively friendly user interface.

Section 176(C) of the Clean Air Act prohibits federal agencies from carrying out, funding, or permitting any activity in a nonattainment or maintenance area “which does not conform to an implementation plan after it has been approved or promulgated” (42 U.S.C. 7506). This is known as the General Conformity rule; under General Conformity, federal agencies must work with state, tribal, and local governments in nonattainment and maintenance areas to ensure that federal actions conform to established air quality implementation plans. Federal actions that result in the emission of air pollutants in attainment areas or undesignated areas are not subject to the requirements of the General Conformity rule. Many federal actions in nonattainment and maintenance areas do not result in significant increases in emissions; therefore, the USEPA has designated *de minimis* emissions levels, based on an area’s designation and classification, for each of the criteria pollutants. If the total emissions from a proposed federal action are below *de minimis* levels, the action is exempt from conformity determination requirements. If the total emissions from a proposed federal action are above *de minimis* levels, then a General Conformity analysis is required (USEPA 2017a). To achieve conformity, a federal action must conform to the applicable SIP/TIP and not “contribute to new violations of standards for ambient air quality, increase the frequency or severity of existing violations, or delay timely attainment of standards in the area of concern” (USDOE 2000).]

### **3.2.1 Affected Environment**

[EXAMPLE. Insert affected environment description for air quality.]

### **3.2.2 Effects on Air Quality**

#### ***3.2.2.1 EFFECTS OF THE NO ACTION ALTERNATIVE***

[EXAMPLE. Insert description of effects of the no action alternative on air quality.]

#### ***3.2.2.2 EFFECTS OF THE REQUESTER’S PREFERRED ALTERNATIVE***

[EXAMPLE. Insert description of effects of the requester’s preferred alternative on air quality.]

## **4. REGULATORY SETTING**

The following federal laws, regulations, and executive orders are relevant to the proposed action. The Requester’s Preferred Alternative would be in compliance with all laws, regulations, and executive orders, as described in the following sections.

[OPTIONAL SECTION. Please note that the laws and executive orders listed below are examples of some of the laws/executive orders that may need to be included in this chapter. This list is neither mandatory nor comprehensive, there may be additional laws not included here that may pertain to individual projects. Additionally, please note that the entire Regulatory Setting chapter is not mandatory. It is acceptable to discuss compliance with laws/regulations/executive orders directly in the sections for each resource instead of having a completely separate chapter. If there has been consultation with any tribes or agencies pursuant to any federal laws (e.g., Endangered Species Act, National Historic Preservation Act, Fish and Wildlife Coordination Act, etc.), consultation efforts and results must be discussed somewhere in the EA. This could be done in the Environmental Consequences Section, an Agencies, Individuals, and Tribes Consulted section, or in the Regulatory Setting section.]

#### *4.1. FEDERAL LAWS*

##### **American Indian Religious Freedom Act of 1978, as amended (42 U.S.C. 1996 *et seq.*)**

[The American Indian Religious Freedom Act was created to protect and preserve the traditional religious rights, including the access of sacred sites, of American Indians, Eskimos, Aleuts, and Native Hawaiians.]

##### **Archaeological and Historic Preservation Act of 1974, as amended (54 U.S.C. 312501 *et seq.*)**

[The Archeological and Historic Preservation Act requires that a federal agency must notify the Secretary of the Interior if its actions may “cause irreparable loss or destruction of significant scientific, prehistoric, historical, or archeological data”.]

##### **Archaeological Resources Protection Act of 1979, as amended (16 U.S.C. 470 *et seq.*)**

[The Archaeological Resources Protection Act (ARPA) is intended to secure the protection of archeological resources and sites on federal and Indian lands. ARPA states that the excavation or removal, and any activities associated with such excavation or removal, of any archaeological resource located on federal or Indian lands requires a permit, issued by the Federal land manager.]

##### **Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. 668 *et seq.*)**

[The Bald and Golden Eagle Protection Act prohibits anyone, without a permit issued by the Secretary of the Interior, from “taking” (take is defined as “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb”) bald or golden eagles, including their parts, nests, or eggs.]

##### **Clean Air Act of 1972, as amended, (42 U.S.C. 7401 *et seq.*)**

[The Clean Air Act regulates air emissions from stationary and mobile sources. Section 176(C) of the Clean Air Act, also known as the General Conformity Rule, prohibits federal agencies from carrying out, funding, or permitting any activity in a nonattainment



or maintenance area “which does not conform to an implementation plan after it has been approved or promulgated” (42 U.S.C. 7506).]

**Clean Water Act (33 U.S.C. 1344 et seq.)**

[Section 404 of the Clean Water Act regulates the discharge of dredged or fill material into waters of the United States, including wetlands. The USEPA promulgates Section 404 regulations; however, the USACE Regulatory Program evaluates and issues permits for proposed activities in waters of the United States. Section 401 of the Clean Water Act requires that applicants for federal permits or licenses provide certification from the state that any discharges will comply with state-established water quality standard requirements. Applicants must obtain a Section 401 certification or waiver for the proposed action before the USACE can authorize a permit under Section 408 and Section 404. EC 1165-2-220 specifies that USACE will coordinate internally to ensure that the Section 404 permit and the Section 408 permissions are consistent.]

**Endangered Species Act of 1973, as amended, (16 U.S.C. 1531 et seq.)**

[The ESA requires federal agencies to consult with the USFWS and/or NOAA Fisheries when their actions may affect federally threatened or endangered species or their designated critical habitat.]

**Farmland Protection Policy Act of 1984 (7 U.S.C. 4201 et seq.)**

[The FPPA was instituted in order to “minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government, and private programs and policies to protect farmland.” Federal permitting for activities on private or non-federal lands is not considered to be a federal program under the FPPA (7 CFR 658.2).]

**Fish and Wildlife Coordination Act of 1958, as amended, (16 U.S.C. 661 et seq.)**

[The FWCA requires that federal agencies consult with the USFWS and the head of the agency exercising administration over the wildlife resources of the particular state, “whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever” (16 U.S.C. 662).]

**Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102-240)**

[The Intermodal Surface Transportation Efficiency Act established the National Scenic Byways Program, implemented by the Federal Highway Administration (FHWA). The Intermodal Surface Transportation Efficiency Act does not have regulatory authority over federal actions affecting National Scenic Byways.]

**Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended (16 U.S.C. 1801 *et seq.*)**

[The MSA is the primary law governing marine fisheries management in U.S. federal waters. It requires that fishery management councils identify as EFH those areas necessary for fish to perform their basic life functions. The MSA also requires that federal agencies consult with NOAA Fisheries when their actions may adversely impact EFH.]

**Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 *et seq.*)**

[The Migratory Bird Treaty Act established “that it is unlawful to pursue, hunt, take, capture or kill; attempt to take, capture or kill; possess, offer to or sell, barter, purchase, deliver or cause to be shipped, exported, imported, transported, carried or received any migratory bird, part, nest, egg or product, manufactured or not.”]

**National Environmental Policy Act of 1969, as amended, (42 U.S.C. 4321 *et seq.*)**

[NEPA requires federal agencies to assess the environmental effects of their proposed actions prior to decision making. This EA has been prepared following CEQ NEPA Regulations (40 CFR 1500-1508) and the USACE ER 200-2-2 (33 CFR 230) and satisfies the NEPA requirement.]

**National Historic Preservation Act of 1966, as amended (54 U.S.C. 300101 *et seq.*)**

[Section 106 of the NHPA requires federal agencies to take into account the effects of their actions on historic properties and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such actions (54 U.S.C. 306108).]

**Native American Graves and Repatriation Act of 1990 (25 U.S.C. 3001 *et seq.*)**

[The Native American Graves and Repatriation Act (NAGPRA) provides protection for Native American burial sites and control over the removal of Native American human remains, funerary objects, sacred objects, and items of cultural patrimony on federal and tribal lands.]

**Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*)**

[The Noise Control Act established a national policy to promote an environment for all Americans free from noise that jeopardizes their health or welfare.]

**Plant Protection Act of 2000 (7 U.S.C. 7701 *et seq.*)**

[The Plant Protection Act states that “the detection, control, eradication, suppression, prevention, or retardation of the spread of plant pests or noxious weeds is necessary for the protection of the agriculture, environment, and economy of the United States.” Furthermore, the Act prohibits the import, entrance, export, or movement in interstate commerce of any plant pest, unless authorized by permit issued by the Secretary of Agriculture (7 U.S.C. 7711).]

## **Rivers and Harbors Appropriation Act of 1899 (22 U.S.C. 403 et seq.)**

[Section 10 of the Rivers and Harbors Appropriation Act (33 U.S.C. 403) requires that the construction of any structure in, over or under any navigable water in the United States receive a permit. This applies to all structures and any dredging or disposal of dredged materials, excavation, filling, rechannelization, or any other modification of a navigable water of the U.S. Additionally, Section 10 applies outside of navigable water if any structure or work will affect the course, location, or condition of a navigable water. The USACE Regulatory Program is responsible for the issuance of permits under Section 10. EC 1165-2-220 specifies that USACE will coordinate internally to ensure that the Section 10 permit and the Section 408 permissions are consistent.]

## **Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1273 et seq.)**

[The Wild and Scenic Rivers Act is intended to preserve, in a free-flowing condition, certain rivers with outstanding natural, cultural, and recreational values. Specifically, the Act prohibits federal agencies from assisting in the construction of any water resources project that would have a direct and adverse effect on a designated river or congressionally authorized study river.]

### **4.2 EXECUTIVE ORDERS (E.O.)**

#### **E.O. 11988, Floodplain Management**

[E.O. 11988 requires that each agency “avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative”.]

#### **E.O. 11990, Protection of Wetlands**

[E.O. 11990 directs federal agencies to “minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands.” Although E.O. 11990 does not apply to the issuance by federal agencies of permits to private parties for activities involving wetlands on non-federal property, it does apply to activities involving wetlands on federal property.]

#### **E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations**

[E.O. 12898 requires federal agencies to “identify and address the disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations, to the greatest extent practicable and permitted by law.”]

#### **E.O. 13007, Indian Sacred Sites**

[E.O. 13007 requires that, when managing Federal lands, executive branch agencies shall “(1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites.”]

### **E.O. 13112, Invasive Species**

[E.O. 13112 requires that federal agencies identify their actions that may affect the status of invasive species and “not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere”.]

### **E.O. 13175, Consultation with Indian Tribes, Alaska Natives, and Native Hawaiians**

[E.O. 13175 requires that federal agencies seek “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.”]

### **E.O. 13751, Safeguarding the Nation from the Impacts of Invasive Species**

[E.O. 13751 states that it “is the policy of the United States to prevent the introduction, establishment, and spread of invasive species, as well as to eradicate and control populations of invasive species that are established.”]

### **E.O. 13990, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis**

[E.O. 13990 directs Federal agencies to “immediately review and take action to address the promulgation of Federal regulations and other actions during the last four years that conflict with these important national objectives and to immediately commence work to confront the climate crisis.”]

### **E.O. 14008, Tackling Climate Crisis at Home and Abroad**

[E.O. 14008 states “Agencies shall make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.”]

## **5. LIST OF PREPARERS**

[Include a list of all the people who wrote the document. This list should state their names, along with their qualifications (e.g., title, expertise, experience) and what section(s) of the document they wrote. Formatting this as a table is typically effective.]

## **6. REFERENCES**

[Pick a citation format and stick with it. Please use in-text parenthetical references throughout the document, do not use footnotes.]

**APPENDIX A: PUBLIC SCOPING RECORD**

Summary table of substantive public comments and questions received in response to the Section 408 [Project Name] Public Notice as well as USACE responses to comments. Comments are ordered by date received. Please note that USACE only responded to substantive comments or questions regarding the proposed project. The full text of all public responses is attached following this table. [All information highlighted yellow in the table below is intended for example purposes only.]

| Comment Number  | Comment   | USACE Response  |
|---|---|---|
| [Description of public response, including medium (e.g., email, letter, phone call), entity or person responding, and date of response. Example:] <i>Email received from AnMarie Medin, California State Historic Preservation Office on September 15, 2017</i> |   |   |
| A-1   | [Direct quote or paraphrase of a comment or question from public response letter or email.]<br><br>Example comment: "Would you please be able to explain to us how Section 106 will factor into this approach?" | [Response to public comment or question. Please keep in mind that this is USACE's response (not the requester's) and should be worded/framed as such. If the response is included in-text in the main part of the EA, it is ok to reference the section and/or page number where the response can be found. It is also ok to respond "Comment noted" in some cases. However, this response should be used only when appropriate, not as a way to avoid responding to a challenging question or comment.]<br><br>Example response: "Under the proposed categorical permission the Sacramento District would continue to individually evaluate each Section 408 request on a case-by-case basis for the potential to affect cultural resources and, when there is the potential for effects, conduct consultation with the appropriate State Historic |

| Comment Number   | Comment   | USACE Response   |
|--|---|--|
|  |   | <p>Preservation Officer or Tribal Historic Preservation Officer pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended (54 U.S.C. 306108 <i>et seq.</i>). When a proposed alteration has the potential to affect cultural resources, the Sacramento District would coordinate, and consult as appropriate, with potentially interested Native American tribes. See Section 3.11 for further discussion of how Section 106 would factor into the proposed categorical permission.”</p> |
| <p><i>Letter received from Reclamation District 17 on October 17, 2017</i></p> |   |  |
| B-1  | <p>Example comment: “...the Sacramento District should clarify how the District intends to document that a Categorical permission applies to a particular activity when a proposed action is covered by a Categorical permission.” – Page 1</p> | <p>Example response: See Section 2.3 and the Categorical Permission (USACE 2018) for information regarding documentation of categorical permission applicability to individual Section 408 requests.</p>   |
| B-2  | <p>Example comment: “Removal, repair or replacement of penetrations through the levees should not require any permit process so long as inspected by the LMA engineer and reported to the CVFPB.” – Page 1</p>                                  | <p>Example response: Per EC 1165-2-220, “routine operations and maintenance (O&amp;M) activities specified in the O&amp;M manual and performed by the non-federal sponsor or USACE do not require permission from USACE under Section 408.” All proposed alterations to USACE federal projects that are not maintenance require Section 408 permissions.</p>   |
| B-3  | <p>Example comment: “...some of the items proposed for Categorical Permission could be very damaging to levees. For example, including borrow site</p>  | <p>Example response: Comment noted. Under the proposed categorical permission borrow site excavations must be located a minimum of 300</p>   |

| Comment Number   | Comment   | USACE Response  |
|--|---|---|
|  | excavations only 100 feet from the waterside or landside levee toes and below ground swimming pools within 15 feet is not a good idea.” – Page 2  | feet and below ground swimming pools must be located a minimum of 15 from the waterside or landside levee toes. |
| <i>Letter received from the California High Speed Rail Authority on October 18, 2017</i> |   |   |
| C-1  | Example comment: “Further, we urge the Corps to develop specific standard mitigation measures and best management practices (BMPs) that are easily understood and that are commensurate with the minor impacts caused by the proposed alteration.” – Page 1 | Example response: See Section 2.3.1 for a list of standard measures.  |