

## 8. REGULATORY PROCESSES

The Beach Restoration Regulatory Guide (BRRG) (EIC, 2006) details federal and state regulatory processes for implementation of beach nourishment projects in California. The document describes the relevant regulatory requirements and the agencies responsible for administering permits, and should be consulted for California-wide federal and state regulatory processes that are relevant to southern Monterey Bay. However, several regulatory organizations administered by federal or state entities have jurisdiction that is specific to the Monterey Bay region and these are discussed in this Coastal RSM Plan. These organizations are:

- Monterey Bay National Marine Sanctuary (MBNMS)
- California Coastal Commission (Coastal Commission) (related to southern Monterey Bay Local Coastal Programs)
- California Department of Parks and Recreation (CDPR) (Salinas River, Marina, and Monterey State Parks).

This section provides an overview of the regulatory roles of these agencies and their policies regarding potential beach nourishment projects in the region. State and federal regulations other than MBNMS, Coastal Commission, and CDPR are tabulated from the BRRG but are not described in detail. Given the large number of local governmental organizations (coastal cities, counties) and the transitory nature of many of their regulations, the BRRG does not cover local regulatory processes. Hence, all relevant local regulations (principally those in Local Coastal Programs) are described in this Coastal RSM Plan.

### 8.1 REGULATORY COMPLIANCE PROCESS

The regulatory compliance process for beach nourishment projects comprises three phases:

- Environmental review
- Permitting
- Compliance review.

Environmental review consists of both National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) compliance, and is typically completed first. NEPA and CEQA documents should be prepared concurrently and are used as the basis upon which the regulatory and resource agencies process permits. The Corps typically serves as the lead agency under NEPA. For CEQA, several state agencies may be involved (such as the Coastal Commission, CDPR). Once the environmental review is completed the permit process begins, and the applicant submits the necessary permit applications to the appropriate agencies. Beach nourishment projects involve placement of sediment into waters of the U.S., which may result in

significant environmental impacts, and hence they receive a high level of scrutiny during the environmental and permitting process. The details of both the NEPA and CEQA compliance processes are described in the BRRG (EIC, 2006) and they are not described in this Coastal RSM Plan.

#### 8.1.1 SCOUP Permitting Process

The intent of a SCOUP permit is to establish a process approved by regulatory agencies for environmentally-responsible use of opportunistic materials to nourish pre-established receiver site(s) when sediment becomes available (Moffatt and Nichol Engineers, 2006). There are two types of SCOUP permit; a single opportunistic permit and an opportunistic use program. The single permit is for a project in which source material is identified and the receiver beach site and method of delivery is permitted (Moffatt and Nichol Engineers, 2006). These are typically applied for by either the developer supplying the sand or the local jurisdiction receiving the sand. The opportunistic use program establishes a predefined program for placement of sediment at receiver beach sites. An approved SCOUP program permit streamlines the regulatory compliance process and enables opportunistically acquired materials that meet certain criteria to be placed at pre-established receiver sites at various quantities and times throughout the year with minimal review required from the regulatory agencies. Generally, these program permits are applied for by a local jurisdiction, county or regional association. This Coastal RSM Plan recommends that AMBAG pursue a regional SCOUP program permit.

To receive a SCOUP program permit, several steps are required that are described in more detail in Moffatt and Nichol Engineers (2006). There are ten federal and state agencies, not including local jurisdictions, which need to be involved in the programmatic permitting; Federal – Corps, USEPA, USFWS; California – CDFG, Coastal Commission, CSLC, State Parks, SWRCB, and RWQCB. In summary, the steps include developing a sediment sampling and analysis plan, used to evaluate potential sources of sand and to identify appropriate receiver sites. For each potential receiver site, components include: a sediment budget analysis to establish need for sediment, and a summary of transport mechanisms and routes to identify potential impacts. Monitoring plans for each site including sensitive habitat surveys that occur at established pre, post, and during construction intervals. The final step is an environmental review that must receive review and approval from all of the permitting agencies. As complicated as the process sounds, SANDAG has managed to receive a program permit on a Mitigated Negative Declaration (MND) which avoided significant environmental impacts by constraining the volume, % of fines, and timing of nourishment activities (EDAW, 2005).

## 8.2 FEDERAL REGULATIONS

Implementation of federal regulatory processes and the issuing of permits for beach nourishment in southern Monterey Bay is the responsibility of several organizations including the Corps, National Oceanic and Atmospheric Administration (NOAA), USFWS, and the U.S. Minerals

Management Service (USMMS). Table 25 summarizes federal regulations affecting beach restoration projects in California (EIC, 2006). All these regulations are described in detail in the BRRG.

**Table 25. Relevant Federal Regulations Affecting Beach Restoration Projects**

Policy/Regulation	Requirement	Responsible Agency
National Environmental Policy Act	Compliance	Lead Federal Agency
Coastal Zone Management Act	Coastal Consistency Determination	California Coastal Commission
Rivers and Harbors Act	Section 10 Permit	U.S. Army Corps of Engineers
Clean Air Act	Title V Operating Permit	California Air Resources Board
Clean Water Act	Section 401 Certification or Waiver (401 Permit)	Regional Water Quality Control Boards
Clean Water Act	Section 402 NPDES Permit (NPDES Permit)	Regional Water Quality Control Boards
Clean Water Act	Section 404 Permit (404 Permit)	U.S. Army Corps of Engineers
Endangered Species Act	Section 7 Consultation	U.S. Fish and Wildlife Service
National Historic Preservation Act	Section 106 Approval	State Historic Preservation Officer
Fish and Wildlife Coordination Act	Coordination Act Report	U.S. Army Corps of Engineers
Magnuson-Stevens Fishery Conservation and Management Act	Assessment of Impacts to Essential Fish Habitat	National Marine Fisheries Service
Outer Continental Shelf Lands Act	Lease Agreement for Utilization of Outer Continental Shelf Sand	U.S. Minerals Management Service

The MBNMS has jurisdiction through NOAA specifically within the boundary of the Sanctuary, which includes the waters off the southern Monterey Bay beaches from the MHW line to offshore. Details on MBNMS regulations are provided below.

8.2.1 Monterey Bay National Marine Sanctuary

The MBNMS is administered by NOAA, and spans over 5,300 square miles of coastal waters off central California. The Sanctuary stretches from Marin County to Cambria, encompassing nearly 300 miles of shoreline and extending an average distance of thirty miles offshore. The Sanctuary was designated in 1992, in response to potential offshore oil and gas development, for the

purpose of resource protection, research, education, and public use. The MBNMS mission is to understand and protect the ecosystem and cultural resources of central California.

The MBNMS was designated in accordance with the National Marine Sanctuaries Act (NMSA) and their regulatory and enforcement powers are specified in the Act. The MBNMS enforces eleven federal regulatory prohibitions designed to preserve and protect the natural and cultural resources and qualities of the ocean and estuarine areas within its boundaries. Depending upon the nature of the project, two of these prohibitions may directly regulate beach nourishment in southern Monterey Bay:

- Drilling into, dredging or otherwise altering the sea bed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the sea bed of the Sanctuary.
- Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter.

Although some potential beach nourishment projects may be technically prohibited by MBNMS regulations, it is still possible for the projects to be authorized through the Sanctuary's permitting program. Permits or authorizations may be issued by the MBNMS Superintendent under special circumstances for activities otherwise prohibited by Sanctuary regulations, when related to:

- research to enhance scientific understanding of the Sanctuary environment or to improve management decision-making
- education to further public awareness, understanding, and to establish access, use, and/or understanding of Sanctuary resources and wise use of the Sanctuary environment.

Authorizations may also be issued under special circumstances for activities otherwise prohibited by Sanctuary regulations if:

- an activity has been authorized by a valid lease, permit, license, approval or other authorization issued after the effective date of MBNMS designation by any federal, state, or local authority
- the Superintendent finds that the activity will not cause long-term or severe impacts to Sanctuary resources
- the applicant complies with all applicable regulations and any specific conditions/terms specified by the Superintendent.

An authorization may be issued in conjunction with a valid lease, permit, license, approval or other authorization issued by any federal, state, or local authority of competent jurisdiction. In cases where projects require a Coastal Commission Coastal Development Permit, the MBNMS would review and potentially authorize that permit. MBNMS approval would be required for any beach nourishment project where sediment is placed within Sanctuary boundaries, or where sediment is dredged from within Sanctuary boundaries.

In order to obtain an MBNMS authorization, the applicant must submit a permit application to the MBNMS Permit Coordinator; guidelines for submitting applications can be found on the Sanctuary website at: <http://montereybay.noaa.gov/resourcepro/authorization.html>. Authorization applications must be submitted at least 45 calendar days in advance of the requested effective date to allow sufficient time for evaluation and processing. In order to expedite processing, applicants are encouraged to contact the Sanctuary in advance of submitting a formal application to discuss any questions or issues they feel may complicate or delay the application process. Complete applications are reviewed by Sanctuary personnel, and, when deemed necessary, peer-reviewed by outside experts. Based on the reviews of the application, authorization will be approved or denied. If approved, the Sanctuary superintendent will issue the authorization. If denied, applicants are notified of the reason(s) for denial and informed of the appeal process.

### 8.3 STATE REGULATIONS

The main state legislations regulating beach nourishment projects in southern Monterey Bay are CEQA and the California Coastal Act (CCA). In addition, in 1978, the State of California adopted a Policy on Coastal Erosion ‘to prevent the loss of the state’s beaches through coastal erosion and to preserve its coastal resources.’ The primary state agencies involved in regulatory processes and the issuing of permits for beach nourishment in California are the Coastal Commission, California State Lands Commission (CSLC), State Water Resources Control Board (SWRCB)/Regional Water Quality Control Board (RWQCB), California Department of Fish and Game (CDFG), and California Department of Parks and Recreation (CDPR). Table 26 summarizes state regulations affecting beach restoration projects in California (EIC, 2006). All these regulations are described in more detail in the BRRG.

**Table 26. Relevant State Regulations Affecting Beach Restoration Projects**

Policy/Regulation	Requirement	Responsible Agency
California Environmental Quality Act	Compliance	Lead CEQA Agency
California Coastal Act	Coastal Development Permit	California Coastal Commission
Porter-Cologne Water Quality Control Act	Compliance: Permits under CWA Sections 401, 402, and 404	State Water Resources Control Board Regional Water Quality Control Boards
California State Lands Public Resources Code	Lease Agreement for Utilization of Sovereign Lands	California State Lands Commission
California Public Resources Code Section 1600	Streambed Alteration Agreement	California Department of Fish and Game

Policy/Regulation	Requirement	Responsible Agency
California Endangered Species Act	Section 2081(b) Incidental Take Permit (State) Section 2081.1 Consistency Determination (State and Federal)	California Department of Fish and Game
Water Quality Control Plans California Ocean Plan	Consistency Compliance	Regional Water Quality Control Boards
Clean Air Act	Title V Operating Permit	APCDs and AQMDs

Details on the Coastal Commission and CDPR regulations specific to southern Monterey Bay are described below.

8.3.1 California Coastal Commission and Local Coastal Programs

The Coastal Commission, in collaboration with local counties and cities, is the primary state agency responsible for planning and regulating the use of land and water within California’s coastal zone, in accordance with the specific policies of the CCA. In addition to development within the coastal zone, the Coastal Commission also has jurisdiction over projects requiring federal permits or approval in federal waters. The Coastal Commission was also established to assist local governments in implementing local coastal planning and regulatory powers by adopting Local Coastal Programs.

Local Coastal Programs (LCPs) are basic planning tools prepared and used by local governments to guide development in the coastal zone, in partnership with the Coastal Commission. LCPs contain the ground rules for future development and short-term and long-term conservation and protection of coastal resources. Each approved LCP specifies appropriate locations, types, and scales of new or changed uses of land and water. Each LCP includes one or more Land Use Plans (LUPs) with goals and regulatory policies and measures to implement the plan (such as zoning ordinances). While each LCP reflects unique characteristics of individual local coastal communities, regional and statewide interests and concerns must also be addressed to conform to CCA goals and policies. Following adoption by a city council or county board of supervisors, an LCP is submitted to the Coastal Commission for review for consistency with CCA requirements.

After an LCP has been certified by the Coastal Commission, the Commission’s coastal permitting authority is transferred to the local government, which applies the requirements of the LCP in reviewing proposed new developments. All project proposals located within the coastal zone will be reviewed for consistency with the LCP or the CCA (where no certified LCP exists) and will require a Coastal Development Permit. Any projects located on sovereign lands below MHW remain within the Coastal Commission appeal jurisdiction (as are lands between the ocean and

the first public road). Therefore, in some cases, two permits may be necessary; one from the local jurisdiction with a certified LCP and one from the Coastal Commission. The beach nourishment projects being evaluated for southern Monterey Bay would require Coastal Commission approval pursuant to Section 30106 of the CCA, which regulates coastal development. The definition of development includes beach nourishment, removal, dredging, mining, or extraction of materials, and discharge or disposal of any dredged material.

Within southern Monterey Bay, the Cities of Marina and Sand City (north of Bay Avenue) and the County of Monterey have certified LCPs. The Cities of Seaside and Monterey have certified LUPs but do not have approved LCPs. Beach nourishment projects in the cities with certified LCPs would require a Coastal Development Permit issued by that city.

The coastal strip between Moss Landing and Wharf II is divided into six planning areas. From Moss Landing to the northern boundary of the City of Marina (approximately 0.5 miles north of Marina sand mine), the shoreline falls within the jurisdiction of the Monterey County LCP, more specifically the North County LUP. Along this frontage, this Coastal RSM Plan does not identify any critical areas of erosion. The City of Marina LCP provides jurisdiction for the coast south of the northern city limit to the northern boundary of Fort Ord, a distance of approximately three miles. Within this length of coast, this Coastal RSM Plan identifies a single critical area of erosion; the Sanctuary Beach Resort. Also, the LCP covers the sand mine at Marina. Fort Ord is currently an uncertified coastal area, with no identified critical zones of erosion, however historic erosion in front of Stilwell Hall was eventually mitigated by pursuing a long-term managed retreat strategy. South of Fort Ord is the City of Sand City LCP planning area which extends to approximately 500 feet northeast of the Monterey Beach Resort. Within the City of Sand City jurisdiction are the critical areas of erosion at Tioga Avenue, Seaside Pump Station, and the Monterey Interceptor. The coast for the 500 feet to the northern boundary of Monterey Beach Resort is part of the City of Seaside LUP. The remaining stretch of coast southwest to Wharf II is part of the City of Monterey planning area, which currently is an uncertified LCP. Here the critical areas of erosion are the Monterey Beach Resort, Ocean Harbor House condominiums, the Monterey Interceptor, and Monterey La Playa town homes. Any proposed amendments to permitted projects or additional projects in the City of Monterey planning area must go through the Coastal Commission.

The details of each LCP and the regulations and policies they contain pertaining to regional sediment management, particularly beach nourishment activities are provided below.

#### County of Monterey

The Monterey County LCP was certified by the Coastal Commission in 1988, whereby the County assumed permit-issuing authority. Most beach nourishment projects within the jurisdiction of the County of Monterey will require a Coastal Development Permit issued by the County's Planning Department. In addition a Grading Permit and an Erosion Control Permit may be required.

The LCP is composed of four LUPs, including the unincorporated section of southern Monterey Bay between the City of Marina northern boundary and Moss Landing, which is part of the North County LUP. The North County LUP (latest update, December 1999) designates the beaches and dunes (except the parking lots of the Salinas River State Beach) as Scenic and Natural Resource Recreation Areas to be maintained at a low level of development to protect dune habitats and preserve the natural character of the shoreline. The LUP recommends that the state acquire privately-owned dune areas that are offered for sale. The North County LUP does not designate set back requirements for new development like most other local LUPs. The following policies from the North County LUP relate to RSM:

- LUP Policy 2.3.2: With the exception of resource dependent uses, all development, including vegetation removal, excavation, grading, filling, and the construction of roads and structures, shall be prohibited in the following environmentally sensitive habitat areas: riparian corridors, wetlands, dunes, sites of known rare and endangered species of plants and animals, rookeries, major roosting and haul-out sites, and other wildlife breeding or nursery areas identified as environmentally sensitive. Resource dependent uses, including nature education and research hunting, fishing and aquaculture, where allowed by the plan, shall be allowed within environmentally sensitive habitats only if such uses will not cause significant disruption of habitat values.
- LUP 2.3.3: A dune stabilization and restoration program should be implemented by the California Department of Parks and Recreation. Damaged dune areas should be replanted with native vegetation. Dune areas of high sensitivity should be protected from disruptive uses and development. The dune area between the City of Marina and the Salinas River should be acquired by the U.S. Fish and Wildlife Service or the California Department of Fish and Game and managed as a wildlife reserve.
- LUP 2.4.2: 1. Further alteration of natural shoreline processes including drainage, erosion, water circulation, and sand transport, shall be limited to protection of public beaches, existing significant structures, coastal dependent development, and the public health and safety.
- LUP 2.4.2: 3. Dredging and spoils disposal should be planned and carried out to avoid significant disruption to marine, estuarine and wetland habitats, and the pattern and volume of water circulation. Dredged spoils suitable for beach replenishment shall be transported for such purposes to appropriate beach areas with suitable longshore current systems. Dredged spoils shall meet all state and federal standards for the protection of the marine biologic environment and shall be disposed of consistent with all current policies and sites.

The remaining southern Monterey Bay coast is under the jurisdiction of City LCPs, apart from Fort Ord, which is within the Monterey County coastal zone in an uncertified area. The Fort Ord Reuse Authority (FORA) has published a Fort Ord Reuse Plan (adopted June 1997) which outlines a set of recommended objectives and associated programs for appropriate land use including the beaches fronting the former base. The following objective and program relates to Monterey County and RSM:

- Monterey County Objective E: Coordinate open space and recreation land use with other affected agencies at the former Fort Ord, such as the California Department of State Parks and Recreation and the Bureau of Land Management. Program E-1.1: The County of Monterey shall assist the CDPR to develop and implement a Master Plan for ensuring the management of the Fort Ord coastal dunes and beaches for the benefit of the public by restoring habitat, recreating the natural landscape, providing public access, and developing appropriate day use and overnight lodging facilities (limited to a capacity of 40 rooms).

Given the conversion from military to suburban land uses it is important that any future development on the dunes at Fort Ord be sited via set backs or a transfer of development rights to avoid future erosion hazards.

#### City of Marina

The City of Marina LCP was certified by the Coastal Commission, and the City assumed permit-issuing authority in April 1982. Several amendments to the LCP have been made in the years up to 2001, with the effective LCP now dated 2002. Further amendments as appealed by the Coastal Commission went to the City Council meeting on November 20, 2007. The following policies from the City of Marina LCP are relevant to RSM:

- LUP Policy 1: to insure access to and along the beach, consistent with recreational needs and environmental sensitivity of Marina coastal area.
- LUP 2: to provide beach access and recreational opportunities consistent with public safety and with the protection of the rights of the general public and of private property owners.
- LUP 8: to prohibit further degradation of the beach environment and conserve its unique qualities.
- LUP 19: to promote restoration and protection of native dune habitat and vegetation.
- LUP 23: to support continuation of the coastal dependent sand mining operations as long as they are economically feasible and their operations are managed with sensitivity to the adjacent dune environment.
- LUP 25: to protect the habitat of recognized rare and endangered species found in the coastal dune area.
- LUP 33: to protect scenic and visual qualities of the coastal area including protection of natural landforms, views to and along the ocean, and restoration and enhancement of visually-degraded areas.

More specific policy is provided in the LCP with respect to the sand mining operations at Marina:

- existing surf zone sand mining operations, as established coastal dependent uses, shall be permitted to continue at their existing locations in substantially the same manner as they are currently being conducted, and have been conducted in the past. All provisions of the LCP (including the Implementation Plan) relating to mining shall be construed and applied in a manner that supports such continuation of existing surf zone sand mining

operations, so long as such existing surf zone sand mining operations are in accordance with the LCP.

- further, the City shall establish in its Implementation Plan a method of monitoring shoreline erosion along the Marina coast for the purpose of establishing a continuing project impact analysis. This analysis shall consist of the submission by sand mining operation on an annual basis, of meaningful information on shoreline retreat by way of a benchmark program or other equally effective measurement.
- the City shall not approve or renew a Mining Permit and/or Coastal Development Permit for new surf zone or beach sand mining, if it finds that such new sand mining, either individually or cumulatively, will have significant adverse impacts on shoreline erosion. Such determination shall be made upon consideration of the results of the continuing project impact analysis, available evidence on the impact of beach and surf zone sand mining on coastal erosion and other relevant social, economic, environmental and technological factors.
- any Mining Permit and/or Coastal Development Permit shall be issued subject to the condition that will permit the City to require that new sand mining activity be reduced to previous levels (prior to the issuance of a Mining Permit and/or Coastal Development Permit) or terminated in the event of a new sand mining operation, if the continuing project impact analysis or other available evidence on the impact of beach and surf zone sand mining on shoreline erosion shows that such operations have a significant adverse impact on shoreline erosion.

The following objective and program from the Fort Ord Reuse Plan also relates to the City of Marina and RSM:

- City of Marina Objective A (also City of Seaside Objective A): Integrate the former Fort Ord's open spaces into the larger regional open space system, making them accessible as a regional resource for the entire Monterey Peninsula. Recreation Policy A-1: The City of Marina (Seaside) shall work with the California State Park System to coordinate the development of Fort Ord Beach State Park.

#### City of Sand City

The City of Sand City LCP was certified by the Coastal Commission in 1986 with the exception of the part of the city south of Bay Avenue, which has been designated as an area for delayed certification. In 1990, the Coastal Commission issued a report to the City of Sand City (Coastal Commission, 1990) recommending major revisions to the LCP to reduce the amount of development allowed. This report came almost simultaneously with an LCP amendment recommended by the Monterey Peninsula Regional Park District (MPRPD) to make public parks and open space the preferred land use along Sand City's coast. In addition MPRPD and CDPR sought to acquire coastal land within Sand City for park purposes. The City of Sand City resisted the efforts of MPRPD, because it wished to preserve certain coastal parcels for development to ensure a stable fiscal future for the city.

In 1996, the Sand City LCP was amended to allow public parks and open space over the vast majority of its coastal area. At the same time, MPRPD, CDPR and the City entered into a

'Memorandum of Understanding,' outlining a few remaining 'development envelopes' on the coast where visitor-serving development (a priority use by the CCA) could be permitted. One of these envelopes is the area occupied by the former Sand City sand mining operation (Section 2.5.3). Now, MPRPD and CDPR would support reasonable development along the coast that does not block views of Monterey Bay, in exchange for acquisition of the majority of Sand City's coast for sensitive habitat reconstruction, public parks, and general open space.

### 8.3.2 California Department of Parks and Recreation

The CDPR is responsible for the management and protection of natural and cultural resources, and facilitating outdoor recreational opportunities within the State Parks. Any project located on or affecting state parkland would require approval by CDPR in the form of an Encroachment Permit. This includes a number of sites in southern Monterey Bay including Monterey, Marina, and Salinas River State Beaches. The CDPR policy on coastal erosion is to allow coastal processes (such as wave erosion, beach deposition, dune formation, lagoon formation, and bluff retreat) to continue without interference. The CDPR will not construct permanent new structures and coastal facilities in areas subject to wave erosion and bluff retreat, or areas with unstable bluffs. Structural protection and re-protection of existing developments is appropriate only when the cost of protection over time is commensurate with the value of the development to be protected, and it can be shown that the protection will not negatively affect the beach or the nearshore environment. Where existing developments must be protected in the short term to achieve park management objectives, CDPR would use the most natural-appearing method feasible, while minimizing impacts outside the threatened area.