

Mitigation Alternatives

What works and where we have issues.

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MITIGATION

Our goals for this round table are:

1. Present the six ways we have identified to accomplish mitigation and the flowcharts mapping the process.
2. Share information on mitigation and advanced mitigation processes and opportunities.
3. Develop a list of recommendations on changes needed for offsite and advanced mitigation to be a more viable option/process.

Think about:

How are you accomplishing offsite or advanced mitigation in your district/region?

How are you defining advanced mitigation?

What has worked ?

What have you learned...would you do anything differently next time?

We have found there are lots of rules and regulations but no mitigation process.

We are taking a process that was developed to deliver transportation projects and trying to make mitigation fit into this.

LETS TALK!!!

Six Alternatives to Accomplish Mitigation

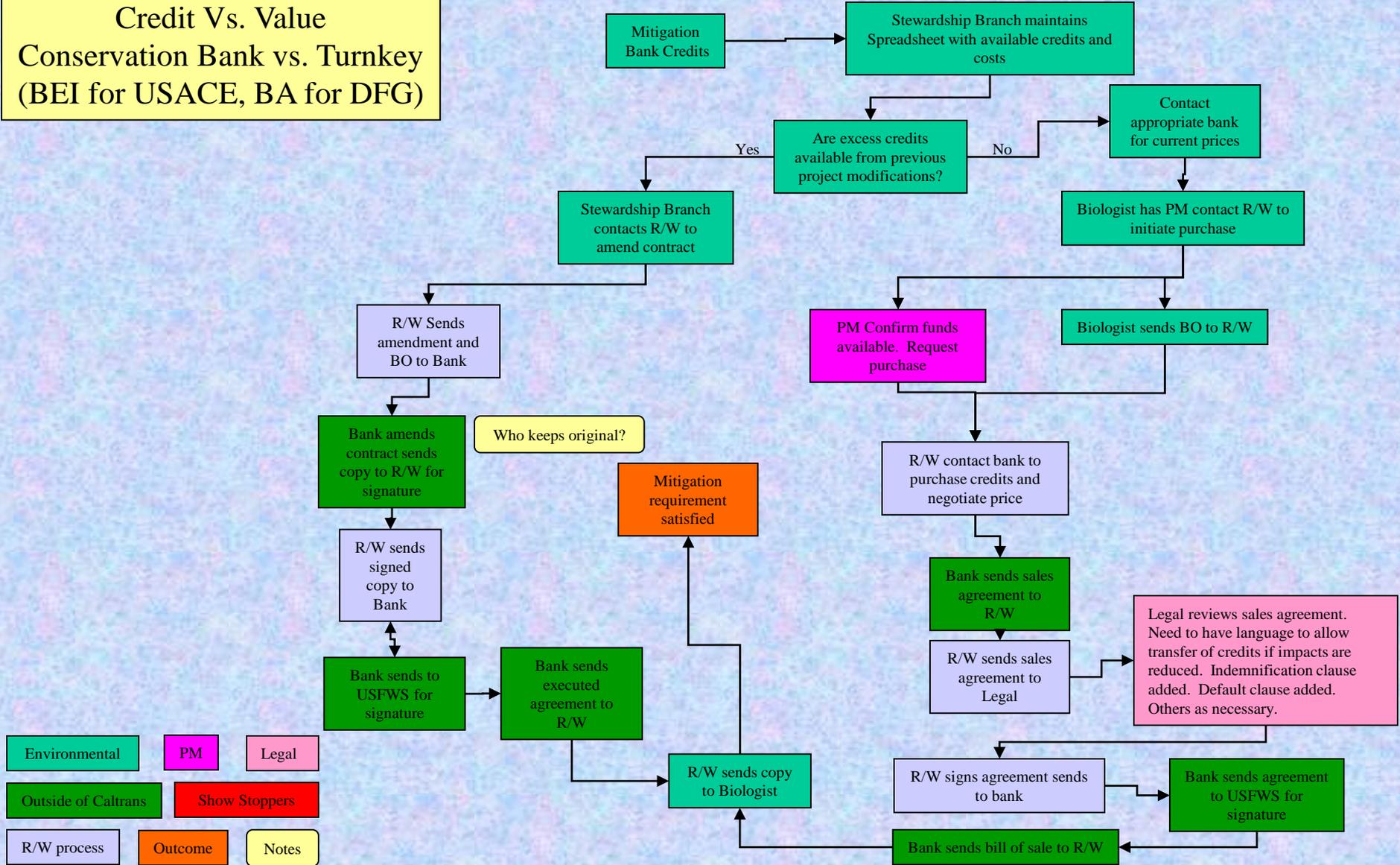
1. Conservation/Mitigation Banks
2. In Lieu Fee Programs
3. On-site creation
4. Off-site creation
5. On-site preservation
6. Off-site preservation

Based on North Region Experiences

These are
ALL works
in progress

1. Mitigation/Conservation Bank Credits for T&E Impacts

Credit Vs. Value
 Conservation Bank vs. Turnkey
 (BEI for USACE, BA for DFG)



Environmental PM Legal

Outside of Caltrans Show Stoppers

R/W process Outcome Notes

2. 404 In Lieu Fee Programs (USACE, RWQCB)

(A) USACE Funds Available (can only be used for NWP):

Habitat	Cost per acre as of 1/20/08
•Vernal Pools	\$350k
•Seasonal Wetland	\$150k
•Seasonal Marsh	\$150k
•Perennial Marsh	\$150k
•Open Water	\$150k
•Riparian	\$225k
•Riverine Aquatic Bed	\$150k
•Shallow Water Marsh	\$183k

In Northern California USFWS and USACE don't recognize each others In Lieu Fee Program

Federal reimbursement is possible if use four way agreement. Has been done in D7.

USACE San Francisco region doesn't accept In Lieu Fee Programs.

Caltrans does not record restrictions or CE's within our operating R/W

Can't use In-lieu fee program

State only funds
Three Way Agreement Required
Reimbursement of Federal funds
Four Way Agreement Required
Request from Stewardship Branch

Attach LOA.
(Actual in lieu agreement)

Mitigation requirement satisfied

Biologist request copy of receipt

NFWF sends receipt to USACE and CT confirming payment

R/W send payment to NFWF

Send all copies with invoice to R/W

Send to NFWF for review

Legal review and modification

4 copies with original signatures

Signature order:
NFWF (includes invoice)
USACE contact
CT Legal
District Director

Send to USACE for review

(C) FHWA issues: For Federal reimbursement a formal agreement between the USACE and the ILF sponsor must have the following:

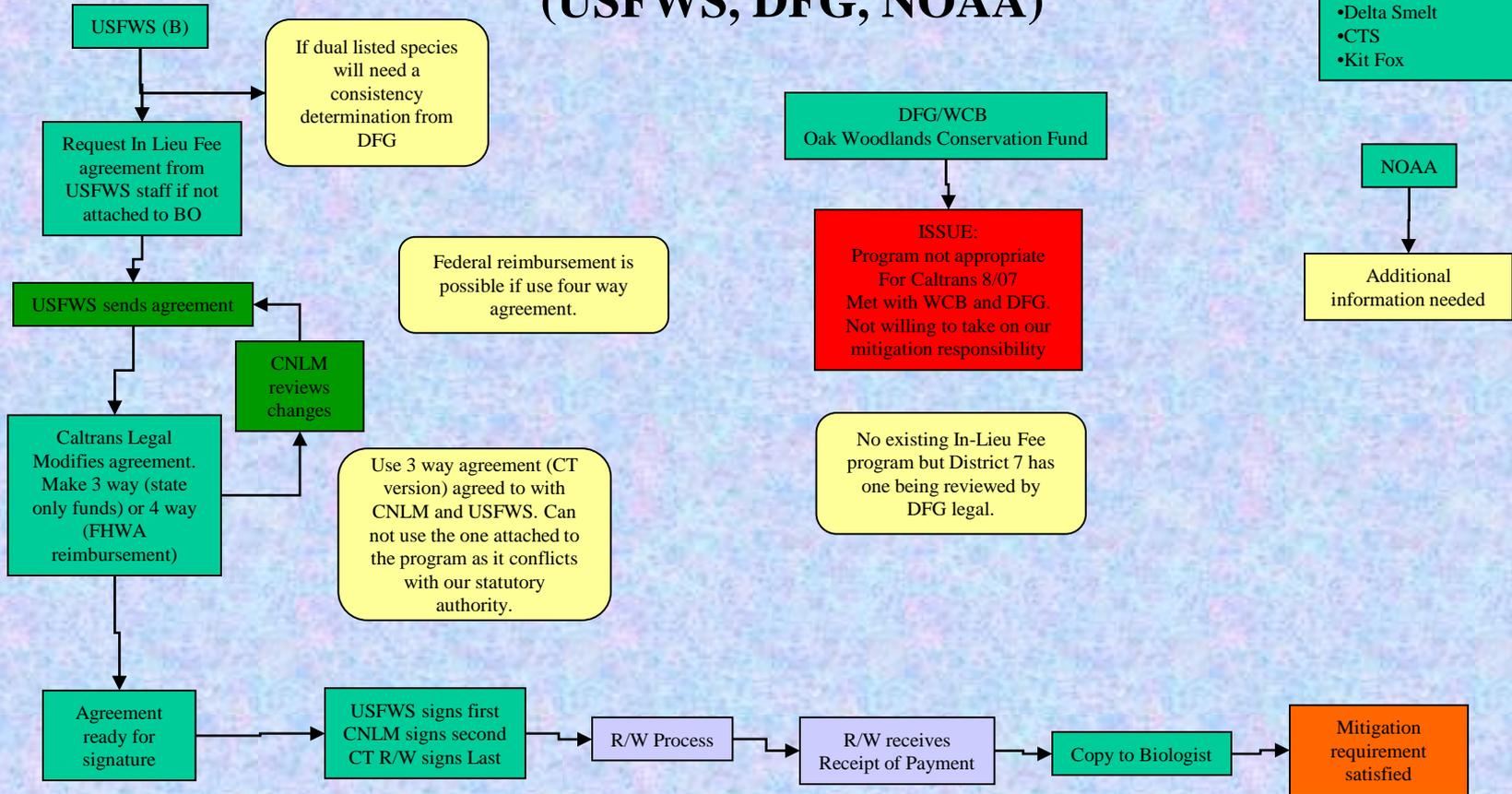
1. Geographic service area
2. Accounting procedures
3. Methods for determining fees and credits
4. A schedule for conducting the activities that will provide the compensatory mitigation
5. Performance standards for determining success of mitigation site
6. Reporting protocols and monitoring plans
7. Financial, technical, and legal provisions for remedial actions and responsibilities (contingency fund)
8. Financial, technical, and legal provisions for long term management and maintenance
9. A provision that clearly states that the legal responsibility for ensuring the mitigation in terms of the permit conditions are fully satisfied rests with the ILF sponsor.
10. A closed schedule for completing the ILF mitigation. This ensures that the mitigation will be accomplished in a timely way, and will avoid long term accounting/auditing problems.

Environmental	PM	Legal
Outside of Caltrans	Show Stoppers	
R/W process	Outcome	Notes

Some agencies don't recognize other agencies In Lieu Fee Program

2b. In Lieu Fee Programs (USFWS, DFG, NOAA)

(B) USFWS Fund Active:	
•CRLF	Expires 10/20/10
•VELB	Closed
•GGS	Expires 10/20/10
•VP Cons. Fund	Expires 9/30/12
•Delta Smelt	Expires 10/18/10
•CTS	Expires 9/30/12
•Kit Fox	Expires 10/20/10



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3. On site Creation

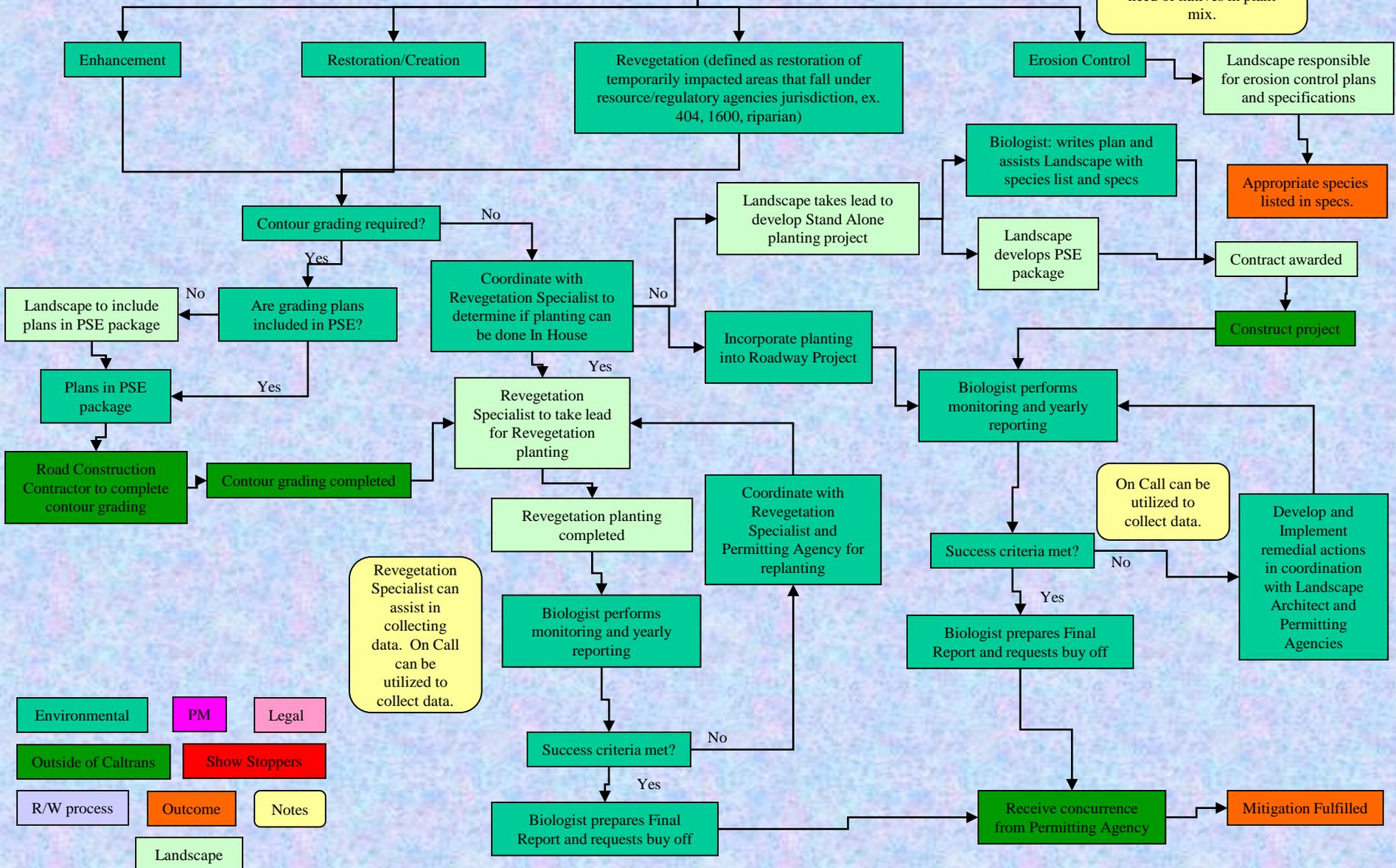
(START HERE)

Mitigation in operating R/W can NOT be protected in perpetuity. As of recent, agencies are requesting in perpetuity protection.

Biologist develops Mitigation Plan (permit driven or in house only) in coordination with Revegetation Specialist and Landscape Architect as appropriate.

\$ location (State Furnished, BEES, Line Item)

Biologist to Coordinate with Landscape regarding need of natives in plant mix.



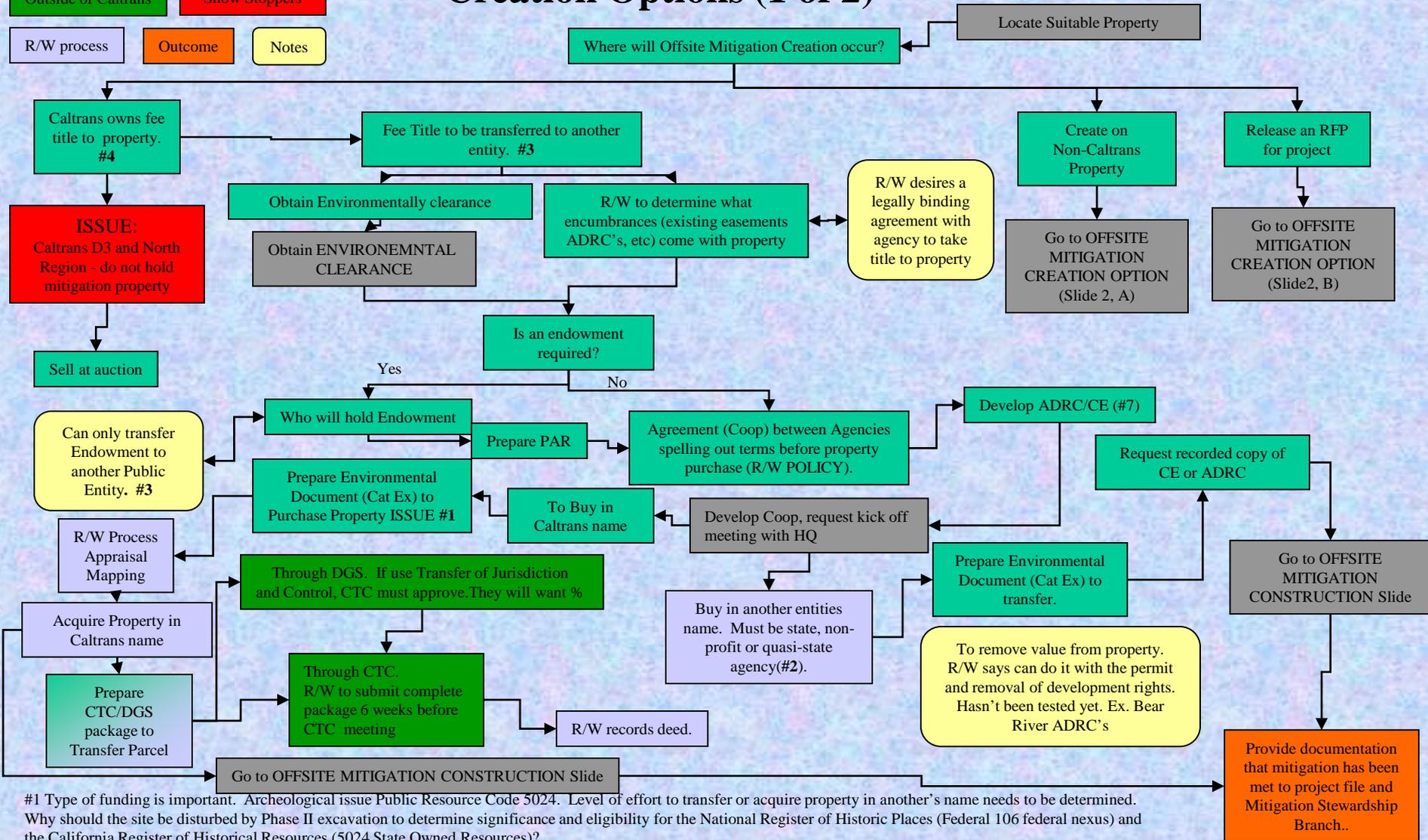
Environmental PM Legal
Outside of Caltrans Show Stoppers
R/W process Outcome Notes
Landscape

4. Off Site Mitigation Creation Options (1 of 2)

Environmental PM Legal

Outside of Caltrans Show Stoppers

R/W process Outcome Notes



#1 Type of funding is important. Archeological issue Public Resource Code 5024. Level of effort to transfer or acquire property in another's name needs to be determined. Why should the site be disturbed by Phase II excavation to determine significance and eligibility for the National Register of Historic Places (Federal 106 federal nexus) and the California Register of Historical Resources (5024 State Owned Resources)?

Erin/Sue working with Greg King of HQ to determine process 9/4/07). Need concurrence from SHPO – 30 days.

#2 current bill would allow transfer of property to Non-profit but doesn't address the transfer of an endowment. Has passed 10/07.

#3 If mitigation is for DFG permit or future permit they must hold Endowment. Our Legal disagrees

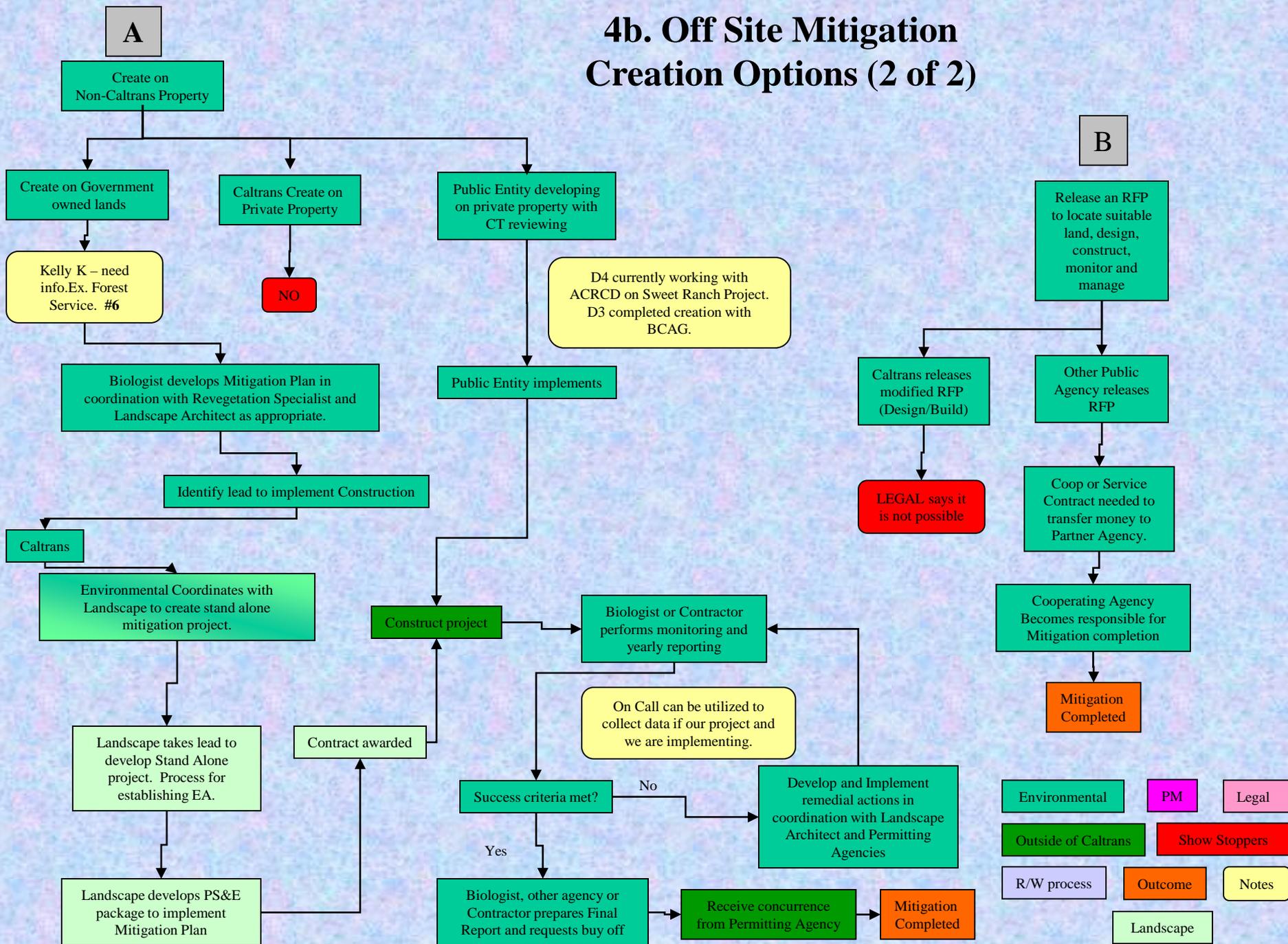
#4 USFWS seems to want CT to hold fee title and have a manager hold the CE and run it according to an approved plan. ARE WE GOING TO CHALLENGE?

#5 Need willing partner. BCAG did, Mendocino won't. **Caution – Requires Coop or Service Contract needed to transfer money to agency.**

#6 USFS can not put a CE to protect in perpetuity. Under NEPA USFS is lead. Would not do CEQA.

#7 DFG not accepting restrictions on property they are to hold.

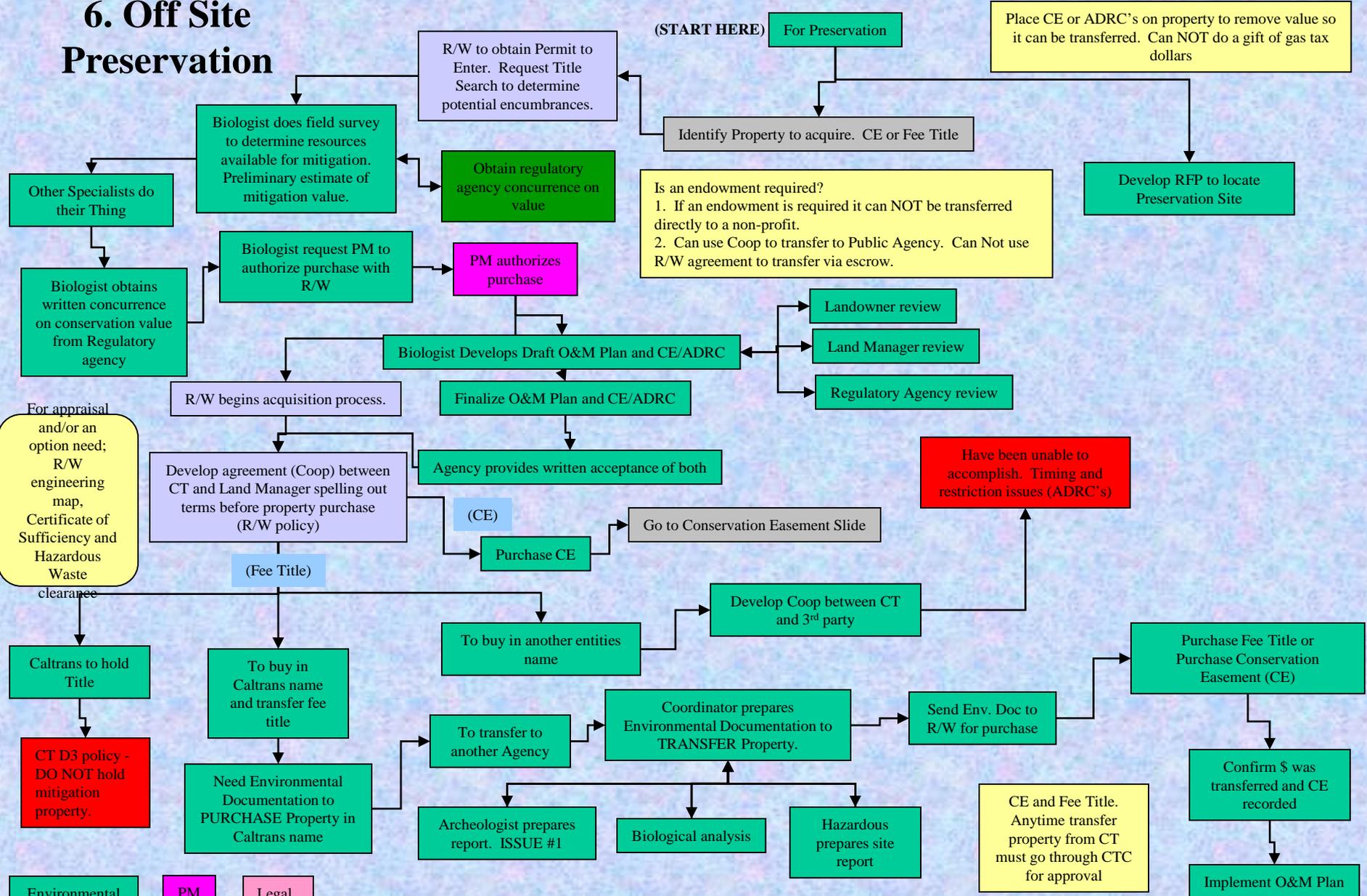
4b. Off Site Mitigation Creation Options (2 of 2)



5. On-Site Preservation

Mitigation in operating R/W can NOT be protected in perpetuity. As of recent, agencies are requesting in perpetuity protection.

6. Off Site Preservation



For appraisal and/or an option need; R/W engineering map, Certificate of Sufficiency and Hazardous Waste clearance

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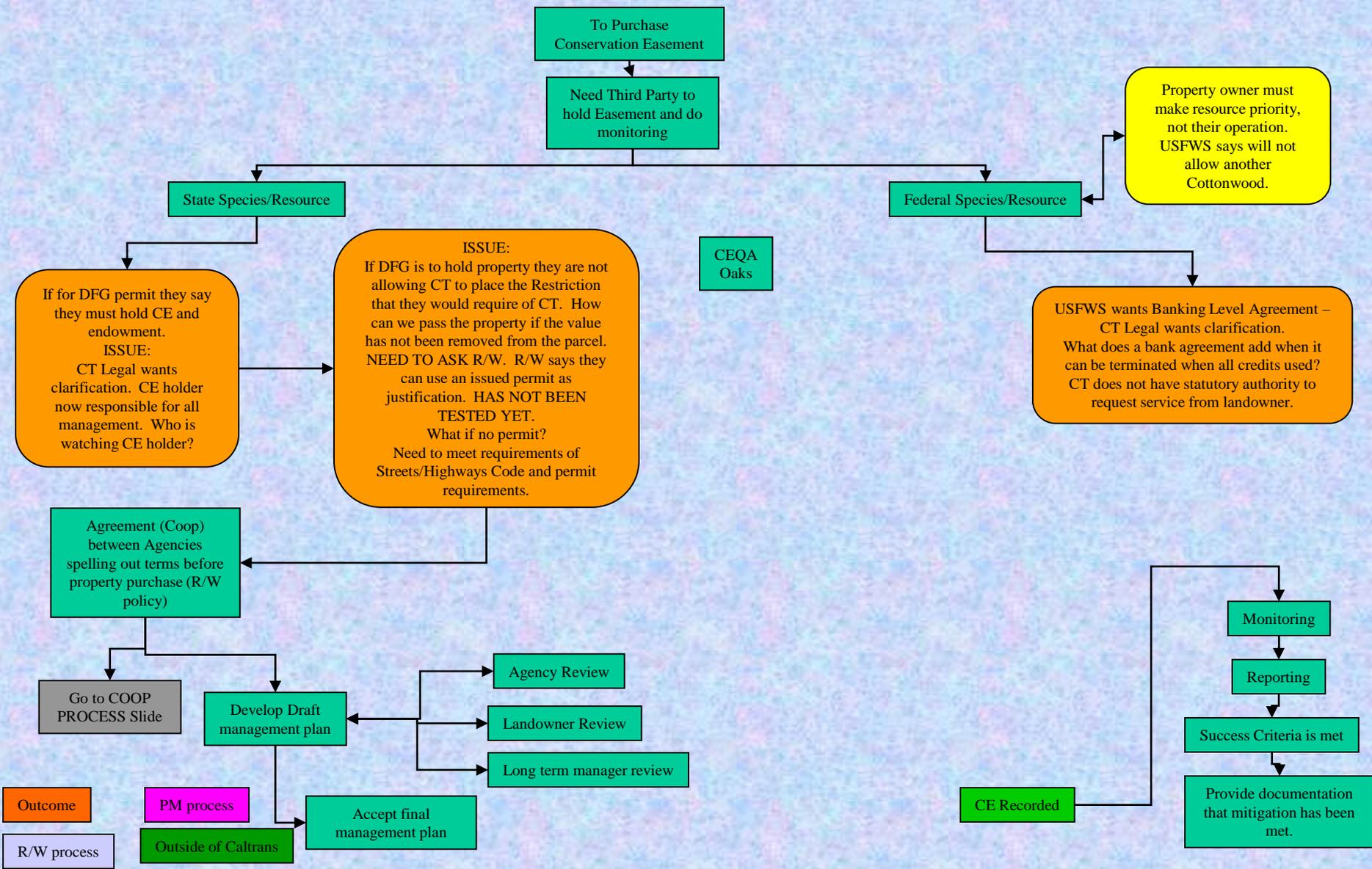
#1 Archeological issue 502.4. Level of effort to transfer or acquire property in another's name needs to be determined. Why should the site be disturbed by Phase II excavation to determine significance and eligibility for the National Register of Historic Places (Federal 106) and the California Register of Historical Resources (502.4 State Owned Resources)?

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Other slides of interest

(maybe)

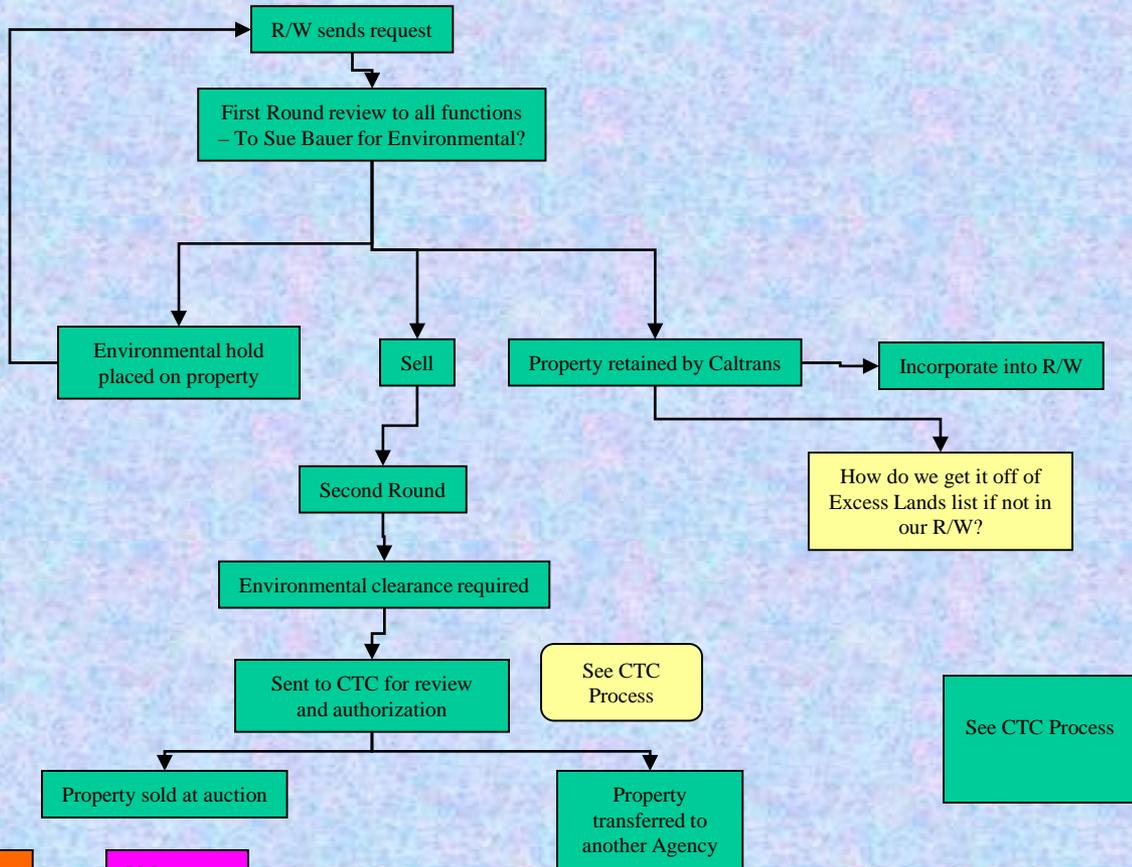
Conservation Easement



Excess Lands

Contact Janel

Who determines if excess?



Outcome

PM process

R/W process

Outside of Caltrans

Finding Lands

ISSUE: Caltrans Policy is not to hold mitigation lands

Option: Could find land then locate long term manager. Will need to hold property until transfer.

Identify long term land owner

Possible conflict of goals. Their management needs could conflict with mitigation management needs.

DFG

RCD

USFWS

Private Land Owner

Non-profits

Universities

State Parks

Forest Service

BLM

RFP

ISSUE: CT must remove value to transfer and DFG not accepting ADRC's.

ISSUE: Not all are qualified to take on the tasks. Must be approved by jurisdictional agency.

ISSUE: Can not transfer Endowment currently

Dealing with Academia

Mitch Dallas (HQ) did this

Do NOT have statutory authority to do Design Build

Are mitigation needs consistent with Wildlife Area management requirements

ISSUE: Won't take property unless adjacent to their property. Refuges not managed specifically for T&E species. Possible conflict of goals when managing a refuge vs. managing for T&E species.

Need legislation that allows the transfer of endowment

Mitigation possible

Mitigation not compatible

Locate Property

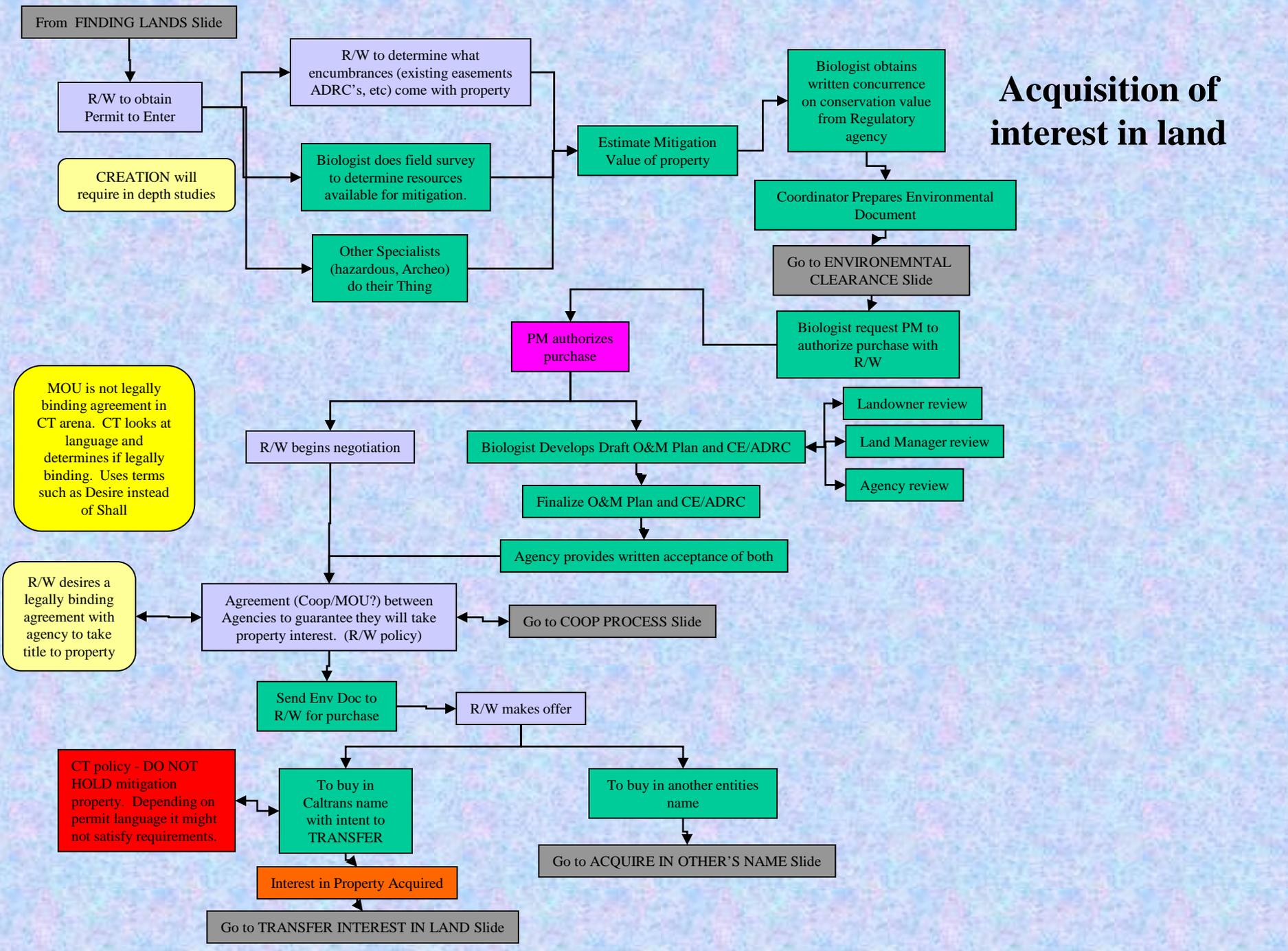
Identify long term manager

Identify CE holder

Go to OFFSITE MITIGATION CREATION Slide

Go to OFFSITE MITIGATION PRESRVATION Slide

Acquisition of interest in land



CREATION will require in depth studies

MOU is not legally binding agreement in CT arena. CT looks at language and determines if legally binding. Uses terms such as Desire instead of Shall

R/W desires a legally binding agreement with agency to take title to property

CT policy - DO NOT HOLD mitigation property. Depending on permit language it might not satisfy requirements.

Transfer interest in land

