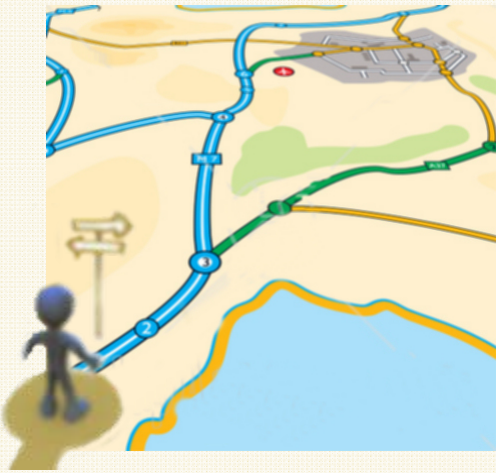


Federal Regulations Affecting Fuels Management Projects

*Miriam Morrill, WUI Coordinator/ Fire Outreach
Pacific Southwest Region*





What's the best route for environmental compliance?

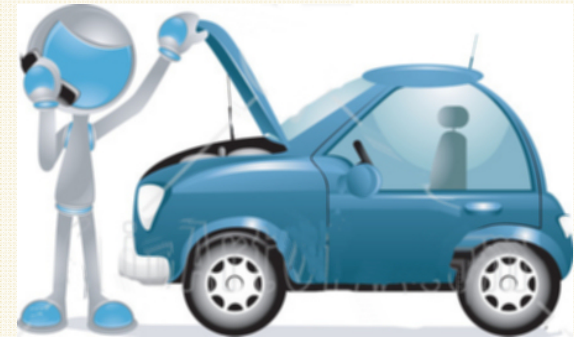


Look at the scope of your project

How can you prepare for environmental compliance?

Plan ahead or wait until it happens?

Best Management Practices?



You are in the driver's seat

National Environmental Policy Act

- Triggered when a Federal agency
 - directly funds project or
 - implements actions with
 - potential for changes in the physical environment

**Individual projects/ sub grantees funded by DOI under FSC Grants Clearinghouse not trigger NEPA but will expedite other compliance if already completed

California Environmental Quality Act

- Triggered when a Non-federal “public” agency is:
 - implementing a project,
 - funding a project implemented by others,
 - issuing a permit, or
 - facilitating or assisting in a project

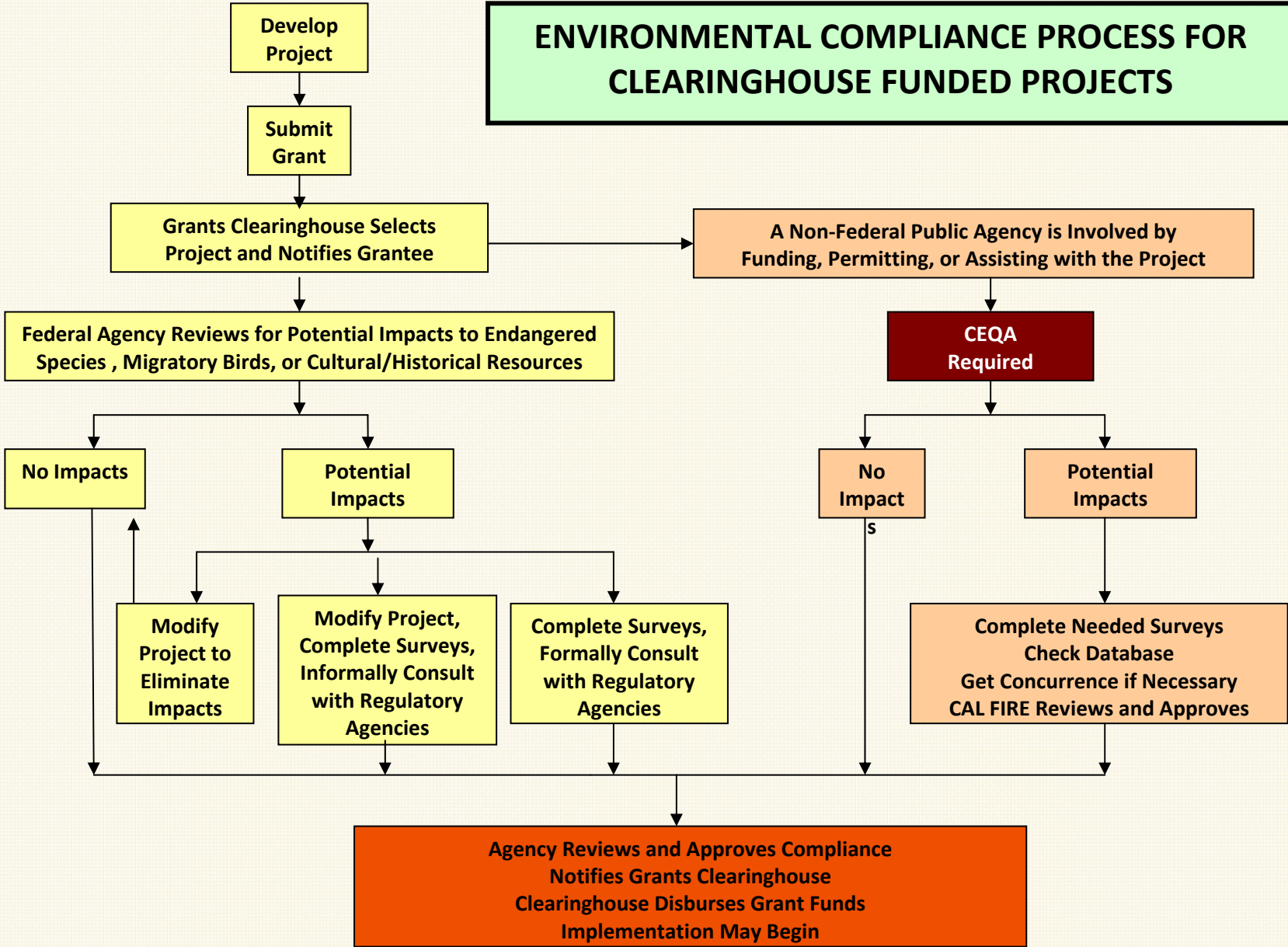
**Fire Safe Councils are not considered public agencies but may be responsible for compliance with these regulations when implementing community wildfire protection projects



Best Management Practices

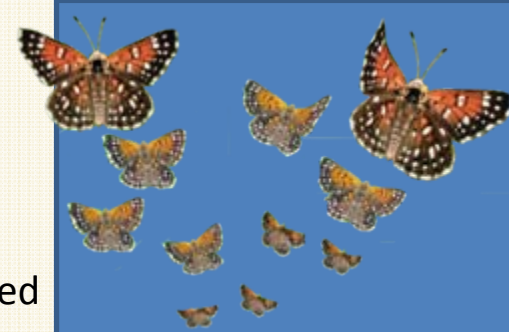
- Talk to the local Federal agency during the project development stage
- Include the costs for surveys and NEPA documentation development in your funding/ grant proposal
- Pieces of a CEQA analysis can be used in the development of a NEPA document
- Utilize effects analysis for adjacent NEPA/CEQA documents
- Negotiate / piggy-back with surveys completed by neighbor agencies

ENVIRONMENTAL COMPLIANCE PROCESS FOR CLEARINGHOUSE FUNDED PROJECTS



Endangered Species Act

- Broad framework to save species from extinction
 - designate Critical Habitat and develop Recovery Plans for those listed species
 - Lists species as
 - **Threatened** -those experiencing serious threats that may eventually lead to extinction, or
 - **Endangered** species are those on the brink of extinction
- Prohibits anyone from
 - “**taking**” (i.e. harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect) a Threatened or Endangered animal species
 - “**Harm**” also includes significant habitat modification or degradation which kills or injures species by significantly impairing essential behavioral patterns like **breeding, feeding or sheltering**
 - intentional removal, maliciously damage or destroy Threatened or Endangered plants on Federal property AND Prohibits the removal, damage, or destruction of listed plants on private property in violation of any state law or regulation



Best Management Practices

- Include funding for surveys in your grant/project proposal
- Avoid damaging/destroying ground burrows, holes and tunnels which provide shelter for many small animals before, during and after fuel reduction projects
- Limit the number of access routes, staging areas, and the total area of the treatment activities to the minimum necessary to achieve the treatment goal
- Provide worker awareness training including species ID and BMPs for project activities

California

Endangered Species Act (CESA)

- CESA- protects all native species and their habitats, threatened with extinction or experiencing a significant decline
- emphasizes early consultation to
 - avoid potential impacts to rare, endangered, and threatened species and
 - develop appropriate mitigation planning to offset project caused losses of listed species
- CESA allows for incidental take
- take incidental to otherwise lawful development projects



ESA Section 7 Consultation

- Any federally funded or permitted activity that may affect federally-listed Threatened or Endangered species or Critical Habitat
- **No Effect, Technical Assistance Letter:**
 - Project determined to have no effect
 - Species determined not present in the action area
- **May Affect, But Not Likely to Adversely Affect, Letter of Concurrence:**
 - Project has potential to affect, but with implementation of avoidance and minimization measures, is not likely to adversely affect
 - Counterpart Regulations
- **Likely to Adversely Affect, Biological Opinion and Incidental Take Permit:**
 - USFWS or NMFS will require a biological opinion and
 - incidental take permit
 - Jeopardy opinion



Best Management Practices

- *Contact adjacent land agencies to learn what compliance documents they have for similar activities*
- *Provide a project map, photos of habitat and detailed project info to your Federal compliance lead*
- *Participation early in the process is recommended to achieve the best possible result.*
 - *Incidental take statement conditions and measures in:*
 - *Conservation Agreement or*
 - *Landowner Plan*
- *Consider project phases and alternatives to be strategic about project planning, implementation and compliance*

ESA Section 10 Consultation

- Triggered when any private activity occurring on private land may adversely affect federally-listed species or Critical Habitat
- **Incidental take** authorized through agreements which conserve or minimize and mitigate impacts
 - Think long-term (project scale, planning, implementation, and conservation commitments)
 - Several agreement options:
 - Candidate Conservation Agreements
 - Safe Harbor Agreements
 - Habitat Conservation Plans- with Implementation Agreements
- Incidental take coverage vs. best management practices



Best Management Practices

- Consider BMPs or alternative conservation strategies :
 - Incidental take statement
 - “no take” agreements or
 - cooperative agreements
- HCPs can be prepared for single species or multiple species, for unlisted species.
- Single-species HCPs are easier to develop and implement, but multi-species HCPs should be considered for areas containing more than one listed or candidate species, and for long-term projects

Migratory Bird Treaty Act

- End to the commercial trade of birds and their feathers. Applies to whole birds, parts of birds, bird nests and eggs
- Applies to many common bird species and private, state and federal lands
- Cannot pursue, hunt, wound, capture, kill, possess, or trade migratory birds – Take does not include harm and harass
 - There are permits for some activities
- **Take-** if a person commit an acts that kills a protected bird. MBTA applies to both intentional and unintentional takings
 - **No Incidental Take Permits**
- a *felony* when the defendant “knowingly” takes a migratory bird (with intent to sell) or sells or attempts to sell such bird
- Does not provide protection of habitat of migratory birds, but does prohibit the destruction of “active” bird nests
- **BMP’s are best!!!**



More than 800 migratory birds are listed under the Migratory Bird Treaty Act

Best Management Practices

- * Avoid active nests by working during the non-breeding season
- Or
- * Hire a biologist to survey for nesting birds and determine no occurrence
- Or
- * Hire a biologist to determine active nest locations and provide adequate buffers around nesting area
- Or
- Start work before breeding season and continue disturbance regime during to deter nesting in the area
- a buffer can be 50 foot around smaller bird’s nest or up to a mile for some large raptors

Bald & Golden Eagle Protection Act

- Cannot **molest, disturb**, pursue, hunt, shoot, wound, kill, trap, capture, collect the **bird (any part), nest, or egg**

Disturb: “to agitate or bother a bald or golden eagle to a degree that is likely to cause

- injury to an eagle,
 - a decrease in its productivity, by substantially **interfering with normal breeding, feeding, or sheltering behavior**, or
 - nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.”
- Also includes impacts that result from human-induced alterations initiated around **a previously used nest site** during a time when eagles are not present
 - **No Permits / Take of Golden Eagle**
 - Bald Eagle permit/take thresholds per USFWS Region
 - **New permit** process for Bald Eagle based on **Health and Human Safety**
 - A violation of the Act can result in a fine of \$100,000 (\$200,000 for organizations), imprisonment for one year, or both, for a first offense. Penalties increase substantially for additional offenses, and a second violation of this Act is a felony.



Best Management Practices

- Consider implementing your field work outside of the bird breeding season and away from known nesting sites
Or
- Have a biologist determine the nesting & sheltering areas and include an avoidance buffer around the active nest
- A buffer can be a ¼ mile to one-mile around Bald and Golden Eagle nests, depending on project scope
- *The buffer can be smaller but you should discuss with a FWS Migratory Bird Biologist.*
- *You can also acquire a take permit from FWS in some cases of human health and safety.*

National Historic Preservation Act

- Intended to preserve historic and archaeological sites in the U.S.
- National Park Service maintains a National Register of Historic Places that identifies districts, sites, buildings, structures and objects worthy of preservation
- Properties on the list are not automatically protected from damage or destruction, but federally-funded (or permitted) projects that will impact sites listed, or eligible for listing, must complete the “Section 106 Review Process” to minimize potential harm and damage to listed properties.

“Historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people” (National Historic Preservation Act). Different cultural resources:

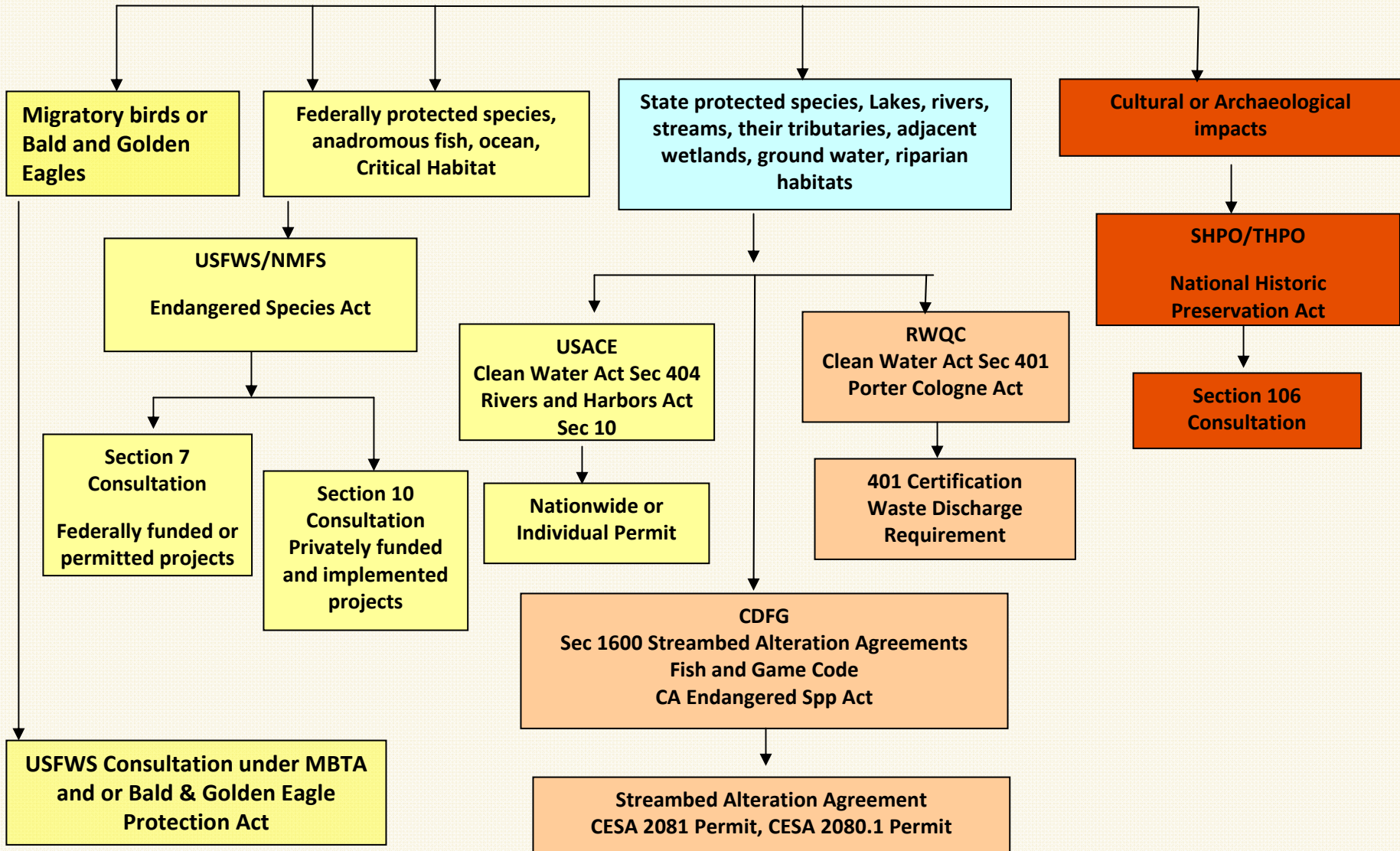
- Prehistoric: pre-1800
- Historic Buildings: Greater than 45 years old
- Historic Period/Era: after 1800
- Paleontology: “Dead Critters”



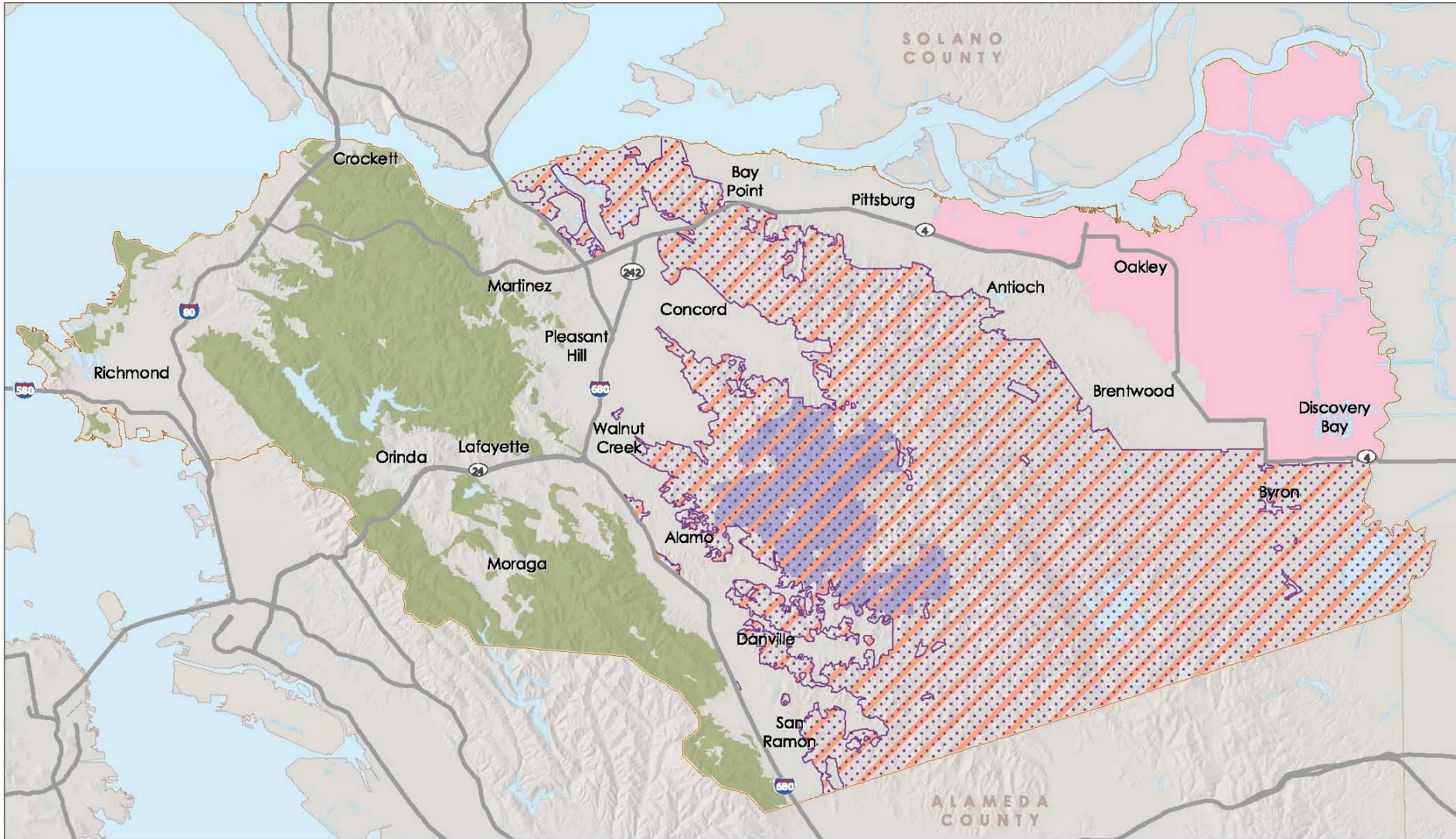
Best Management Practices

- Exclude the area containing cultural resources from prescribed burn area
- Clearly mark the boundaries of the cultural/historical resources in the project area
- Create protective buffers around the cultural sites
- Keep roads, skid trails, and landings away from cultural resources
- Take measures to reduce soil disturbance in cultural resource areas

Develop Project, Assess Impacts, Identify BMPs

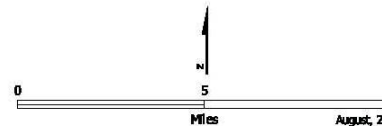


Grassland Species Ranges

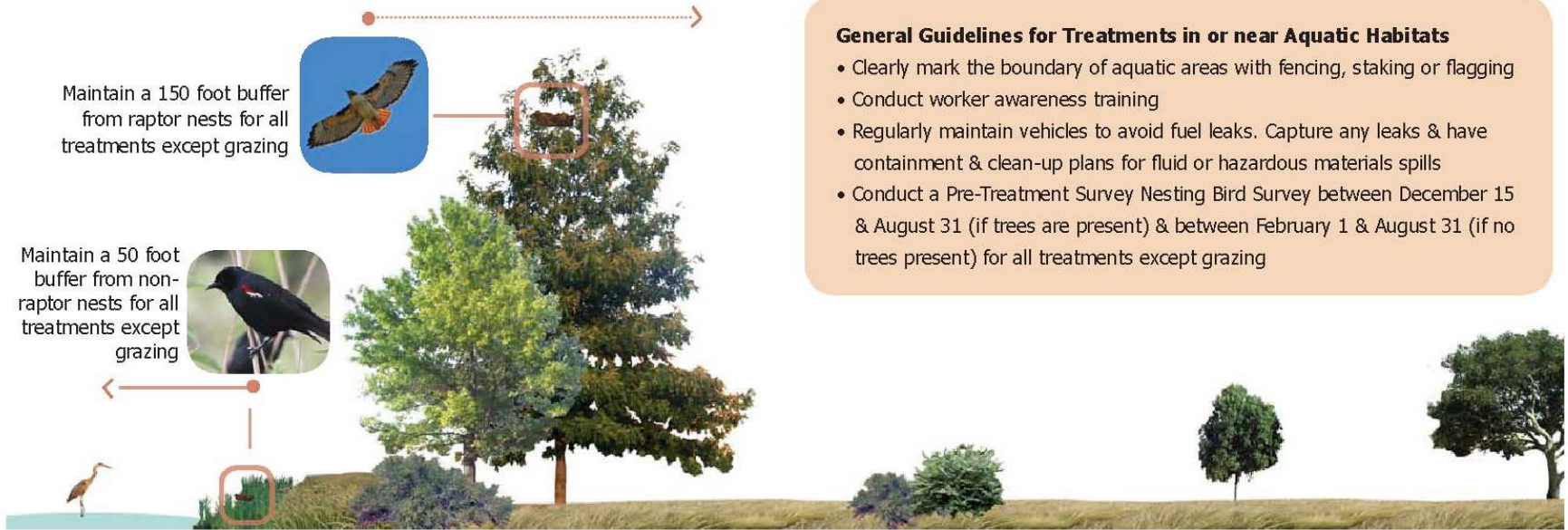


Grassland Species

- Bay Checkerspot Butterfly
- Callippe Silverspot Butterfly
- California Tiger Salamander
- Lange's Metalmark Butterfly
- San Joaquin Kit Fox



Aquatic Habitats



Maintain a 150 foot buffer from raptor nests for all treatments except grazing



Maintain a 50 foot buffer from non-raptor nests for all treatments except grazing



General Guidelines for Treatments in or near Aquatic Habitats

- Clearly mark the boundary of aquatic areas with fencing, staking or flagging
- Conduct worker awareness training
- Regularly maintain vehicles to avoid fuel leaks. Capture any leaks & have containment & clean-up plans for fluid or hazardous materials spills
- Conduct a Pre-Treatment Survey Nesting Bird Survey between December 15 & August 31 (if trees are present) & between February 1 & August 31 (if no trees present) for all treatments except grazing

Within 50 feet of water: No chemical use. No dumping of litter, debris, or sidecasts

Within 100 feet of water: No vehicle or equipment fueling or maintenance. Park & drive vehicles only on existing roads. No hazardous materials

Within 200 feet of water (only in areas with Giant Garter Snake, see map on page XX): Hand thinning & grazing preferred. Mechanical & prescribed burns permitted between May 1 & October 1 with Best Management Practices (see page XX)



Within 300 feet of water (only in areas with California Red-legged Frog, see map on page XX): Hand thinning & grazing preferred. Mechanical & prescribed burns permitted between April 15 & October 15 with Best Management Practices (see page XX)

Within 2100 feet of seasonal wetlands & ponds (only in areas with California Tiger Salamander, see map on page XX): Hand thinning & grazing preferred. Avoid disking, grading, excavating & other subsurface disturbance (see page XX)

Figure X. Best Management Practices for Hazardous Fuel Treatments in or near Aquatic Habitats (Riparian, Freshwater Marsh, Seasonal Wetlands & Ponds)

QUESTIONS?

Abraham Mill

