

# **Appendix 1B**

---

## **Federal and State Regulatory Considerations**

# FEDERAL AND STATE REGULATORY CONSIDERATIONS

The following lists the applicable federal and state plans, policies, regulations, and laws applicable to implementation of the Level II Infill Correctional Facilities Project.

## 1.1 AIR QUALITY

### FEDERAL PLANS, POLICIES, REGULATIONS, AND LAWS

#### Clean Air Act

At the federal level, EPA has been charged with implementing national air quality programs. EPA's air quality mandates are drawn primarily from the CAA, which was enacted in 1970. The most recent major amendments made by Congress were in 1990.

The Clean Air Act (CAA) required EPA to establish National Ambient Air Quality Standards (NAAQS). EPA has established primary and secondary NAAQS, which are shown in Section 3.1, "Air Quality" of Volumes 2 through 5 of this EIR, for the following criteria air pollutants: ozone, CO, NO<sub>2</sub>, SO<sub>2</sub>, PM<sub>10</sub>, PM<sub>2.5</sub>, and lead. The primary standards protect the public health and the secondary standards protect public welfare. The CAA also required each state to prepare an air quality control plan referred to as a State Implementation Plan (SIP). The federal Clean Air Act Amendments of 1990 (CAAA) added requirements for states with nonattainment areas to revise their SIPs to incorporate additional control measures to reduce air pollution. The SIP is modified periodically to reflect the latest emissions inventories, planning documents, and rules and regulations of the air basins as reported by their jurisdictional agencies. EPA must review all state SIPs to determine whether they conform to the mandates of the CAA and the amendments thereof, and to determine whether implementing them will achieve air quality goals. If EPA determines a SIP to be inadequate, a Federal Implementation Plan (FIP) that imposes additional control measures may be prepared for the nonattainment area. Failure to submit an approvable SIP or to implement the plan within the mandated time frame may cause sanctions to be applied to transportation funding and stationary air pollution sources in the air basin.

#### Federal Hazardous Air Pollutant Programs

EPA has programs for identifying and regulating HAPs. Title III of the CAAA directed EPA to promulgate national emissions standards for HAPs (NESHAP). The NESHAP may differ for major sources than for area sources of HAPs. Major sources are defined as stationary sources with potential to emit more than 10 tons per year (TPY) of any HAP or more than 25 TPY of any combination of HAPs; all other sources are considered area sources. The CAAA called on EPA to promulgate emissions standards in two phases. In the first phase (1992–2000), EPA developed technology-based emission standards designed to produce the maximum emission reduction achievable. These standards are generally referred to as requiring MACT. For area sources, the standards may be different, based on generally available control technology. In the second phase (2001–2008), EPA is required to promulgate health risk–based emissions standards, where deemed necessary, to address risks remaining after implementation of the technology-based NESHAP standards.

The CAAA also required EPA to promulgate vehicle or fuel standards containing reasonable requirements that control toxic emissions, at a minimum to benzene and formaldehyde. Performance criteria were established to limit mobile-source emissions of toxics, including benzene, formaldehyde, and 1,3-butadiene. In addition, Section 219 of the CAAA required the use of reformulated gasoline in selected areas with the most severe ozone nonattainment conditions to further reduce mobile-source emissions.

## STATE PLANS, POLICIES, REGULATIONS AND LAWS

### California Clean Air Act

ARB is the agency responsible for coordination and oversight of State and local air pollution control programs in California and for implementing the California Clean Air Act (CCAA). The CCAA, which was adopted in 1988, required ARB to establish the California Ambient Air Quality Standards (CAAQS), which are shown in Section 3.1, "Air Quality" of Volumes 2 through 5 of this EIR. ARB has established CAAQS for sulfates, hydrogen sulfide, vinyl chloride, visibility-reducing particulate matter, and the above-mentioned criteria air pollutants. In most cases, the CAAQS are more stringent than the NAAQS. Differences in the standards are generally explained by the health effects studies considered during the standard-setting process and the interpretation of the studies. In addition, the CAAQS incorporate a margin of safety to protect sensitive individuals.

The CCAA requires that all local air districts in the State endeavor to achieve and maintain the CAAQS by the earliest practical date. The CCAA specifies that local air districts should focus particular attention on reducing the emissions from transportation and area-wide emission sources, and provides districts with the authority to regulate indirect sources.

Among ARB's other responsibilities are overseeing local air district compliance with California and federal laws, approving local air quality plans, submitting SIPs to EPA, monitoring air quality, determining and updating area designations and maps, and setting emissions standards for new mobile sources, consumer products, small utility engines, off-road vehicles, and fuels.

ARB and local air pollution control districts are currently developing plans for meeting new national air quality standards for ozone and PM<sub>2.5</sub>. California's adopted 2007 State Strategy was submitted to EPA as a revision to the SIP in November 2007 and revisions to this plan were submitted by ARB to EPA in August 2009 and May 2011 (ARB 2011).

### California Health and Safety Code

Chapters 3 (Emission Limitations) and 4 (Enforcement) of the Code include provisions for air emissions control and a permitting nexus for projects within the State. Specific sections relevant to the proposed project include Section 41700, which states that a person shall not discharge from any source whatsoever quantities of air contaminants or other material that cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any of those persons or the public, or that cause, or have a natural tendency to cause, injury or damage to business or property. Additionally, Section 41701 states that no person shall discharge into the atmosphere from any source whatsoever any air contaminant, other than uncombined water vapor, for a period or periods aggregating more than three minutes in any one hour which is:

- ▶ As dark or darker in shade as that designated as No. 2 on the Ringelmann Chart, as published by the United States Bureau of Mines, or
- ▶ Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in subdivision (a).

Section 42301 establishes the requirements for the air quality permit system established pursuant to Section 42300 of the California Health and Safety Code. This section forms the basis for permit requirements for local air districts.

### State Toxic Air Contaminant Programs

TACs in California are primarily regulated through the Tanner Air Toxics Act (Assembly Bill [AB] 1807, Tanner Act) and the Air Toxics Hot Spots Information and Assessment Act of 1987 (AB 2588, Hot Spot

Act). The Tanner Act sets forth a formal procedure for ARB to designate substances as TACs. Research, public participation, and scientific peer review must occur before ARB can designate a substance as a TAC. To date, ARB has identified more than 21 TACs and adopted EPA's list of HAPs as TACs. Most recently, diesel PM was added to the ARB list of TACs.

Once a TAC is identified, ARB then adopts an Airborne Toxics Control Measure for sources that emit that particular TAC. If there is a safe threshold for a substance at which there is no toxic effect, the control measure must reduce exposure below that threshold. If there is no safe threshold, the measure must incorporate BACT to minimize emissions (e.g., the Airborne Toxic Control Measure limits truck idling to 5 minutes [13 CCR Chapter 10 Section 2485]).

The Hot Spots Act requires that existing facilities that emit toxic substances above a specified level prepare a toxic-emission inventory, prepare a risk assessment if emissions are significant, notify the public of significant risk levels, and prepare and implement risk reduction measures.

ARB has adopted diesel exhaust control measures and more stringent emission standards for various on-road mobile sources of emissions, including transit buses and off-road diesel equipment (e.g., tractors, generators). In February 2000, ARB adopted a new public transit bus fleet rule and emission standards for new urban buses. These new rules and standards provide for 1) more stringent emission standards for some new urban bus engines, beginning with 2002 model year engines; 2) zero-emission bus demonstration and purchase requirements applicable to transit agencies; and 3) reporting requirements, under which transit agencies must demonstrate compliance with the public-transit bus fleet rule. Current and future milestones include the low-sulfur diesel fuel requirement and tighter emission standards for heavy-duty diesel trucks (2007) and off-road diesel equipment (2011) nationwide. Over time, the replacement of older vehicles will result in a vehicle fleet that produces substantially lower levels of TACs than under current conditions. Mobile-source emissions of TACs (e.g., benzene, 1,3-butadiene, diesel PM) have been reduced significantly over the last decade, and will be reduced further in California through a progression of regulatory measures (e.g., Low Emission Vehicle/Clean Fuels and Phase II reformulated gasoline regulations) and control technologies. With implementation of ARB's Risk Reduction Plan, it is expected that diesel PM concentrations will be reduced by 75% in 2010 and 85% in 2020 from the estimated year-2000 level. Adopted regulations are also expected to continue to reduce formaldehyde emissions from cars and light-duty trucks. As emissions are reduced, it is expected that risks associated with exposure to the emissions will also be reduced.

## **1.2 BIOLOGICAL RESOURCES**

### **FEDERAL PLANS, POLICIES, REGULATIONS, AND LAWS**

#### **Federal Endangered Species Act**

USFWS and the National Marine Fisheries Service have authority over projects that may result in take of a species listed as threatened or endangered under ESA (i.e., a federally listed species). In general, persons subject to ESA (including private parties) are prohibited from "taking" endangered or threatened fish and wildlife species on private property, and from "taking" endangered or threatened plants in areas under Federal jurisdiction or in violation of state law. Under ESA, the definition of "take" is to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." USFWS has also interpreted the definition of "harm" to include significant habitat modification that could result in take. If a proposed project would result in take of a federally listed species, the project applicant must acquire either an incidental-take permit, under Section 10(a) of ESA, or take exemption under Section 7 of ESA if a federal action is involved, before the take occurs. Permissible take typically requires implementation of measures to avoid and minimize the extent of the take as well as measures to compensate for the take.

## Clean Water Act

### **Section 404**

Section 404 of the Federal Clean Water Act (CWA) requires a project applicant to obtain a permit before engaging in any activity that involves any discharge of dredged or fill material into waters of the U.S., including wetlands. Fill material is material placed in waters of the U.S. where the material has the effect of replacing any portion of a water of the U.S. with dry land, or changing the bottom elevation of any portion of a water of the U.S. Waters of the U.S. include navigable waters of the U.S.; interstate waters; all other waters where the use, degradation, or destruction of the waters could affect interstate or foreign commerce; tributaries to any of these waters, and wetlands adjacent to these waters. Wetlands are defined as those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Potentially jurisdictional wetlands must meet three wetland delineation criteria: hydrophytic vegetation, hydric soil types, and wetland hydrology. Wetlands that meet the delineation criteria may be jurisdictional under Section 404 of CWA pending USACE and U.S. Environmental Protection Agency (EPA) review.

### **Section 401**

Under Section 401 of the CWA, an applicant for a Section 404 permit must obtain a certificate from the appropriate state agency stating that the intended dredging or filling activity is consistent with the state's water quality standards and criteria. In California, the authority to grant water quality certification is delegated by the State Water Resources Control Board to the nine Regional Water Quality Control Boards (RWQCBs).

### **Migratory Bird Treaty Act**

The Migratory Bird Treaty Act (MBTA), first enacted in 1918, provides for protection of international migratory birds and authorizes the Secretary of the Interior to regulate the taking of migratory birds. The MBTA provides that it shall be unlawful, except as permitted by regulations, to pursue, take, or kill any migratory bird, or any part, nest, or egg of any such bird. This prohibition includes both direct and indirect acts, although harassment and habitat modification are not included unless they result in direct loss of birds, nests, or eggs. The current list of species protected by the MBTA can be found in Title 50 of the Code of Federal Regulations (CFR), Section 10.13 (50 CFR 10.13). The list includes nearly all non-game birds native to the United States.

## STATE PLANS, POLICIES, REGULATIONS AND LAWS

### **California Endangered Species Act**

The California Endangered Species Act (CESA) directs state agencies not to approve projects that would jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of habitat essential to the continued existence of a species. Furthermore, CESA states that reasonable and prudent alternatives shall be developed by DFG, together with the project proponent and any state lead agency, consistent with conserving the species, while at the same time maintaining the project purpose to the greatest extent possible. A "take" of a species, under CESA, is defined as an activity that would directly or indirectly kill an individual of a species. The CESA definition of take does not include "harm" or "harass" as is included in the Federal act. As a result, the threshold for a take under CESA may be higher than under ESA because habitat modification is not necessarily considered take under CESA.

## California Fish and Game Code

### ***Lake and Streambed Alteration***

All diversions, obstructions, or changes to the natural flow or bed, channel, or bank of any river, stream, or lake in California that supports wildlife resources are subject to regulation by CDFW under Section 1602 of the California Fish and Game Code. Under Section 1602, it is unlawful for any person to substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake designated by CDFW, or use any material from the streambeds, without first notifying DFG of such activity and obtaining a final agreement authorizing such activity. "Stream" is defined as a body of water that flows at least periodically or intermittently through a bed or channel having banks and that supports fish or other aquatic life. CDFW's jurisdiction within altered or artificial waterways is based on the value of those waterways to fish and wildlife. A CDFW streambed alteration agreement must be obtained for any project that would result in an impact on a river, stream, or lake.

### ***Fully Protected Species***

Sections 3511, 4700, 5050, and 5515 of the California Fish and Game Code describe the take prohibitions for fully protected birds, mammals, reptiles and amphibians, and fish. The Fish and Game Code fully protected status was California's first attempt to identify and protect animals that were rare or facing extinction. Most species listed as fully protected were eventually listed as threatened or endangered under CESA, however some species remain listed as fully protected but do not have simultaneous listing under CESA. Species listed under these statutes may not be taken or possessed at any time and no incidental take permits can be issued for these species except for scientific research purposes or for relocation to protect livestock.

### ***Protection of Bird Nests and Raptors***

Section 3503 of the California Fish and Game Code states that it is unlawful to take, possess, or needlessly destroy the nest or egg of any bird. Section 3503.5 specifically states that it is unlawful to take, possess, or destroy any raptors (i.e., species in the orders Falconiformes and Strigiformes), including their nests or eggs. Typical violations include destruction of active raptor nests as a result of tree removal and failure of nesting attempts, resulting in loss of eggs and/or young, because of disturbance of nesting pairs by nearby human activity.

### ***Oak Woodlands Conservation Act***

In response to the continuing loss of oak woodlands, Chapter 588, Statutes of 2001, enacted the Oak Woodlands Conservation Act. It required the California Wildlife Conservation Board to establish a grant program, known as the Oak Woodland Preservation Program, designed to protect and restore oak woodlands using conservation easements, cost-share and long-term agreements, technical assistance and public education and outreach. The program provides incentives designed to foster the conservation of oak woodlands in a manner that promotes local priorities while sustaining the economic viability of farming and ranching operations. Under this act, oak woodland is defined as an oak stand with a greater than 10% canopy cover or that may have historically supported greater than 10% canopy cover.

### ***Porter-Cologne Water Quality Control Act***

Under the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), California must adopt water quality policies, plans, and objectives to ensure that the state's beneficial uses for water are reasonably protected. The Porter-Cologne Act requires that each of the nine RWQCBs prepare and periodically update basin plans for water quality control. Each basin plan sets forth water quality standards for surface water and groundwater and actions to control nonpoint and point sources of pollution to achieve and maintain these standards. The water quality standards provisions of the basin plans (i.e., designation of beneficial uses, adoption of water quality objectives to protect beneficial uses, and adoption of an antidegradation policy) meet the requirements of Section 303 of the federal CWA, which requires the states to adopt water quality standards.

The RWQCB's jurisdiction includes federally protected waters as well as areas that meet the definition of "waters of the state." Waters of the state is defined as any surface water or groundwater, including saline waters, within the boundaries of the state. The RWQCB has the discretion to take jurisdiction over areas not federally protected under the CWA provided they meet the definition of waters of the state. Mitigation requiring no net loss of wetlands functions and values of waters of the state is typically required by the RWQCB.

### **Statewide Electrified Fence Project Habitat Conservation Plan**

The contemplated infill sites would include a lethal electrified fence similar to those found at state prisons throughout California. Contact with the LEF can result in accidental wildlife electrocution and mortality. CDCR prepared a statewide EIR to assess impacts on wildlife resulting from operation of the lethal electrified fences at 25 existing state prisons and four future planned facilities and to identify feasible mitigation measures. CEQA documents prepared for the Statewide Electrified Fence Project include the *Draft Environmental Impact Report (DEIR), Statewide Electrified Fence Project (CDC 1996); Final Environmental Impact Report (FEIR), Statewide Electrified Fence Project (CDC 1997); and FEIR Addendum, Statewide Electrified Fence Project (CDC 1999).*

Impacts of the lethal electrified fence on species covered by ESA and CESA, and migratory birds, were evaluated further in 1999 when CDCR prepared a HCP for the Statewide Electrified Fence Program. USFWS and CDFW issued threatened and endangered species take permits covering 62 wildlife species to CDCR for the 27 prisons in the project on June 12, 2002. The permits expire in 2052. The Statewide Electrified Fence Program's HCP covers mortality of ESA-, CESA-, and MBTA-protected species caused by accidental electrocution on the lethal electrified fence. The HCP does not cover prison construction of any kind and does not address habitat loss or degradation.

The approved HCP for the Statewide Electrified Fence Program includes numerous mitigation measures designed to minimize wildlife use in areas near the lethal electrified fences and to deter wildlife from making contact with the lethal electrified fences. An extensive feasibility evaluation was conducted over several years by CDCR to determine which mitigation measures were biologically effective, cost effective, and viable based on weather, security, maintenance, and operational issues. Mitigation in the HCP was organized and implemented in three tiers. Tier 1 includes operational measures designed to modify or remove habitat or other attractants to wildlife from the secured perimeter area of each prison. Tier 2 involves installing exclusion and deterrent devices on lethal electrified fences and in the perimeters. Tier 3 includes a compensation package designed to offset the residual loss of wildlife resources at each prison as a result of electrocution risks that remain even after Tiers 1 and 2 have been implemented. The plan also includes a wildlife mortality monitoring program. In this program a qualified biologist visits each institution that has an operational lethal electrified fence 3 times per year and identifies carcasses of animals collected from the perimeter of the lethal electrified fence by CDCR staff and inspects compliance with Tier 1 and Tier 2 measures.

Operation of the lethal electrified fences has been monitored intensively and regularly, in coordination with USFWS and CDFW, since 1993. No endangered or threatened species have been electrocuted by any of CDCR's fences. Because of this record, and supporting biological analyses in the locations of these facilities, CDCR constructed lethal electrified fences around four additional facilities not covered by the HCP (after consultation with USFWS and CDFW). CDCR has implemented the same three-tier mitigation approach and the same intensive monitoring at these additional prisons as was implemented with the 27 facilities (26 operational fences) covered by the HCP. No take of endangered species has occurred at the facilities not covered by the HCP. Although the electrified fence associated with the considered infill site would not be covered under the Statewide Electrified Fence HCP, the HCP provides a useful framework for assessing impacts and determining appropriate mitigation approaches for development of a level II infill correctional facility at the infill site.

## 1.3 CULTURAL RESOURCES

### FEDERAL PLANS, POLICIES, REGULATIONS, AND LAWS

#### National Historic Preservation Act

Among those statutes enacted by Congress that affect historic properties, the National Historic Preservation Act of 1966 (NHPA) is the most significant law that addresses historic preservation. One of the most important provisions of the NHPA is the establishment of the National Register of Historic Places (NRHP), the official designation of historical resources. Districts, sites, buildings, structures, and objects are eligible for listing in the Register. Nominations are listed if they are significant in American history, architecture, archeology, engineering, and culture. The NRHP is administered by the National Park Service. To be eligible, a property must be significant under criterion A (history), B (persons), or C (design/construction); possess integrity; and ordinarily be 50 years of age or more.

Listing in the NRHP does not entail specific protection or assistance for a property but it does guarantee recognition in planning for federal or federally-assisted projects, eligibility for federal tax benefits, and qualification for federal historic preservation assistance. Additionally, project effects on properties listed in the NRHP must be evaluated under CEQA.

Once a heritage resource has been recorded and if it is determined to be significant, the potential impacts (or effects) of a project on a heritage property are assessed. Federal regulatory impact thresholds are contained in Section 106 of the NHPA and accompanying regulations (36 CFR [Code of Federal Regulations] Part 800). Section 106 requires that federal agencies consider the effects of their actions on significant archaeological properties prior to implementing a project or “undertaking.” The criteria of effect are found in 36 CFR 800.0(a) and state that:

An undertaking has an effect on a historic property when the undertaking may alter characteristics of the property that may qualify the property for inclusion in the National Register.

The Advisory Council’s regulations require that the federal agency apply the criteria of adverse effect to historic properties that will be affected by a proposed undertaking (36 CFR 800.9b). An undertaking is considered to have an adverse effect when the effect on a historic property may diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling, or association, or the quality of data suitable for scientific analysis.

### STATE PLANS, POLICIES, REGULATIONS AND LAWS

#### California Environmental Quality Act

Under CEQA, public agencies must consider the effects of their actions on both “historical resources” and “unique archaeological resources.” Pursuant to Public Resources Code section 21084.1, a “project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.” Section 21083.2 requires agencies to determine whether proposed projects would have effects on “unique archaeological resources.”

“Historical resource” is a term of art with a defined statutory meaning. (See Public Resources Code, section 21084.1 and CEQA Guidelines, section 15064.5, subdivisions (a) and (b).) The term embraces any resource listed in or determined to be eligible for listing in the CRHR. The CRHR includes resources listed in or formally determined eligible for listing in the NRHP, as well as some California State Landmarks and Points of Historical Interest.

Properties of local significance that have been designated under a local preservation ordinance (local landmarks or landmark districts) or that have been identified in a local historical resources inventory

may be eligible for listing in the CRHR and are presumed to be “historical resources” for purposes of CEQA unless a preponderance of evidence indicates otherwise (Public Resources Code, section 5024.1 and California Code of Regulations, Title 14, section 4850). Unless a resource listed in a survey has been demolished, lost substantial integrity, or there is a preponderance of evidence indicating that it is otherwise not eligible for listing, a lead agency should consider the resource to be potentially eligible for the CRHR.

In addition to assessing whether historical resources potentially impacted by a proposed project are listed or have been identified in a survey process, lead agencies have a responsibility to evaluate them against the CRHR criteria prior to making a finding as to a proposed project’s impacts to historical resources (Public Resources Code, section 21084.1 and CEQA Guidelines, section 15064.5, subdivision (a)(3)). In general, an historical resource, under this approach, is defined as any object, building, structure, site, area, place, record, or manuscript that:

- (a) Is historically or archeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political or cultural annals of California; and
- (b) Meets any of the following criteria:
  - 1) Is associated with events that have made a significant contribution to the broad patterns of California’s history and cultural heritage;
  - 2) Is associated with the lives of persons important in our past;
  - 3) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
  - 4) Has yielded, or may be likely to yield, information important in prehistory or history. (CEQA Guidelines, section 15064.5 (a)(3))

Archaeological resources can sometimes qualify as “historical resources.” (CEQA Guidelines, section 15064.5 subdivision (c)(1).) In addition, Public Resources Code 5024 requires consultation with the Office of Historic Preservation when a project may impact historical resources located on State-owned land.

For historic structures, CEQA Guidelines section 15064.5, subdivision (b)(3), indicates that a project that follows the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings, or the Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1995) shall mitigate impacts to a level of less than significant. Potential eligibility also rests upon the integrity of the resource. Integrity is defined as the retention of the resource’s physical identity that existed during its period of significance. Integrity is determined through considering the setting, design, workmanship, materials, location, feeling and association of the resource.

As noted above, CEQA also requires lead agencies to consider whether projects will impact “unique archaeological resources.” Public Resources Code section 21083.2, subdivision (g), states that unique archaeological resource means an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:

- ▲ Contains information needed to answer important scientific research questions and that there is a demonstrable public interest in that information.
- ▲ Has a special and particular quality such as being the oldest of its type or the best available example of its type.
- ▲ Is directly associated with a scientifically recognized important prehistoric or historic event or person.” (Pub. Resources Code, § 21083.2, subdivision (g).)

Treatment options under section 21083.2 include activities that preserve such resources in place in an undisturbed state. Other acceptable methods of mitigation under section 21083.2 include excavation and curation or study in place without excavation and curation (if the study finds that the artifacts would not meet one or more of the criteria for defining a “unique archaeological resource”).

Advice on procedures to identify cultural resources, evaluate their importance and estimate potential effects is given in several agency publications such as the series produced by the Governor’s Office of Planning and Research (OPR). The technical advice series produced by OPR strongly recommends that Native American concerns and the concerns of other interested persons and corporate entities, including but not limited to, museums, historical commissions, associations and societies, be solicited as part of the process of cultural resources inventory. In addition, California law protects Native American burials, skeletal remains and associated grave goods regardless of their antiquity and provides for the sensitive treatment and disposition of those remains.

CEQA Guidelines Section 15064.5 (e) requires that excavation activities be stopped whenever human remains are uncovered and that the county coroner be called in to assess the remains. If the county coroner determines that the remains are those of Native Americans, the NAHC must be contacted within 24 hours. At that time, the lead agency is required to consult with the appropriate Native Americans as identified by the NAHC and directs the lead agency (or applicant), under certain circumstances, to develop an agreement with the Native Americans for the treatment and disposition of the remains.

### **Public Resources Code Section 5020.1-Historic Districts**

The types of resources eligible for nomination include historic districts. Under PRC section 5020.1, subdivision (h), a historic district means a definable, unified geographic entity that possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development. Historic districts require nomination to be listed in the CRHR pursuant to PRC section 5024.1(e)(1)-(5). Under section 5024.1, a historic resource nominated for listing, and determined to be significant by the SRHC, may include the following:

- ▲ (1) Individual historical resources.
- ▲ (2) Historical resources contributing to the significance of an historic district under criteria adopted by the SRHC.
- ▲ (3) Historical resources identified as significant in qualified historical resources surveys.
- ▲ (4) Historical resources and historic districts designated or listed as city or county landmarks or historic properties or districts pursuant to any city or county ordinance, if the criteria for designation or listing under the ordinance have been determined by the office to be consistent with CRHR criteria adopted by the SRHC.
- ▲ (5) Local landmarks or historic properties designated under any municipal or county ordinance. (PRC 5024., subd. (e)(1-5).)

### **Public Resources Code Section 5024-State-Owned Resources**

Public Resources Code (PRC) Section 5024(f) requires state agencies to submit to the State Historic Preservation Officer (SHPO) for comment documentation for any project having the potential to affect historical resources under its jurisdiction listed in or potentially eligible for inclusion in the NRHP, or are registered or eligible for registration as California Historical Landmarks. The SHPO has 30 days after receipt of the notice for review and comment.

### **California Native American Historical, Cultural, and Sacred Sites Act**

The California Native American Historical, Cultural and Sacred Sites Act applies to both State and private lands. The Act requires that upon discovery of human remains, that construction or excavation activity cease and that the county coroner be notified. If the remains are of a Native American, the

coroner must notify the NAHC. The NAHC then notifies those persons most likely to be descended from the Native American's remains. The Act stipulates the procedures the descendants may follow for treating or disposing of the remains and associated grave goods.

### **California Health and Safety Code**

Section 7050.5 (b) of the California Health and Safety code specifies protocol when human remains are discovered. The code states:

In the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until the coroner of the county in which the human remains are discovered has determined, in accordance with Chapter 10 (commencing with Section 27460) of Part 3 of Division 2 of Title 3 of the Government Code, that the remains are not subject to the provisions of Section 27492 of the Government Code or any other related provisions of law concerning investigation of the circumstances, manner and cause of death, and the recommendations concerning treatment and disposition of the human remains have been made to the person responsible for the excavation, or to his or her authorized representative, in the manner provided in Section 5097.98 of the Public Resources Code.

## **1.4 EMPLOYMENT, POPULATION, AND HOUSING**

There are no federal, state, or local plans, policies, regulations, or laws related to employment, population, and housing that are applicable to the development of level II correctional facilities.

## **1.5 GEOLOGY, SOILS, SEISMICITY, MINERALS, AND PALEONTOLOGICAL RESOURCES**

### **FEDERAL PLANS, POLICIES, REGULATIONS, AND LAWS**

#### **GEOLOGY AND MINERALS**

##### **Clean Water Act**

The Clean Water Act (CWA) is the primary federal legislation governing water quality whose objective is "to restore and maintain the chemical, physical, and biological integrity of the nation's waters," which includes oceans, bays, rivers, lakes, ponds, and wetlands.

In 1972, the CWA was amended to require National Pollutant Discharge Elimination System (NPDES) permits for discharge of pollutant in "waters of the United States." The CWA was amended in 1987 to require that the U.S. Environmental Protection Agency (EPA) establish regulations for permitting under the NPDES program of municipal and industrial stormwater discharges. The EPA published final regulations regarding stormwater discharges on November 16, 1990. The EPA regulations require that Municipal Separate Storm Water Sewer System (MS4) discharges to surface waters be regulated by an NPDES permit.

In addition, the CWA requires states to adopt water quality standards for water bodies and have those standards approved by the EPA. Water quality standards consist of designated beneficial uses (e.g., wildlife habitat, agricultural supply, fishing) for a particular water body along with water quality criteria necessary to support those uses. Water quality criteria are prescribed concentrations or levels of contaminants (e.g., lead, suspended sediment, and fecal coliform bacteria) or narrative statements that represent the quality of water that supports a particular use.

The SWRCB identifies waters of the state that do not meet water quality criteria and places them on the 303 (d) list of impaired waters. Once listed, a total maximum daily load (TMDL) must be developed for the impaired water body. The TMDL address all sources of the impairing pollutants from point, nonpoint, and natural sources that a water body may receive without exceeding applicable water quality standards (with a factor of safety included). Once established, the TMDL is allocated among current and future pollutant sources to the water body.

Sections of the CWA pertaining to regulating impacts on waters of the United States are described below.

### **Section 402**

The 1972 amendments to the CWA established the NPDES permit program to control discharges of pollutants from point sources. In California, the SWRCB is authorized by the EPA to oversee the NPDES program through the regional board (see the related discussion in the section titled Porter-Cologne Water Quality Control Act below). The NPDES program provides for both general permits (those that cover a number of similar or related activities) and individual permits.

### **Section 404**

CWA Section 404 regulates the discharge of dredged and fill materials into waters of the United States. Project proponents must obtain a permit from the U.S. Army Corps of Engineers (Corps) for all discharges of dredged or fill materials into waters of the United States. Section 404 permits may be issued only for the “least environmental damaging practicable alternative.” That is, the authorization of a proposed project discharge is prohibited if an existing practicable alternative would have less of an environmental impact and lacks other significant adverse consequences.

Before any actions that might affect surface waters are carried out, a delineation of jurisdictional waters of the United States must be completed following the Corps protocols in order to determine if the project area encompasses wetlands or other waters of the United States that qualify for the CWA protection. These waters include any or all of the following.

- ▲ Areas with ordinary high water marks of a stream, including perennial streams with defined bed and bank and any stream channel that conveys runoff, even if it has been realigned.
- ▲ Seasonal and perennial wetlands, including coastal wetlands.

Wetlands are defined for regulatory purposes as areas “inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions” (33 CFR 328.3, 40 CFR 230.3).

Under CWA Section 401, applicants for a federal license or permit such as the Section 404 permit must obtain certification from the state that the activity will not adversely affect water quality. In California the authority to grant or waive the requirement is delegated by the SWRCB to the nine RWQCBs.

### **National Pollutant Discharge Elimination System**

The 1972 amendment to the CWA (Section 402) established the NPDES permit program. The NPDES permit program outlined in the CWA contains effluent limitation guidelines, water quality requirements, and permit program requirements for discharges to waters of the U.S. The EPA has overall responsibility for the NPDES program, but administration of the program in California has been delegated to the SWRCB and the nine RWQCBs. The goal of the NPDES non-point source regulations is to improve the quality of stormwater discharged to receiving waters to the “maximum extent practicable” through the use of best management practices (BMPs).

### ***Municipal Separate Storm Sewer Systems Permits***

The 1987 amendment to the CWA established a framework for regulating discharges under the NPDES program and in 1990 the EPA promulgated regulations for permitting stormwater discharges from industrial sites, including construction sites that disturb 5 acres or more, and from municipal separate storm sewer systems (MS4s) serving a population of 100,000 people or more. The November 16, 1990, regulations, known as the Phase I regulations (Title 55 [FR] 47990), rely on NPDES permit coverage to address stormwater runoff from (1) operators of medium and large MS4s, (2) construction activity disturbing 5 acres of land or greater, and (3) 10 categories of industrial activity.

On December 8, 1999, the EPA promulgated regulations known as Phase II. The regulations set forth in the Storm Water Phase II Final Rule (Title 64 FR 68722) require permit coverage for discharges from small municipalities, including non-traditional Small MS4s, which are governmental facilities such as military bases, public campuses, and prison and hospital complexes, and from construction sites disturbing at least one acre of land. Phase II is intended to further reduce adverse impacts to water quality in receiving waters and aquatic habitats by instituting controls on the unregulated sources of stormwater discharges that have the greatest likelihood of continued environmental degradation. The focus of the Phase II program is the implementation of the following six minimum control measures: public education and outreach, public participation and involvement, illicit discharge detection and elimination, construction site runoff control, post-construction runoff control, and pollution prevention and good housekeeping practices.

The Phase I Rule required that large MS4s obtain a stormwater discharge permit, and the Phase II Rule expands the requirement to small MS4s. Generally, Phase I MS4s are covered by individual permits while Phase II MS4s are covered by a general permit. Phase I and II MS4 permits require permittees to develop and implement stormwater management plans that include provisions for reducing pollutant discharges from construction activities. Local jurisdictions are responsible for enforcement of those provisions. Future construction activities associated with the development of the infill site would need to implement soil erosion and sediment control measures that are consistent with municipal stormwater management plan requirements.

### ***National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities***

In 2009, the State Water Board adopted the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, State Water Board Order No. 2009-0009-DWQ (General Permit), which regulates stormwater discharges from construction sites that involve 1 acre or more of disturbed area (State Water Resources Control Board 2009). Coverage under the General Permit is obtained by submitting a Notice of Intent (NOI) to the SWRCB, which includes site-specific information and the certification of compliance with the terms of the NPDES General Construction Permit. A risk level assessment and a site-specific storm water pollution prevention plan (SWPPP) that identifies an effective combination of erosion control, sediment control, and non-stormwater best management practices (BMPs) that must be implemented to reduce construction effects on receiving water quality must also be submitted to the SWRCB. The General Permit requires that the SWPPP be prepared by a Qualified SWPPP Developer (QSD) and implemented under the supervision of a Qualified SWPPP Practitioner (QSP). The SWPPP must define a program of regular inspections of the BMPs and in some cases sampling of water quality parameters. The SWPPP also includes demonstration of compliance with all applicable local and regional erosion and sediment control standards, identification of responsible parties, a detailed construction timeline, and a best management practice (BMP) monitoring and maintenance schedule. The SWPPP would specify the forms and records that must be uploaded to the State Water Board's online Stormwater Multiple Application and Report Tracking System (SMARTS), such as quarterly non-stormwater inspection and annual compliance reports.

The BMPs identified are directed at implementing both sediment and erosion control measures and other measures to control potential contaminants. Examples of construction BMPs identified in SWPPPs include using temporary mulching, seeding, or other stabilization measures to protect uncovered soils; storing materials and equipment to ensure that spills or leaks cannot enter the storm drain system or surface water; developing and implementing a spill prevention and cleanup plan; installing traps, filters, or other devices at drop inlets to prevent contaminants from entering storm drains; and using barriers, such as fiber rolls and silt fencing, to minimize the amount of uncontrolled runoff that could enter drains or surface water.

### ***Industrial Activities***

Various types of industrial activities are covered under the NPDES General Permit for Discharges of Storm Water Runoff Associated with Industrial Activity (General Industrial Permit). These activities include manufacturing operations, transportation facilities where vehicles are maintained (including fueling and washing), landfills, hazardous waste sites, and other similar operations. The General Industrial Permit requires that each facility file an NOI with the RWQCB, prepare and implement a SWPPP, and monitor to determine the amount of pollutants leaving the site. The SWPPP does not have to be submitted to the RWQCB, but it must be available at each facility.

## **STATE PLANS, POLICIES, REGULATIONS AND LAWS**

### **GEOLOGY AND MINERALS**

#### **Alquist-Priolo Earthquake Fault Zoning Act**

California's Alquist-Priolo Act (Public Resources Code [PRC] 2621 et seq.), originally enacted in 1972 as the Alquist-Priolo Special Studies Zones Act and renamed in 1994, is intended to reduce the risk to life and property from surface fault rupture during earthquakes. The Alquist-Priolo Act prohibits the location of most types of structures intended for human occupancy across the traces of active faults and strictly regulates construction in the corridors along active faults (Earthquake Fault Zones). It also defines criteria for identifying active faults, giving legal weight to terms such as "active" and establishes a process for reviewing building proposals in and adjacent to Earthquake Fault Zones.

Under the Alquist-Priolo Act, faults are zoned, and construction along or across them is strictly regulated if they are "sufficiently active" and "well-defined." A fault is considered sufficiently active if one or more of its segments or strands shows evidence of surface displacement during the Holocene. A fault is considered well-defined if its trace can be clearly identified by a trained geologist at the ground surface or in the shallow subsurface, using standard professional techniques, criteria, and judgment (Bryant and Hart 2007).

#### **Seismic Hazards Mapping Act**

Like the Alquist-Priolo Act, the Seismic Hazards Mapping Act of 1990 (PRC 2690–2699.6) is intended to reduce damage resulting from earthquakes. While the Alquist-Priolo Act addresses surface fault rupture, the Seismic Hazards Mapping Act addresses other earthquake-related hazards, including strong ground shaking, liquefaction, and seismically induced landslides. Its provisions are similar in concept to those of the Alquist-Priolo Act: The State is charged with identifying and mapping areas at risk of strong ground shaking, liquefaction, landslides, and other corollary hazards, and cities and counties are required to regulate development within mapped Seismic Hazard Zones.

Under the Seismic Hazards Mapping Act, permit review is the primary mechanism for local regulation of development. Specifically, cities and counties are prohibited from issuing development permits for sites in Seismic Hazard Zones until appropriate site-specific geologic or geotechnical investigations have been carried out, and measures to reduce potential damage have been incorporated into the development plans. Geotechnical investigations conducted within Seismic Hazard Zones must incorporate standards specified by California Geological Survey Special Publication 117, Guidelines for

Evaluating and Mitigating Seismic Hazards (California Geological Survey 2008b). The seismic hazard zones have been superseded by seismic design categories under the California Building Standards Code (see next section).

### **California Building Standards Code**

The State's minimum standards for structural design and construction are given in the California Building Standards Code (CBSC) (24 California Code of Regulations). The CBSC is based on the IBC (International Code Council 2006), which is used widely throughout United States (generally adopted on a state-by-state or district-by-district basis) and has been modified for California conditions with numerous, more detailed or more stringent regulations. The CBSC requires that "classification of the soil at each building site will be determined when required by the building official" and that "the classification will be based on observation and any necessary test of the materials disclosed by borings or excavations." In addition, the CBSC states that "the soil classification and design-bearing capacity will be shown on the (building) plans, unless the foundation conforms to specified requirements." The CBSC provides standards for various aspects of construction, including (i.e., not limited to) excavation, grading, and earthwork construction; fills and embankments; expansive soils; foundation investigations; and liquefaction potential and soil strength loss. In accordance with California law, the contemplated development would be required to comply with provisions of the CBSC, where applicable.

The California Building Code (CBC) requires extensive geotechnical analysis and engineering for grading, foundations, retaining walls, and other structures, including criteria for seismic design. With respect to seismic hazards, the 2007 CBC replaced the previous seismic zones with seismic design categories. The seismic design categories integrate the site-specific probable ground motion, the site-specific soil or site class, and the type of building occupancy use. The determination of seismic design category is done by an engineer.

### **Surface Mining and Reclamation Act of 1975**

The principal piece of legislation addressing mineral resources in California is the Surface Mining and Reclamation Act of 1975 (SMARA) (PRC 2710–2719), which was enacted in response to land use conflicts between urban growth and essential mineral production. The stated purpose of SMARA is to provide a comprehensive surface mining and reclamation policy that will encourage the production and conservation of mineral resources while ensuring that adverse environmental effects of mining are prevented or minimized; that mined lands are reclaimed and residual hazards to public health and safety are eliminated; and that consideration is given to recreation, watershed, wildlife, aesthetic, and other related values.

SMARA provides for the evaluation of an area's mineral resources using a system of MRZ classifications that reflect the known or inferred presence and significance of a given mineral resource. The MRZ classifications are based on available geologic information, including geologic mapping and other information on surface exposures, drilling records, and mine data, and socioeconomic factors such as market conditions and urban development patterns. The MRZ classifications are defined as follows. MRZ 2a is included because it applies to the general area although not the infill site. Other sublevel MRZ classifications are not included.

- ▲ 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-2a – Areas underlain by mineral deposits where geologic data indicate that significant measured or indicated resources are present. MRZ-2 is divided on the basis of both degree of knowledge and economic factors. Areas classified MRZ-2a contain discovered mineral deposits that are either measured or indicated reserves as determined by such evidence as drilling

records, sample analysis, surface exposure, and mine information. Land included in the MRZ-2a category is of prime importance because it contains known economic mineral deposits.

- ▲ 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 into any other MRZ.

SMARA governs the use and conservation of a wide variety of mineral resources. However, certain resources and activities are exempt from the provisions of SMARA. Subject to certain conditions, exempted activities include excavation and grading conducted for farming, onsite construction, or recovery from flooding or other natural disaster. Solar extraction of salt and related minerals from sea and bay waters are also exempt from SMARA governance.

## **PALEONTOLOGICAL RESOURCES**

### **Section 15064.5(a)(3)**

Paleontological resources, which are considered limited, nonrenewable, and sensitive scientific resources, are afforded protection under CEQA. State CEQA Guidelines Section 15064.5(a)(3) provides protection for paleontological resources by requiring that they be identified and mitigated as historical resources.

### **California Public Resource Code (13 PRC 21000 et seq.)**

California (13 PRC 21000 et seq.) requires public agencies and private interests to identify the potential adverse impacts and/or environmental consequences of their proposed project(s) to any object or site important to the scientific annals of California (Division 1, PRC 020.1(b)). This is interpreted to include fossils and other paleontological resources.

## **1.6 HAZARDS AND HAZARDOUS MATERIALS**

### **FEDERAL PLANS, POLICIES, REGULATIONS, AND LAWS**

#### **Resource Conservation and Recovery Act (42 United States Code [U.S.C.]**

##### **Section 6901 et seq.)**

The Resource Conservation and Recovery Act (RCRA) established a framework for national programs to achieve environmentally sound management of both hazardous and non-hazardous wastes. RCRA was designed to protect human health and the environment, reduce/eliminate the generation of hazardous waste, and conserve energy and natural resources. RCRA also promotes resource recovery techniques. The Hazardous and Solid Waste Amendments of 1984 (HSWA) both expanded the scope of RCRA and increased the level of detail in many of its provisions. The Hazardous Waste Management subchapter of the RCRA deals with a variety of issues regarding the management of hazardous materials including the export of hazardous waste, inspections of hazardous waste disposal facilities, and the identification and listing of hazardous waste.

#### **Comprehensive Environmental Response, Compensation, and Liability Act**

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) was enacted by Congress on December 11, 1980. This law created a tax on the chemical and petroleum industries and provided broad federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. CERCLA established prohibitions and requirements concerning closed and abandoned hazardous waste sites; provided for liability of persons responsible for releases of hazardous waste at these sites; and established a trust fund to provide for cleanup when no responsible party could be identified.

On October 17, 1986, the President of the United States signed into law the Superfund Amendments and Reauthorization Act (SARA). This act amended the already existing CERCLA law, which was also known as Superfund. SARA reflected EPA's experience in administering the complex Superfund program during its first 6 years and made several important changes and additions to the program, including the following: stressed the importance of permanent remedies and innovative treatment technologies in cleaning up hazardous waste sites; required Superfund actions to consider the standards and requirements found in other state and federal environmental laws and regulations; provided new enforcement authorities and settlement tools; increased state involvement in every phase of the Superfund program; increased the focus on human health problems posed by hazardous waste sites; encouraged greater citizen participation in making decisions on how sites should be cleaned up; and increased the size of the trust fund.

### **Emergency Planning Community Right-to-Know Act (40 Code of Federal Regulations [CFR] Parts 350–372)**

The Emergency Planning Community Right-to-Know Act (EPCRA) was included under the SARA law and is commonly referred to as SARA Title III. EPCRA was passed in response to concerns regarding the environmental and safety hazards posed by the storage and handling of toxic chemicals. EPCRA establishes requirements for federal, state and local governments, Indian tribes, and industry regarding emergency planning and "Community Right-to-Know" reporting on hazardous and toxic chemicals.

SARA Title III requires states and local emergency planning groups to develop community emergency response plans for protection from a list of extremely hazardous substances (40 CFR 355 Appendix A). The Community Right-to-Know provisions help increase the public's knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment.

### **Hazardous Materials Transportation Act (49 U.S.C. Sections 1801–1819 and 49 CFR Parts 101, 106, 107, and 171–180)**

The transportation of hazardous materials is regulated by the Hazardous Materials Transportation Act (HMTA), which is administered by the Research and Special Programs Administration (RSPA) of the U.S. Department of Transportation (DOT). HMTA provides DOT with a broad mandate to regulate the transport of hazardous materials, with the purpose of adequately protecting the nation against risk to life and property which is inherent in the commercial transportation of hazardous materials. RSPA carries out these responsibilities by prescribing regulations and managing a user-funded grant program for planning and training grants for states and Indian tribes. DOT regulations that govern the transportation of hazardous materials are applicable to any person who transports, ships, causes to be transported or shipped, or who is involved in any way with the manufacture or testing of hazardous materials packaging or containers. Additionally, DOT is responsible for developing curriculum to train for emergency response, and administers grants to states and Indian tribes for ensuring the proper training of emergency responders. HMTA was enacted in 1975 and was amended and reauthorized in 1990, 1994, and 2005.

### **Chemical Accident Prevention Provisions (40 CFR Part 68)**

The provisions listed under Part 68 of the Code of Federal Regulations set forth the list of regulated substances and thresholds, the petition process for adding to, or deleting from, the list of regulated substances, the requirements for owners or operators of stationary sources concerning the prevention of accidental releases, and the state accidental release prevention programs approved under Section 112(r).

### **Clean Air Act (42 U.S.C. Section 7401)**

This act protects the general public from exposure to airborne contaminants that are known to be hazardous to human health. Under the Clean Air Act, EPA established National Emissions Standards for Hazardous Air Pollutants, which are emissions standards for air pollutants, including asbestos.

## **Clean Water Act (Section 402(p))**

The Clean Water Act (CWA) is the primary federal legislation governing water quality whose objective is “to restore and maintain the chemical, physical, and biological integrity of the nation’s waters,” which includes oceans, bays, rivers, lakes, ponds, and wetlands.

In 1972, the CWA was amended to require National Pollutant Discharge Elimination System (NPDES) permits for discharge of pollutant in “waters of the United States.” The CWA was amended in 1987 to require that the U.S. Environmental Protection Agency (EPA) establish regulations for permitting under the NPDES program of municipal and industrial stormwater discharges. The EPA published final regulations regarding stormwater discharges on November 16, 1990. The EPA regulations require that Municipal Separate Storm Water Sewer System (MS4) discharges to surface waters be regulated by an NPDES permit.

In addition, the CWA requires states to adopt water quality standards for water bodies and have those standards approved by the EPA. Water quality standards consist of designated beneficial uses (e.g., wildlife habitat, agricultural supply, fishing) for a particular water body along with water quality criteria necessary to support those uses. Water quality criteria are prescribed concentrations or levels of contaminants (e.g., lead, suspended sediment, and fecal coliform bacteria) or narrative statements that represent the quality of water that supports a particular use.

The SWRCB identifies waters of the state that do not meet water quality criteria and places them on the 303 (d) list of impaired waters. Once listed, a total maximum daily load (TMDL) must be developed for the impaired water body. The TMDL address all sources of the impairing pollutants from point, nonpoint, and natural sources that a water body may receive without exceeding applicable water quality standards (with a factor of safety included). Once established, the TMDL is allocated among current and future pollutant sources to the water body.

## **Safe Drinking Water Act [42 U.S.C. Section 300(f) et seq.]**

This act regulates discharges of pollutants to underground aquifers.

## **Toxic Substances Control Act [15 U.S.C. Section 2601 et seq.]**

This act regulates the manufacturing, inventory, and disposition of industrial chemicals, including hazardous materials.

## **Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) [7 U.S.C. Section 136 and 40 CFR Parts 152 to 171]**

This act regulates the manufacturing, distribution, sale, and use of pesticides.

## **Uniform Fire Code**

The Uniform Fire Code (UFC) is the primary means for authorizing and enforcing procedures and mechanisms to ensure the safe handling and storage of any substance that may pose a threat to public health and safety. The UFC regulates the use, handling, and storage requirements for hazardous materials at fixed facilities. The UFC and the Uniform Building Code (UBC) use a hazard classification system to determine what protective measures are required. These measures may include construction standards, separations from property lines, and specialized equipment. To ensure that these safety measures are met, the UFC employs a permit system based on hazard classification.

## **Federal Aviation Regulation Part 77**

Establishes standards and notification requirements for objects affecting navigable airspace and determines the potential hazardous effects of proposed construction on air navigation. It is intended to allow the Federal Aviation Administration to identify potential aeronautical hazards in advance to prevent impacts to the safe and efficient use of navigable airspace.

## STATE PLANS, POLICIES, REGULATIONS AND LAWS

### **California Health and Safety Code: Hazardous Materials Release Response Plans and Inventory Law (Section 25500 et seq.)**

Under this law, facilities using hazardous materials are required to prepare Hazardous Materials Business Plans.

### **Hazardous Waste Control Act (Section 25100 et seq.)**

Similar to RCRA, the Hazardous Waste Control Act regulates the identification, generation, transportation, storage, and disposal of materials the State of California has deemed hazardous.

### **California Code of Regulations, Title 27, Division 2, Chapter 3, Subchapter 5, Closure and Post Closure Maintenance of Landfills**

Provides post closure maintenance guidelines, including requirements for an emergency response plan and site security. Regulates post closure land use, requiring protection of public health and safety and the built environment, as well as the prevention of gas explosions. Construction on the site must maintain the integrity of the final cover, drainage and erosion control systems, and gas monitoring and control systems. All post closure land use within 1,000 feet of a landfill site must be approved by the local enforcement agency and designed and constructed to prevent gas migration into buildings.

## **California Code of Regulations**

### ***California Code of Regulations, Title 8***

Title 8 of the California Code of Regulations contains the CAL OSHA health and safety regulations. Hazardous substance information and training is detailed in Article 5 of Division 3.5. This section includes special procedure for supplementary enforcement of state plan requirement concerning Proposition 65 and the hazardous substances list.

### ***California Code of Regulations, Title 17***

Title 17 of the California Code of Regulations provides information on the appropriate accreditation, certification, and work practices for lead-based paint and lead hazards.

### ***California Code of Regulations, Title 22***

Division 4.5, Environmental Health Standards for the Management of Hazardous Waste, of Title 22 Social Security contains the California Department of Toxic Substances hazardous waste regulations.

### **California Public Resources Code Section 21151.4**

The Public Resources Code requires the lead agency to consult with any school district with jurisdiction over a school within 0.25 mile of a proposed project about potential impacts on the school if the project might reasonably be anticipated to emit hazardous air emissions, or handle an extremely hazardous substance or a mixture containing an extremely hazardous substance.

### **Porter-Cologne Water Quality Act (California Water Code Section 13000 et seq.)**

The Porter-Cologne Water Quality Act regulates the oversight of water monitoring, and contamination cleanup and abatement through the SWRCB and the RWQCBs.

### **Safe Drinking Water and Toxic Enforcement Act (Proposition 65)**

The Safe Drinking Water and Toxic Enforcement Act regulates the discharge of contaminants to groundwater.

### **California Government Code Section 65962.5**

Requires the California Department of Toxic Substances Control (DTSC) to compile and maintain lists of potentially contaminated sites located throughout the State of California. This “Cortese List” includes hazardous waste and substance sites from DTSC’s database, leaking underground storage tank sites from the SWRCB’s database, solid waste disposal sites with waste constituents above hazardous waste levels outside of the waste management unit, Cease and Desist Orders and Cleanup and Abatement Orders concerning hazardous wastes, and hazardous waste facilities subject to corrective action pursuant to Section 25187.5 of the Health and Safety Code.

### **Air Toxic Control Measure**

The California Air Resources Board (CARB) adopted an Air Toxic Control Measure (ATCM) for asbestos on July 29, 2002. The ATCM governs the construction of projects in areas that contain asbestos and also authorizes the Air Pollution Control Officer (APCO) of an air district to apply the ATCM to any area that it determines contains NOA.

### **Fire Hazard Severity Zones**

Public Resources Code, Sections 4201-4204, and Government Code Sections 51175–51189, require identification of fire hazard severity zones within the state of California. Fire prevention areas considered to be under state jurisdiction are referred to as “state responsibility areas.” In state responsibility areas, the California Department of Forestry and Fire Protection is required to delineate three hazard ranges: moderate, high, and very high; whereas “local responsibility areas,” which are under the jurisdiction of local entities (e.g., cities, counties), are required to only identify very high fire hazard severity zones. The hazard ranges are measured quantitatively, based on: vegetation, topography, weather, crown fire potential (a fire’s tendency to burn upwards into trees and tall brush), and ember production and movement within the area of question.

## **1.7 HYDROLOGY**

### **FEDERAL PLANS, POLICIES, REGULATIONS, AND LAWS**

#### **Clean Water Act**

Refer to Section 1.5, above, for a discussion of the CWA as it relates to hydrology and water quality.

#### **National Pollutant Discharge Elimination System**

Refer to Section 1.5, above, for a discussion of the NPDES permit program as it relates to hydrology and water quality.

#### **National Flood Insurance Act of 1968**

Congress passed the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973 in response to increasing costs of disaster relief. These acts reduce the need for large publicly funded flood control structures and disaster relief by providing flood insurance and restricting development on floodplains, respectively. FEMA administers the National Flood Insurance Program (NFIP), which was created by the National Flood Insurance Act of 1968, to provide subsidized flood insurance for those communities that comply with FEMA regulations. FEMA issues flood insurance rate maps (FIRMs) that delineate flood hazard zones in the community and show which areas are prone to flooding.

FEMA established the design standard for flood protection, with the minimum level of flood protection for new development determined to be the 1-in-100 annual exceedances probability (AEP) event (i.e., the 100-year flood event). Specifically, where levees provide flood protection, FEMA requires the levee

crown to have 3 feet of freeboard above the one-in-100 AEP water surface elevation, except in the vicinity of a structure, such as a bridge, where the level of the crown must have 4 feet of freeboard for a distance of 100 feet upstream and downstream of the structure.

## STATE PLANS, POLICIES, REGULATIONS AND LAWS

### California State Nondegradation Policy

In 1968, as required under the federal antidegradation policy, the SWRCB adopted a nondegradation policy aimed at maintaining high quality for waters in California. The nondegradation policy states that the disposal of wastes into State waters shall be regulated to achieve the highest water quality consistent with the maximum benefit to the people of the state and to promote the peace, health, safety, and welfare of the people of California. The policy can be summarized as follows.

- ▲ Where the existing water quality of water is better than required under existing water quality control plans, such quality would be maintained until it has been demonstrated that any change would be consistent with maximum benefit to the people of the state and would not unreasonably affect present and anticipated beneficial uses of such water.
- ▲ Any activity that produces waste or increases the volume or concentrations of waste and which discharges to existing high-quality waters would be required to meet waste discharge requirements which would ensure (1) pollution or nuisance would not occur and (2) the highest water quality consistent with the maximum benefit to the people of the State would be maintained.

### Central Valley Flood Protection Board

The Central Valley Flood Protection Board, formerly known as the Reclamation Board, is required to enforce standards for the construction, maintenance, and protection of adopted flood control plans that will protect public lands from floods. The jurisdiction of the board includes the Central Valley, including all tributaries and distributaries of the Sacramento and San Joaquin Rivers and designated floodways. According to Section 8709.22 of the California Water Code, a permit is required prior to construction within the board's jurisdiction for the following actions.

- ▲ The placement, construction, reconstruction, removal, or abandonment of any landscaping, culvert, bridge, conduit, fence, projections, fill, embankment, building, structure, obstruction, encroachment, or excavation; the planting or removal of vegetation; and any repair or maintenance that involves cutting into the levee.
- ▲ Existing structures that predate permitting or where it is necessary to establish the conditions normally imposed by permitting. The circumstances include those where responsibility for the encroachment has not been clearly established or ownership and use have been revised.

This permit would apply to development of a level II infill correctional facility at the infill site if any of the construction practices involve the above.

### Porter-Cologne Water Quality Control Act of 1969

The State Porter-Cologne Water Quality Control Act (California Water Code [CWC] Section 13000 et seq.) is California's statutory authority for water quality regulation in the state. The act requires a "report of water discharge" for any discharge of water (liquid, solid, or otherwise) to land, surface waters, or groundwaters that may impair a beneficial use of any groundwater or surface water in the state.

The act established the SWRCB as the primary state agency responsible for protecting the quality of the state's surface and groundwater supplies and ensuring compliance with the federal CWA and the Porter-Cologne Water Quality Control Act. The act also divided the state into nine regions and

established nine RWQCBs to oversee the regions. The Mokelumne River sub-basins are under the jurisdiction of the Central Valley RWQCB.

The SWRCB and the subsidiary RWQCBs must adopt water quality policies, plans, and objectives to protect the State's waters for use and enjoyment by the people of California. Basin Plans are the regional water quality control plans required by both the CWA and the Porter-Cologne Act in which beneficial uses, water quality objectives, and implementation programs are established for each of the nine regions in California. The act also requires waste dischargers to notify the RWQCBs of their activities through the filing of Reports of Waste Discharge (RWD) and authorizes the SWRCB and RWQCBs to issue and enforce waste discharge requirements (WDRs), NPDES permits, Section 401 water quality certifications, or other approvals. The RWQCBs also have authority to issue waivers to RWD/WDRs for broad categories of "low threat" discharge activities that have minimal potential for adverse water quality effects when implemented according to prescribed terms and conditions. In addition to the SWRCB and RWQCBs, water quality protection is the responsibility of numerous water supply and wastewater management agencies, as well as City and County governments, and requires the coordinated efforts of these various entities.

### **Recycled Water Policy (State Board Resolution No. 2009-0011)**

The State Water Board adopted a policy for water quality control for recycled water in 2009 (State Board Resolution No. 2009-0011) that encourages beneficial use of recycled water instead of sole disposal. The Recycled Water Policy (Policy) is intended to support the Strategic Plan priority to Promote Sustainable Local Water Supplies (State Water Resources Control Board 2009). Increasing the acceptance and promoting the use of recycled water is a means towards achieving sustainable local water supplies and can result in reduction in greenhouse gases, a significant driver of climate change.

The purpose of this Policy is to provide direction to the RWQCBs, proponents of recycled water projects, and the public regarding the appropriate criteria to be used by the State Water Board and the Regional Water Boards in issuing permits for recycled water projects. It is the intent of the State Water Board that all elements of the Policy are interpreted in a manner that fully implements state and federal water quality laws and regulations in order to enhance the environment and put the waters of the state to the fullest use of which they are capable. The Policy describes permitting criteria that are intended to streamline the permitting of the vast majority of recycled water projects. The intent of the streamlined permit process is to expedite the implementation of recycled water projects in a manner that implements state and federal water quality laws while allowing the RWQCBs to focus their limited resources on projects that require substantial regulatory review due to unique site-specific conditions. By prescribing permitting criteria that apply to the vast majority of recycled water projects, it is the State Water Board's intent to maximize consistency in the permitting of recycled water projects in California while also reserving to the RWQCBs sufficient authority and flexibility to address site-specific conditions. The State Water Board will establish additional policies that are intended to assist the State of California in meeting the goals established in the preamble to this Policy for water conservation and the use of stormwater. For purposes of this Policy, the term "permit" means an order adopted by a Regional Water Board or the State Water Board prescribing requirements for a recycled water project, including but not limited to water recycling requirements, master reclamation permits, and waste discharge requirements.

### **Statewide General Permit for Landscape Irrigation Uses of Municipal Recycled Water**

In July 2009, the State Water Resources Control Board adopted General Waste Discharge Requirements for Landscape Irrigation Uses of Municipal Recycled Water (General Permit) (State Water Resources Control Board 2009). For those eligible, the General Permit allows the use of recycled water for landscape irrigation. This General Permit is intended to streamline the regulatory process for such uses of recycled water but may not be appropriate for all scenarios due to unique site-

specific characteristics and conditions. For this General Permit, “recycled water” is limited to disinfected tertiary recycled water produced by a public entity at a municipal wastewater treatment plant (WWTP), as defined in Water Code section 13625(b)(1) and section 13625(b)(2). This General Permit is not applicable for the use of water produced from the treatment of other non-municipal wastewaters (e.g., oil field production, food processing, storm water, etc.) at other types of treatment facilities (e.g., industrial wastewater treatment plants). Pursuant to Water Code section 13552.5(e)(1), persons who are covered under this General Permit are not required to remain subject to the applicable provisions of existing waste discharge requirements or water reclamation requirements. Recycled water shall be managed in conformance with the applicable regulations contained in the Title 22 Requirements.

To obtain coverage under this General Permit, either a Producer or a Distributor shall submit a complete Notice of Intent (NOI) form, Operations & Maintenance Plan, and appropriate application fee to the State Water Board. Recycled water shall not be used for direct human consumption or for the processing of food or drink intended for human consumption. Use of recycled water on water-saturated or frozen ground or during periods of precipitation such that runoff is induced is also prohibited. The direct or indirect discharge from use areas of recycled water to surface waters, either perennial or ephemeral, including wetlands, vernal pools, etc. is prohibited, unless otherwise authorized by an NPDES permit and the application of recycled water within 50 feet of a domestic well, and impoundment of recycled water within 100 feet of a domestic well, unless approved by the California Department of Public Health, is prohibited.

### **Chemicals of Emerging Concern (CECs)**

The State Water Board identified a need exists to increase understanding of CECs that may be present in recycled water used for landscape irrigation. CECs include many chemical sources, such as pharmaceuticals and personal care products and endocrine disrupting compounds. The many evolving issues associated with “emerging contaminants” are presently the subject of a number of studies. As required by the Recycled Water Policy, the State Water Board is convening a CEC advisory panel to provide recommendations on CEC monitoring and other topics. The State Water Board has consulted with the California Department of Public Health, the primary state agency responsible for the protection of public health and the regulation of drinking water standards, in convening the CEC advisory panel. In accordance with the Recycled Water Policy, the General Permit does not specify CEC monitoring requirements. After the State Water Board takes action on the recommendations of the CEC advisory panel, this General Permit will be reviewed for any needed revisions. The constituents that are the subject of studies subject to the scrutiny of the California Department of Public Health, the USEPA, and the U.S. Geological Survey, will in all likelihood change over time as their relative importance or unimportance to human health and the environment becomes better known.

### **Stormwater Discharges**

The CWA mandates permits for municipal stormwater discharges. These permits require implementation of controls in order to reduce the discharge of pollutants in stormwater flows to the maximum extent possible.

### **Senate Bill 5: 200-Year Flood Protection**

Senate Bill (SB) 5 (Chapter 364, Statutes of 2007), signed into law on October 10, 2007, enacts the Central Valley Flood Protection Act of 2008. SB 5 requires DWR and the Central Valley Flood Protection Board (previously known as the State of California Reclamation Board) to accomplish all of the following tasks:

- ▲ prepare and adopt a Central Valley Flood Protection Plan by 2012;
- ▲ establish 200-year protection as the minimum urban level of flood protection, effective with respect to specific development projects as of 2015 or 2025;

- ▲ have DWR produce preliminary maps for 100-year and 200-year floodplains protected by project levees and make them available to cities and counties in the Sacramento and San Joaquin Valleys;
- ▲ set deadlines for Central Valley cities and counties to amend their general plans and their zoning ordinances to conform to the plan within 24 months and 36 months, respectively, of plan adoption (i.e., by approximately 2014 and 2015);
- ▲ obligate Central Valley counties to develop flood emergency plans within 24 months of plan adoption; and
- ▲ propose amendments to the California Building Standards Code by 2009 to reduce the risk of flood damage and increase safety in areas where flood depths for the 200-year flood event are anticipated to exceed 3 feet.

Beginning in 2015—potentially sooner depending on when the Central Valley Flood Protection Plan takes effect—local governments will be prohibited from entering into any development agreement or approving any entitlement or permit resulting in construction of a new residence in a flood zone unless they can meet one of the following three conditions:

- ▲ flood management facilities provide the level of protection necessary to withstand a 200-year flood event;
- ▲ the development agreement or other entitlement includes conditions that provide protections necessary to withstand a 200-year flood event; or
- ▲ the local flood management agency has made adequate progress on constructing a flood protection system that will result in sufficient protections to withstand a 200-year flood event by 2025.

### **Dewatering Activities**

While small amounts of construction-related dewatering activities are covered under the NPDES General Construction Permit, the Central Valley RWQCB has also adopted a General Order for Dewatering and Other Low Threat Discharges to Surface Waters (General Dewatering Permit). This permit applies to various categories of dewatering activities and would likely apply to the development of a level II infill correctional facility at the infill site if construction required dewatering in greater quantities than that allowed by the General Construction Permit and discharged effluent to surface waters. Permit conditions for discharge of these types of wastewaters to surface water are specified in the Waste Discharge Requirements for Dewatering and Other Low Threat Discharges to Surface Waters General Order. (CVRWQCB Order No. 5-00-175)

## **1.8 LAND USE AND AGRICULTURAL AND FORESTRY RESOURCES**

### **STATE PLANS, POLICIES, REGULATIONS AND LAWS**

#### **California Important Farmland System and Farmland Mapping and Monitoring Program**

CDC's Division of Land Resource Protection operates the FMMP, which was established in 1982 by the state to continue the Important Farmland mapping efforts begun in 1975 by NRCS, which aimed to produce agricultural resource maps based on soil quality and land use across the nation. CDC's system was designed to inventory, map, and monitor the acreage of California farmland to document how much agricultural land was being converted to nonagricultural land or transferred into (or out of)

Williamson Act contracts (the Williamson Act is explained further below). CDC's classifications in the Important Farmland Inventory System are as follows:

- ▲ Prime Farmland—land that has the best combination of features for the production of agricultural crops;
- ▲ Farmland of Statewide Importance—land other than Prime Farmland that has a good combination of physical and chemical features for the production of agricultural crops, but that has more limitations than Prime Farmland, such as greater slopes or less ability to store soil moisture;
- ▲ Unique Farmland—land of lesser quality soils used for the production of the state's leading agricultural cash crops;
- ▲ Farmland of Local Importance—land of importance to the local agricultural economy;
- ▲ Grazing Land—existing vegetation that is suitable to grazing;
- ▲ Urban and Built-Up Land—land occupied by structures in density of at least one dwelling unit per 1.5 acres;
- ▲ Land Committed to Nonagricultural Use—vacant areas; existing land that has a permanent commitment to development but has an existing land use of agricultural or grazing lands; and
- ▲ Other Land—land that does not meet criteria of the remaining categories.

Prime Farmland, Farmland of Statewide Importance, and Unique Farmland are defined as Important Farmland in Appendix G of the State CEQA Guidelines.

### **California Land Conservation Act (Williamson Act)**

The California Land Conservation Act (Williamson Act) (California Government Code Section 51200 et seq.), administered by CDC, was enacted in 1965 when population growth and rising property taxes were recognized as a threat to the viability of valuable farmland in California. The State is not subject to the Williamson Act.

### **Statewide Electrified Fence Project Habitat Conservation Plan**

Refer to Section 1.2, above, for a discussion of the Statewide Electrified Fence Project Habitat Conservation Plan as it relates to land use.

## **1.9 NOISE**

### **FEDERAL PLANS, POLICIES, REGULATIONS, AND LAWS**

#### **Federal Noise Control Act of 1972**

The U.S. Environmental Protection Agency's (EPA's) Office of Noise Abatement and Control was originally established to coordinate federal noise control activities. After its inception EPA's Office of Noise Abatement and Control issued the Federal Noise Control Act of 1972, establishing programs and guidelines to identify and address the effects of noise on public health, welfare, and the environment. In 1981, EPA administrators determined that subjective issues such as noise would be better addressed at more local levels of government. Consequently, in 1982 responsibilities for regulating noise control policies were transferred to state and local governments. However, noise control guidelines and regulations contained in the EPA rulings in prior years are still adhered to by designated federal agencies where relevant.

## STATE PLANS, POLICIES, REGULATIONS AND LAWS

The State of California has adopted noise standards in areas of regulation not preempted by the federal government. State standards regulate noise levels of motor vehicles, sound transmission through buildings, occupational noise control, and noise insulation.

### Title 24

Title 24 of the California Code of Regulations, also known as the California Building Standards Code, establishes building standards applicable to all occupancies throughout the state. The code provides acoustical regulations for both exterior-to-interior sound insulation as well as sound and impact isolation between adjacent spaces of various occupied units. Title 24 regulations state that interior noise levels generated by exterior noise sources shall not exceed 45 dBA Ldn, with windows closed, in any habitable room for general residential uses. Section 13-102 of Title 24 presents minimum requirements for correctional facilities and requires that all inmate housing areas be constructed so that average interior noise levels not exceed 70 dBA during periods of activity and 45 dBA during sleeping hours.

## 1.10 PUBLIC SERVICES

### STATE PLANS, POLICIES, REGULATIONS AND LAWS

#### FIRE PROTECTION

##### **Fire Safe Regulations (California Code of Regulations Title 14 and Title 19)**

California Code of Regulations Title 14 establishes minimum wildfire protection standards in conjunction with building construction and development in the State Responsibility Area.

California Code of Regulations Title 19 contains regulations that have been developed by the State Fire Marshal for the purpose of establishing additional fire protection for group occupancies, such as places of assembly, schools, high rise buildings, hospitals and organized camps.

##### **California Building Standards Code**

The California Building Standards Code is published in its entirety every three years, by order of the legislature, with supplements published in the intervening years. The California legislature delegated authority to various state agencies, boards, commissions, and departments to create building regulations to implement the state's statutes. The California Fire Code is based on the International Fire Code, with the express purpose of prescribing regulations governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises.

#### EMERGENCY SERVICES

##### **California Emergency Services Act**

The California Emergency Services Act of 1970 established authority for the preparation of an emergency preparedness plan for prisons. Each CDCR institution must assign an emergency coordinator to implement this plan and must prepare an emergency preparedness plan for submission to the Director of Corrections for review and approval. All institutions are required to ensure preparedness in dealing with disasters such as earthquakes, fires, and floods.

## **SCHOOLS**

### **Senate Bill 50**

Senate Bill 50 (Chapter 407, Statutes of 1998) instituted a new school facility program by which school districts can apply for state construction and modernization funds. This legislation imposed limitations on the power of cities and counties to require mitigation of school facilities impacts as a condition of approving new development. It also provided the authority for school districts to levy fees at three different levels.

Level I fees are the current statutory fees allowed under California Education Code Section 17620. As mentioned above, this code section authorizes school districts to levy a fee against residential and commercial construction to fund school construction or reconstruction. These fees are adjusted every two years in accordance with the statewide cost index for Class B construction, as determined by the State Allocation Board.

### **Education Code (Section 17620)**

California Education Code Section 17620 authorizes school districts to levy a fee, charge, dedication, or other requirement against any development project for the construction or reconstruction of school facilities, provided that the district can show justification for levying of fees. This fee is not applicable to state projects.

### **California Government Code**

California Government Code Section 65995 limits the fee to be collected by school districts under the Education Code to the statutory fee unless a school district conducts a Facility Needs Assessment (Section 65995.6) and meets certain conditions.

California Government Code Section 65996(b) includes provisions that deem payment of school impact fees to provide full and complete school facilities mitigation that a state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or any change in governmental organization or reorganization, as defined in Section 56021 or 56073, on the basis that school facilities are inadequate.

## **1.11 TRANSPORTATION**

### **STATE PLANS, POLICIES, REGULATIONS AND LAWS**

#### **Caltrans Guide for the Preparation of Traffic Impact Studies**

The California Department of Transportation (Caltrans) Guide for the Preparation of Traffic Impact Studies (December 2002) provides guidance on the evaluation of traffic impacts to State highway facilities. The document outlines when a traffic impact study is needed and what should be included in the scope of the study.

#### **Caltrans Transportation Concept Reports**

The California Department of Transportation (Caltrans) provides Transportation Concept Reports (TCR) for each of its State Routes. The TCR's are "long-term planning documents that evaluate the conditions of a given State highway, and establish a vision of what that highway should look like at the end of the twenty-year planning period and includes improvements necessary to achieve this concept."

## 1.12 UTILITIES AND SERVICE SYSTEMS

### STATE PLANS, POLICIES, REGULATIONS AND LAWS

#### WATER SUPPLY

##### California Water Code

The California Water Code outlines the general state authority and responsibilities over water in California. It establishes DWR as the primary research, supply development, and management agency for water; the State Water Resources Control Board (SWRCB) for overall water quality policy development and for dealing with water rights issues; and nine regional water quality control boards (RWQCBs) for regulation, enforcement, and protection of the beneficial uses of water.

##### Urban Water Management Planning Act

The Urban Water Management Planning Act requires water suppliers to document water supplies available during normal, single dry, and multiple dry water years during a 20-year projection period, and to document the existing and projected future water demand during a 20-year projection period. The Act requires that the projected supplies and demand be presented in 5-year increments for the 20-year projection period (Water Code Section 10631).

Each urban water supplier in California is required to prepare an Urban Water Management Plan (UWMP) and update the plan on or before December 31 in years ending in 5 and 0, pursuant to California Water Code Sections 10610–10657, as last amended by Senate Bill (SB) 318 (2004), the Urban Water Management Planning Act. SB 318 is the 18th amendment to the original bill requiring an UWMP, which was initially enacted in 1983. Amendments to SB 318 have focused on ensuring that the UWMP emphasizes and addresses drought contingency planning, water demand management, reclamation, and groundwater resources. Under the current law, all urban water suppliers with more than 3,000 service connections or water use of more than 3,000 acre-feet per year (afy) are required to submit an UWMP to the DWR every 5 years.

##### Senate Bills 610

The State of California enacted SB 610, effective January 1, 2002, which amended the Water Code requirements within the CEQA process and broadened the types of information required in a UWMP. SB 610 requires the preparation of “water supply assessments” for large developments (i.e., more than 500 dwelling units or nonresidential equivalent) proposed under the jurisdiction of a County or City lead agency. It is important to note that projects proposed by the State or involving the State as lead agency are not subject to the requirements of SB 610 (or SB 221). Although compliance with SB 610 is not required for the development of a level II infill correctional facility at the infill site, this section provides a “SB 610-like” water supply analysis to assess the adequacy of water supplies to serve the development of level II infill facilities.

Such assessments, prepared by public water systems responsible for serving local projects, address whether existing and projected water supplies are adequate to serve a proposed project while also meeting existing urban and agricultural demands and the needs of other anticipated development in the service area in which the project is located. If the most recently adopted UWMP accounted for the projected water demand associated with the project, the public water system may incorporate the requested information from the UWMP. If the UWMP did not account for the project’s water demand, or if the public water system has no UWMP, the project’s water supply assessment (WSA) shall discuss whether the system’s total projected water supplies (available during normal, single dry, and multiple dry water years during a 20-year projection) would meet the project’s water demand in addition to the system’s existing and planned future uses, including agricultural and manufacturing uses.

Where a WSA concludes that insufficient supplies are available, the public water system must provide to the City or County considering the development project its plans for acquiring and developing additional water supplies. Based on all the information in the record relating to a project, including all applicable WSAs and all other information provided by the relevant public water systems, the City or County must determine whether sufficient water supplies are available to meet the demands of the project in addition to existing and planned future uses. Where a WSA concludes that insufficient supplies are available, the WSA must lay out the steps that would be required to obtain the necessary supplies. The WSA is required to include (but is not limited to) identification of the existing and future water supplies over a 20-year projection period. This information must be provided for average normal, single dry, and multiple dry years. The absence of an adequate current water supply does not preclude a project's approval, but it does require a lead agency to address a water supply shortfall in its project findings.

### **California Water Code Part 2.10**

Water Code Part 2.10 clarifies the roles and responsibilities, under CEQA, of the lead agency and the water supplier (i.e., the public water system) with respect to describing current and future supplies compared to current and future demand. It also defines the projects for which a WSA must be prepared as well as the responsibilities of the lead agency related to the WSA. A WSA would be required only when the City or County is lead agency, and for the following project types:

- ▲ proposed residential developments of more than 500 dwelling units;
- ▲ proposed shopping centers or business establishments employing more than 1,000 persons or having more than 500,000 square feet of floor space;
- ▲ proposed commercial office buildings employing more than 1,000 persons or having more than 250,000 square feet of floor space;
- ▲ proposed hotels or motels, or both, having more than 500 rooms;
- ▲ proposed industrial, manufacturing, or processing plants, or industrial parks planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area;
- ▲ mixed-use developments that include one or more of the uses described above;
- ▲ developments that would demand an amount of water equivalent to or greater than the amount of water required by a 500-dwelling-unit project; and
- ▲ lead agencies with fewer than 5,000 water service connections, and any new developments that will increase the number of water service connections in the service area by 10% or more.

Under Part 2.10, the lead agency must identify the affected water supplier and ask the supplier whether new demand associated with the project is included in the supplier's UWMP. If the UWMP includes the demand, it may be incorporated by reference in the WSA (Water Code Section 10910[c][2]). If there is no public water system to serve the project, the lead agency must prepare the WSA itself (Water Code Section 10910[b]).

## **ELECTRICITY AND NATURAL GAS**

### **California Building Code (CBC), Title 24, Part 6:**

California Building Code (CBC), Title 24, Part 6, establishes building energy efficiency standards for new construction (including requirements for new buildings, additions, alterations, nonresidential buildings, and repairs). Energy efficiency standards were established in 1978 in response to a

legislative mandate to reduce California's energy consumption. The standards are updated periodically to allow consideration and possible incorporation of new energy efficiency technologies and methods.

## **SOLID WASTE**

### **California Waste Management Act of 1989:**

The California Waste Management Act of 1989 requires state, county, and local governments to substantially decrease the volume of waste disposed at landfills by the year 2000 and beyond. The act requires each county to submit an Integrated Waste Management Plan to the California Integrated Waste Management Board that includes an adopted Source Reduction and Recycling Element from each of its cities as well as a county-prepared Source Reeducation and Recycling Element for the unincorporated area. The element identifies existing and future quantities and types of solid waste, an inventory of existing disposal sites, a determination of the plan's economic feasibility, enforcement programs, and implementation schedule.

## **1.13 VISUAL RESOURCES**

### **FEDERAL PLANS, POLICIES, REGULATIONS, AND LAWS**

#### **National Scenic Byways Program**

The National Scenic Byways Program was established under the Intermodal Surface Transportation Efficiency Act of 1991 and reauthorized in 1998 under the Transportation Equity Act for the 21st Century. Under the program, the U.S. Secretary of Transportation recognizes certain roads as National Scenic Byways or All-American Roads based on their archaeological, cultural, historic, natural, recreational, and scenic qualities. There are 125 such designated byways in 44 states. The Federal Highway Administration promotes the collection as America's Byways®. This program is a voluntary, grassroots program that recognizes and supports outstanding roads. It provides resources to help manage the intrinsic qualities in the broader byway corridor to be treasured and shared.

### **STATE PLANS, POLICIES, REGULATIONS AND LAWS**

#### **California's Scenic Highway Program**

California's Scenic Highway Program was created by the California Legislature in 1963. Its purpose is to protect and enhance the natural scenic beauty of California highways and adjacent corridors through special conservation treatment. The State laws governing the Scenic Highway Program are found in the Streets and Highways Code, Sections 260–263. A highway may be designated scenic depending upon how much of the natural landscape can be seen by travelers, the scenic quality of the landscape, and the extent to which development intrudes upon the traveler's enjoyment of the view. Official designation requires a local jurisdiction to enact a scenic corridor protection program that protects and enhances scenic resources.

This page intentionally left blank.