

**STAFF REPORT  
C39**

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04/05/19  
W 27210  
M. Schroeder

**GENERAL LEASE – PUBLIC AGENCY USE**

**APPLICANT:**

San Joaquin Area Flood Control Agency

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in the San Joaquin River, adjacent to Assessor's Parcel Numbers 133-060-01 and 109-020-06, near Stockton, San Joaquin County.

*AUTHORIZED USE:*

Construction, use, and maintenance of a fixed wall, gate structure, flood wall, bank protection, and dredging of up to 8,650 cubic yards for installation of the fixed wall and gate structure.

*LEASE TERM:*

35 years, beginning April 5, 2019.

*CONSIDERATION:*

The public use and benefit; with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

*SPECIFIC LEASE PROVISIONS:*

Lessee shall place warning signage or buoys, clearly visible from the shore and in the water, both upstream and downstream of the construction site, to provide notice of the project and to advise the public to exercise caution. Lessee shall place and maintain such signage at all times during the project and construction activities and shall notify the California Department of Parks and Recreation's Division of Boating and Waterways of the location, description, and purpose of such signage upon its installation and removal.

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**STAFF ANALYSIS AND RECOMMENDATION:**

**Authority:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503;  
California Code of Regulations, title 2, sections 2000 and 2003.

**Public Trust and State's Best Interests Analysis:**

The Applicant has applied for a General Lease – Public Agency Use for the proposed construction, use, and maintenance of a fixed wall, gate structure, flood wall, bank protection, and dredging of up to 8,650 cubic yards for installation of the fixed wall and gate structure associated with the Smith Canal Gate Project (Project).

The Applicant, in partnership with Reclamation Districts (RDs) 1614 (whose boundaries include the north bank levee) and 828 (whose boundaries include the south bank levee), is implementing the Project in the San Joaquin River, near the mouth of Smith Canal. Two fishing platforms will also be constructed in the deep-water ship channel of the San Joaquin River, which at this location is not within the Commission's jurisdiction. The Smith Canal is a backwater slough of the Sacramento–San Joaquin River Delta, adjacent to the San Joaquin River across from Rough and Ready Island and the Port of Stockton.

In 2005, as part of the Federal Emergency Management Agency (FEMA) Flood Map Modernization Program, FEMA began requiring levee owners to submit documentation showing that their levees provide 100-year level flood protection. RD 1614 and RD 828 both determined that existing levees along Smith Canal would not meet the FEMA criteria.

The Code of Federal Regulations, title 44, section 65.10 requirements include criteria for design, operation plans, maintenance plans, and certification by a registered civil engineer. FEMA revoked the accreditation of the levees surrounding Smith Canal in 2009, leading to the area surrounding Smith Canal to be mapped as a Special Flood Hazard Area. The accreditation was revoked primarily due to extensive encroachments, such as houses, garages, and other buildings from the landside of the levee, and stairs, docks, planters, boat houses, and boat slips from the waterside of the levee, that prevented access for maintenance and inspection.

The Applicant, in partnership with the Smith Canal RDs, led a process of evaluating options for restoring FEMA accreditation to the Smith Canal area. The Applicant evaluated several alternatives in the Environmental Impact Report (EIR) for this project, State Clearinghouse No.

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2014062079, determining in-place rehabilitation of the levees was economically infeasible and would have greater environmental impacts than the other alternatives considered. The Applicant concluded that the environmentally superior and most cost-effective alternative would be constructing a fixed wall and gate structure at the mouth of Smith Canal.

To address flood risk, the Applicant is proposing the construction of the project to remove the area from the 100-year floodplain and meet FEMA's minimum acceptable level of performance of withstanding a 100-year flood, which is the regulatory standard specified by the National Flood Insurance Program. A 100-year flood is a flood event with a 1 percent chance of taking place in any given year over a 100-year span. The proposed fixed wall and gate structure will be built to provide a minimum 200-year level of performance as required in the Central Valley Flood Protection Plan. On November 2, 2018, the Applicant filed a Certification of Consistency for the Delta Plan with the Delta Stewardship Council.

The fixed wall will be constructed as a cellular sheet pile wall, consisting of interlocking flat-web steel sheet piles that will be driven in a curved cellular design. The sheet pile walls will be constructed to be approximately 29 feet wide at the connection between cells and 34 feet wide at the widest part of each cell with a top elevation of 15 feet. The sheet piles will be driven into the riverbed using a vibratory hammer. The fixed wall will be filled with granular material, with the wall extending approximately 800 feet across the mouth in the San Joaquin River adjacent to the Smith Canal. It includes a 50-foot wide gate structure. The granular material will consist of a sand and gravel mixture installed between the walls with a front-end loader.

During high flow and tide events, the gate structure will isolate Smith Canal from the San Joaquin River and allow existing levees to function as a secondary flood risk-reduction measure. It is expected that the gate will be closed an average of six times per year for flood control purposes. The gate will also be closed for equipment testing as needed, and during testing the gate will be closed and then immediately reopened. While the closure of the gate is minimal throughout the year, there will be an impact on tidal movement, navigation, and recreation in Smith Canal during the closure of the gate. With the exception of the few times the gate requires closure, the gate will remain open allowing for tidal movement, continuous navigation and boating, and recreation in Smith Canal.

The opening portion of the gate structure will consist of a double-door gate structure, opening outwards toward the San Joaquin River. When open,

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the gate doors will recess into the gate structure, providing a 50-foot wide opening. The structure will be opened and closed by electric motors located above water on top of each gate hinge. The gate doors, consisting of several panels, will be attached to a concrete foundation using stainless steel anchor bolts. The gate panels will be gasket-sealed at their connection to the fixed wall structure and at the point where the two panels come together.

Construction and installation of the gate structure will begin by installing a metal sheet pile cofferdam to dewater the work area and allow dry work on the foundation and walls for the gate structure. To form the cofferdam, sheet piles will be driven using a barge-mounted crane equipped with a vibratory hammer. In order to provide a level surface for construction of the gate structure and fixed wall, up to 8,650 cubic yards may be dredged in the river channel located between Dad's Point and Stockton Golf and Country Club. The project requires dredging for completion of construction, but maintenance dredging is not required at this time. A small portion of the gate structure and fixed wall are within the Commission's jurisdiction (see Exhibit B, Lease Area A-1). An additional area may be dredged to allow barge access for pile driving during periods when water surface elevations may be low, which would limit barge access. Material will be dredged using a combination of a long-arm excavator, a dragline excavator, and a clamshell excavator, and silt curtains may be used along the perimeter of dredging to control sediment movement in the water. Dredged material will be deposited at U.S. Army Corps of Engineers-approved disposal sites or at approved beneficial upland use sites.

Once the fixed wall is constructed, approximately 3,400 tons of riprap will be placed where the wall ties into the banks, and an additional 800 tons will be placed around the edge of the gate structure, for a total of 4,200 tons. The wall tie-ins are designed to be stable, but the riprap will be needed for scour protection during flood events. The riprap will be placed using either an excavator or a clamshell bucket.

Construction of the fixed wall and its use as a flood structure contributing to 200-year level of flood protection will require the banks upstream and downstream of the site to also meet the minimum elevation of 15 feet necessary to achieve a 200-year level of protection. The downstream banks adjacent to the Stockton Golf and Country Club meet this elevation requirement. However, several areas along Dad's Point do not, including most of its eastern half. To address the elevation deficiency, as well as seismic and seepage concerns, a single sheet pile floodwall will be built,

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and fill will be placed in additional areas to bring the entirety of Dad's Point up to a minimum elevation of 15 feet. Only a fraction of the project occurring on Dad's Point is within the Commission's jurisdiction (see Exhibit B, Lease Area A-2).

To accommodate the new single sheet pile floodwall and fill placement, the existing landscaping and concrete pathway along the middle of Dad's Point will be removed. Most of the existing vegetation along the edges of Dad's Point will be preserved in place. Sheet piles will then be installed using a vibratory hammer and impact hammer, and a 2-foot-wide concrete cap will be constructed on top of the single sheet pile floodwall where exposed. Dad's Point will be regraded following construction of the floodwall to cover both sides of the floodwall wherever possible, possibly requiring placement of fill material to form a 20-foot-wide levee crown. After grading, an 8-foot-wide all-purpose road and a 12-foot-wide concrete paver trail will be constructed along the crown to provide access to the southern end of the fixed wall and gate structure.

A multi-use interpretive trail suitable for walking, running, and bicycling will be constructed on Dad's Point after the floodwall and grade adjustment are complete. Kiosks with interpretive signs will help educate the public on a variety of topics, including local wildlife and plants, the San Joaquin River watershed, the history of the Port of Stockton, and the Sacramento–San Joaquin River Delta. The signs will be developed in multiple languages to reach the widest audience possible.

Two fishing and wildlife viewing platforms will be constructed in the San Joaquin River adjacent to Dad's Point approximately 750 feet apart. The platforms will be constructed by driving 24-inch steel pipe piles with an impact hammer into the bank in a pattern extending out from the peninsula to support the ramp and platform, with some of the piles placed below the mean high-water mark of the San Joaquin River. The platforms will be 36 feet wide and 12 feet deep, with a ramp for access.

Upon completion of construction, a locked security gate will be installed at the south end of the fixed wall at Dad's Point and at the north end of the fixed wall at the Stockton Golf and Country Club. The gate will be 8 feet high and will prevent public access to the gate structure. Access to the gate structure through the security gate will be limited to the Applicant and authorized maintenance personnel for security and public safety purposes.

To keep boats from impacting the fixed wall, a fender system will be installed upon completion of construction of the fixed wall. Thirty-five steel

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pipe dolphin piles (36 inches in diameter) will be installed on the San Joaquin River side of the wall, and two fender piles will be installed on both the San Joaquin River and Smith Canal sides of the gate structure. The pipes will be driven using a barge-mounted impact hammer. The dolphin piles will be spaced every 16 feet on each side of the gate structure and will be placed approximately 55 feet away from the centerline of the fixed wall. The fender piles will have a floating fender that will move up and down the pile with the tide, and all four fender piles will have a top-mounted solar-powered light-emitting diode navigation light.

Construction of the fixed wall will be completed over 2 years to comply with the allowable in-water work period from mid-July to mid-October each year. The southern portion of the fixed wall will be installed during the first year of construction and the northern portion during the second year. Construction of the northern side of the fixed wall will not take place until after the gate structure has been tested to confirm operability. Construction of the gate structure and fixed wall will be done using barge-mounted equipment. The granular material will be delivered to the construction site by truck or barge using a crane equipped with a clamshell bucket. Access to the site will be through Luis Park, adjacent to Dad's Point, and the Stockton Golf and Country Club.

Routine inspection and maintenance of the gate structure and associated equipment will be conducted on an annual basis to ensure that flood risk reduction will be provided by the operation of the gate structure. This inspection and maintenance will be conducted on the gate's abutment seals, motors, hinges, and panels.

Maintenance of the fixed wall structure corrosion protection system will take place every 2 years. The fill material in the fixed wall will be inspected annually, and fill material will be added as required. Likewise, graffiti removal from the gate structure and the Dad's Point sheet pile wall cap will be conducted as needed to avoid creating a visual nuisance.

Floating debris that accumulates behind the fixed wall will be regularly removed. The frequency of debris removal will depend on the rate of accumulation, to be determined by weekly visual monitoring of the site. In addition, water hyacinth will regularly be removed from the areas on the Atherton Cove/Smith Canal side of the fixed wall through development and implementation of a water hyacinth control program. The frequency of water hyacinth removal will depend on the rate of vegetation growth and accumulation, to be determined by regular visual monitoring of the site.

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Overall, the proposed action is considered beneficial because it does not permanently or unduly impede navigation, fishing or boating. The flood control agency and the Smith Canal RD's have determined that the project is the best way to reduce flood risk to over 8,000 homes. Prevention of major flooding is in the best interests of the state as supporting flood prevention is a more viable option than the aftermath of a large flood event. The project will enhance the public's access to fishing and wildlife viewing for the statewide public. There will be a temporary loss of fishing access from August 2019 to November 2021 at Dad's Point due to the proposed project. However, it is anticipated that parking and boat launch access will be continuously maintained during construction at portions of nearby Louis Park. In addition, other nearby parking areas in Louis Park will be available for those participating in non-boating activities.

The proposed lease includes certain provisions protecting the public use of the proposed lease area and requires the Applicant to obtain necessary permits for the project. Further, the proposed project does not significantly alter the land, the lease does not alienate the State's fee simple interest, and neither permanently impairs public rights. The lease requires the Applicant to conduct all work safely and indemnify the Commission in the event of any liability resulting from the proposed action or use. The lease is limited to a 35-year term, and does not grant the lessee exclusive rights to the lease premises, which allows the Commission flexibility to determine if the Public Trust needs of the area have changed over time. Therefore, staff believes this use of public land will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease.

### **Climate Change:**

Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The proposed Project was designed to withstand expected sea-levels rise rates in this area of the San Joaquin River by carefully designing the project features like the fixed wall, gate structure, flood wall, and bank riprap.

The California Ocean Protection Council updated the State of California Sea-Level Rise Guidance in 2018 to provide a synthesis of the best available science on sea-level rise projections and rates. Commission staff evaluated the "high emissions," "medium-high risk aversion" scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The San Francisco tide gauge was

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used for the projected sea-level rise scenario for the region as listed in Table 1.

**Table 1. Projected Sea-Level Rise for San Francisco**

<b>Year</b>	<b>Projection (feet)</b>
2030	0.8
2040	1.3
2050	1.9
2060	2.6
2100	6.9

Source: Table 13, State of California Sea-Level Rise

Guidance: 2018 Update

Note: Projections are with respect to a 1991 to 2009 baseline.

Climate change impacts could increase the San Joaquin River's inundation levels within the lease area, and this risk of flood exposure is likely to increase with time. In addition, as stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, fire, drought, extreme heat, and storms (especially when coupled with sea-level rise). In rivers and tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris as well as decreased bank stability and structure. Conversely, climate-change induced droughts could decrease river levels and flow for extended periods of time. Climate change and sea-level rise will further influence riverine areas by changing erosion and sedimentation rates. Flooding and storm flow, as well as runoff, will likely increase scour and decrease bank stability at a faster rate.

The purpose of the Project is to protect residents, businesses, and public infrastructure from flooding and meet FEMA standards for accreditation. The existing levees along Smith Canal (backwater slough of the Sacramento-San Joaquin Delta) are heavily encroached upon and cannot be certified as meeting FEMA standards<sup>1</sup>. The proposed gate, when closed during high water levels in the San Joaquin River, would allow the Smith Canal to be isolated from the San Joaquin River and ensure that the affected area would not be in the FEMA-designated 100-year floodplain. Once this area is isolated with the gate during high water events, it would allow the existing levees to function as a secondary flood risk-reduction

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<sup>1</sup> Agency's Findings of Fact and Statement of Overriding Considerations on page 1-1 (pdf page 5) at <https://www.sjafca.com/pdf/smithcanal/docs111215/Findings.pdf>.

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measure because the gate would be temporarily closed during floods, so the flood waters would remain in the San Joaquin River and not enter the Smith Canal.

The Commission considers the sea-level rise projections described in Table 1 for this area for projects meant to protect populations that will experience medium-to-high consequences as a result of potential sea-level rise and storm activity. The Applicant evaluated sea-level rise for this project through 2050 (30 years from building the project) assuming future sea-level rise could be 1.4 feet based on “high” estimates for 2050<sup>2</sup> (modified National Research Council Curve III). This projection (1.4 feet by 2050) differs from the information provided in the current State of California Sea-Level Rise Guidance: 2018 Update from the Ocean Protection Council (1.9 feet by 2050), as shown in Table 1.

Though the Applicant used a lower sea-level rise estimate than the Commission, the height of the fixed wall and gate of the proposed Project accounts for an additional 1.1 feet of ‘uncertainty’ in sea-level rise, allowing for up to 2.5 feet of sea-level rise, which covers the estimated projections found in the state guidance through the terms of the lease, to 2054. Therefore, the proposed Project would be able to withstand sea-level rise in accordance with the state’s most recent and best available science and guidance.

In addition to accommodating sea-level rise through the term of the lease, the proposed Project is also designed to protect against a 200-year storm, with an additional 3 feet of freeboard above storm event and sea-level rise water levels.

To accommodate these sea-level rise predictions, the following project components are proposed on lands under the Commission’s jurisdiction to withstand predicted levels of sea-level rise:

- **Fixed Wall** - The fixed wall would be constructed using interlocking flat-web steel sheet piles that are approximately 29 inches wide and would be driven in a curved cellular design. The top of the fixed wall would be 15 feet above sea level (NAVD 88) and it would be capable of withstanding predicted of sea-level rise.

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<sup>2</sup> Response to Commission’s comments on Final EIR pages 9-30 and 9-31 (pdf pages 507 and 508) at <https://www.sjafca.com/pdf/smithcanal/docs111215/FinalEIR.pdf> in response to Commission’s August 7, 2015, comment letter (Comment #3) for the Draft EIR.

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- **Gate Structure** - The gate would also be 15 feet above sea level (NAVD 88) to withstand the predicted sea-level rise levels. There would be 36-inch steel pipe piles to construct the base of the gate structure, and two 36-inch steel pipe fender piles would be added to each side of the gate structure. This gate would also provide additional flood protection because the gate would be manually closed during high water events to isolate Smith Canal from the San Joaquin River.
- **Dad's Point Flood Wall** - The 700 linear feet of grade raise to a minimum of 14.9 feet flood wall along Dad's Point to match the grade of Louis Park. It will be a continuous sheet pile wall. Most of this sheet pile wall will be entirely underground along the uplands of Dad's Point. For safety purposes, a concrete cap will be installed on top of the sheet pile wall in areas where it is exposed.
- **Riprap** - Riprap would be added to both sides of the fixed wall, on both sides of the gate structure, and to the locations where the fixed wall would be connected to the Dad's Point and to the golf course to provide scour protection during flood events.

Regular maintenance, as required by the terms of the lease, will reduce the likelihood of severe structural degradation or dislodgement.

**Conclusion:**

For the reasons stated above, staff believes the issuance of the proposed lease will not substantially impair the public rights to navigation, fishing, or other Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
2. An EIR, State Clearinghouse No. 2014062079, was prepared for this project by the San Joaquin Area Flood Control Agency and certified on November 19, 2015, and an Addendum approved by the Applicant on November 16, 2017, and an Addendum II approved by the Applicant on September 20, 2018. Staff has reviewed these documents and Mitigation Monitoring Program prepared pursuant to the provisions of the California

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Environmental Quality Act (CEQA) (Pub. Resources Code, § 21081.6) and adopted by the lead agency.

3. The EIR has been challenged in a lawsuit under CEQA raising issues including impermissible piecemealing, inadequate alternatives analysis, failure to adequately address public comments, failure to recirculate after significant new information was discovered, and deficient analysis of water quality, visual impacts, flooding impacts, and navigational safety. The trial court upheld the EIR, but it is currently under appeal. (*Dominick Gulli v. San Joaquin Area Flood Control Agency* (Case No. CV 2015 0011880).) No injunction or stay has been issued. When a lawsuit has been filed and no stay or injunction has been issued, responsible agencies must assume the EIR complies with the requirements of CEQA and proceed with consideration of the project. If the Commission approves the Project, the approval constitutes permission to proceed with the Project at the Applicant's risk pending final determination of the lawsuit. (Pub. Resources Code, § 21167.3 subdivision (b).)
4. A Mitigation Monitoring Program, Findings, and a Statement of Overriding Considerations made in conformance with the State CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15091, 15093, and 15096) are contained in the attached Exhibits C and D.
5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

**APPROVALS REQUIRED:**

U.S. Army Corps of Engineers  
U.S. Fish and Wildlife  
National Marine Fisheries Service  
Central Valley Regional Water Quality Control Board  
California Department of Fish and Wildlife  
Central Valley Flood Protection Board

**EXHIBITS:**

- A. Land Description
- B. Site and Location Map
- C. Mitigation Monitoring Program
- D. Findings and Statement of Overriding Considerations

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**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

Find that an EIR, State Clearinghouse No. 2014062079, was prepared for this project by the Applicant and certified on November 19, 2015; that an Addendum was approved by the Applicant on November 16, 2017; and that an Addendum II was approved by the Applicant on September 20, 2018; and that the Commission has reviewed and considered the information contained in the EIR together with the Addenda.

Adopt the Mitigation Monitoring Program, as contained in the attached Exhibit C.

Adopt the Findings, made in conformance with California Code of Regulations, title 14, sections 15091 and 15096, subdivision (h), and Statement of Overriding Considerations, made in conformance with California Code of Regulations, title 14, sections 15093, as contained in the attached Exhibit D.

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

**SIGNIFICANT LANDS INVENTORY FINDING:**

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

**AUTHORIZATION:**

Authorize issuance of a General Lease – Public Agency Use to the Applicant, beginning April 5, 2019, for a term of 35 years, for the construction, use, and maintenance of a fixed wall, gate structure, flood wall, bank protection, and dredging of up to 8,650 cubic yards for installation of the fixed wall and gate structure, as described on Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; consideration is the public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests; dredged material may not be sold.

W27210

**EXHIBIT A-1****DESCRIPTION  
SAN JOAQUIN RIVER SOVEREIGN AND PROPRIETARY  
STATE LANDS LEASE**

A parcel of State owned lands, being a portion of the tide and submerged lands of the San Joaquin River, situate in the City of Stockton, County of San Joaquin, State of California, Section 6 and 7, Township 1 North, Range 6 East, Mount Diablo Base and Meridian, being a portion of the original San Joaquin River as shown on The Map of the Tuxedo Country Club Farms by Budd and Widdows, recorded in Book 8 of Maps at Page 66 filed September 20, 1916, San Joaquin County Records; also being a portion of the Indenture from Albert Lindley and Maryland Virginia Lindley to the State of California, recorded on October 17, 1919 in Book A, Volume 383 of Deeds, page 392, San Joaquin County Records; and being a portion of Lindley Cutoff, Parcel 8A-S – 10.12 Acres, as shown on that certain Corps of Engineers US Army Plat titled “Property to be acquired from The State of California for use on the Stockton Deep Water Channel” dated April 1928, more particularly described as follows:

**UNIT A – SOVEREIGN STATE LANDS LEASE**

**COMMENCING** at a found 2-inch Iron Pipe, set as the most northwesterly corner of that certain 0.967 Acs. lot as shown on that certain map by Chas H. Widdows, filed in Book of Surveys Volume 4 at Page 263, on December 30, 1937, San Joaquin County Records; thence along the easterly Right-of-Way of Virginia Lane, a 40’ wide public roadway, South 15°01’46” East 599.96 feet to a found 2-inch Iron Pipe, set at the south westerly corner of that 1.081 Acs. lot as shown on said map by Chas H. Widdows; thence South 05° 12’ 22” East 759.28 feet to a point on the easterly line of herein described Sovereign State Lands Lease, said point also being the **TRUE POINT OF BEGINNING** of the herein described Sovereign State Lands Lease; thence along the easterly lines of herein described Sovereign State Lands Lease, the following two (2) courses:

- 1) South 62° 53’ 56” West 26.29 feet;
- 2) thence South 27° 08’ 36” East 56.69 feet, more or less,

to the intersection of the east line of the Sovereign State Lands Lease and the shore line of the historic left bank of the San Joaquin River as described in said Indenture from Albert Lindley and Maryland Virginia Lindley to the State of California in Book A, Volume 383 of Deeds, page 392, said point also herein designated as Point “C”; thence southwesterly, South 59° 23’ 16” West 75.14 feet, along the said shore line of the historic left bank of the San Joaquin River to the most southerly corner of herein described Sovereign State Lands Lease; thence in a general northerly direction, along the southwesterly and southeasterly lines of herein described Sovereign State Lands Lease, the following three (3) courses:

- 1) North 27° 08' 36" West 261.03 feet;
- 2) thence South 55° 48' 05" West 64.65 feet;
- 3) thence North 37° 29' 02" West 24.99 feet, more or less,

to the right bank of the San Joaquin River, also being the most westerly corner of herein described Sovereign State Lands Lease; thence in a northeasterly direction along the said right bank of the San Joaquin River, the following three courses:

- 1) North 56° 19' 48" East 60.80 feet;
- 2) thence North 62° 06' 02" East 130.00 feet;
- 3) thence North 65° 25' 32" East 64.17 feet,

to the most northerly corner of herein described Sovereign State Lands Lease; thence, leaving said right bank of the San Joaquin River, in a general southerly direction along the herein described Sovereign State Lands Lease, the following six (6) courses:

- 1) South 02° 26' 50" West 27.76 feet;
- 2) thence South 72° 55' 26" West 53.12 feet;
- 3) thence South 54° 43' 28" West 45.29 feet;
- 4) thence South 27° 08' 36" East 126.41 feet;
- 5) thence North 62° 53' 36" East 26.38 feet;
- 6) thence South 27° 04' 43" East 74.52 feet,

to the **TRUE POINT OF BEGINNING** of herein described Sovereign State Lands Lease.

**EXCEPTING THEREFROM** any portion lying landward of the Ordinary High Water Mark of the right bank of the San Joaquin River.

### **UNIT B – PROPRIETARY STATE LANDS LEASE**

**BEGINNING** at herein designated Point “C” as described in above “UNIT A – SOVEREIGN STATE LANDS LEASE”, said point also being the most northerly corner of herein described Proprietary State Lands Lease, said point also being on the shore line of the historic left bank of the San Joaquin River as described in said Indenture from Albert Lindley and Maryland Virginia Lindley to the State of California in Book A, Volume 383 of Deeds, page 392; thence southwesterly, South 59° 23' 16" West 75.14 feet, along the said shore line of the historic left bank of the San Joaquin River to the most westerly corner of herein described Proprietary State Lands Lease; thence southeasterly, South 27° 08' 36" East 233.61 feet, more or less, to the northeasterly line of the Lands of the United States of America as described in that certain document titled “JUDGEMENT No. 6199”, recorded in Book of Official Records, Volume 1221, at page 7 filed July 26, 1949, San Joaquin County Record; thence southeasterly along the said northeasterly line of the Lands of the United States of America, South 68° 29' 00" East 113.55 feet, to the most easterly corner of herein described Proprietary State Lands Lease; thence northwesterly, leaving said northeasterly line of the Lands of the United States of America, North 27° 08' 36" West 323.40 feet, to the said most northerly corner of herein described Proprietary

State Lands Lease, said point also being the **POINT OF BEGINNING** of herein described Proprietary State Lands Lease.

**SUBJECT TO** special assessments, if any, restrictions, reservations and easements of record.

Bearings and distances are based on the North American Datum of 1983 (NAD83) converted to the California Coordinate System of 1983; Zone 3 (CCS83-III), Survey Feet Units, 1991.35 Epoch Date Adjustment. Multiply distances shown by 1.00005972 to obtain ground distances.

End of Description.



A circular professional seal for Brett A. Setness, a Professional Land Surveyor in the State of California. The seal contains the text: "PROFESSIONAL LAND SURVEYOR", "BRETT A. SETNESS", "No. 8265", "Exp. 12-31-2019", and "STATE OF CALIFORNIA". The seal is stamped in black ink. Overlaid on the seal is a handwritten signature in blue ink. To the right of the seal, the date "03-14-2019" is handwritten in blue ink.

**W27210****EXHIBIT A-2****DESCRIPTION****SAN JOAQUIN RIVER SOVEREIGN STATE LANDS LEASE**

A parcel of State owned lands, being a portion of the tide and submerged lands of the San Joaquin River, whether filled or unfilled, situate in the City of Stockton, County of San Joaquin, State of California, Sections 5 and 8, Township 1 North, Range 6 East, Mount Diablo Base and Meridian, and being a portion of that certain Indenture from W.R. Haney to the State of California recorded May 13, 1920 in Book "A" Volume 426 of Deeds page 365, San Joaquin County Records and also being a portion of that certain W.R. Haney 13.3 acres, as shown on the United States Army Corps of Engineer's plat titled "Property to be Acquired for Lindley Cutoff..." dated Oct 17, 1919, more particularly described as follows:

**COMMENCING** at a found Brass Cap stamped LS 3552 set at the northwesterly corner of that certain parcel titled "Lands of the United States of America" as shown on that certain Record of Survey, filed in Book 28 of Surveys at Page 103, on September 28, 1983, San Joaquin County Records, which bears South 76° 45' 12" West 1,041.10 feet from a found ¾" iron pipe tagged RCE 7029 at the centerline intersection of Occidental Avenue and Monte Diablo Avenue as shown on said Record of Survey; thence North 70° 26' 43" West 1027.01 feet to the most easterly corner of that certain Quitclaim Deed to the City of Stockton, recorded in Book of Official Records, 2333, at page 81 filed September 2 1960, San Joaquin County Records, and the most easterly corner of that certain Indenture to the State of California from Albert Lindley recorded December 15, 1919 in Book "A" Vol. 394 of Deeds, at page 217, San Joaquin County Records, said point also being the intersection of the Left Bank of the Old Channel of the San Joaquin River and the northerly Line "B" of a portion of the 400' wide Lindley Cutoff Channel per that certain Indenture to the State of California from Albert Lindley recorded December 16, 1919 in Book "A" Vol. 402 of Deeds, page 202, San Joaquin County Records, said point also being the **TRUE POINT OF BEGINNING** of herein described State Lands Lease; thence southwesterly along the said Left Bank of the Old Channel of the San Joaquin River, South 48° 00' 00" West 123.53 feet, to the most westerly corner of herein described State Lands Lease; thence in an easterly direction along the southerly lines of herein described State Lands Lease, the following two (2) courses:

- 1) South 85° 09' 09" East 79.87 feet;
- 2) thence North 55° 23' 48" East 86.61 feet,

to a point on the northerly Line "B" of the 400' wide Lindley Cutoff Channel as prolonged southeasterly from that portion of said channel per said Indenture; thence northwesterly along said southeasterly prolongation of said portion of the northerly Line "B" of the 400' wide Lindley Cutoff Channel, North 55° 45' 00" West 71.46 feet to said intersection of the Left Bank of the Old Channel of the San Joaquin River and the said portion of the northerly Line "B" of the 400' wide Lindley Cutoff Channel, said point also being the **TRUE POINT OF BEGINNING**, of herein described said State Lands Lease.

**EXCEPTING THEREFROM** any portion lying landward of the Ordinary High Water Mark of the left bank of the San Joaquin River.

**SUBJECT TO** special assessments, if any, restrictions, reservations and easements of record.

Bearings and distances are based on the North American Datum of 1983 (NAD83) converted to the California Coordinate System of 1983; Zone 3 (CCS83-III), Survey Feet Units, 1991.35 Epoch Date Adjustment. Multiply distances shown by 1.00005972 to obtain ground distances.

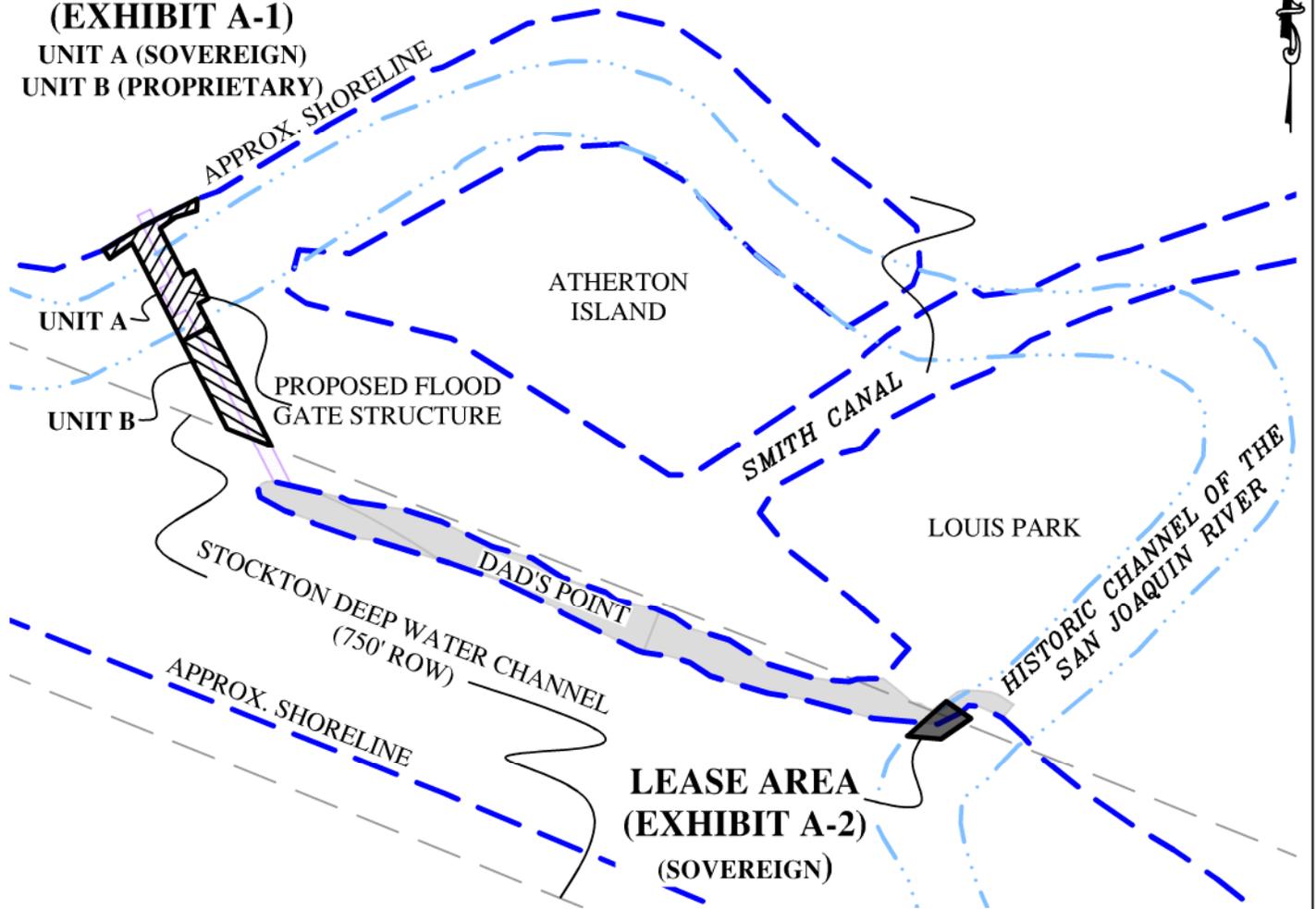
End of Description.



NO SCALE

### SITE

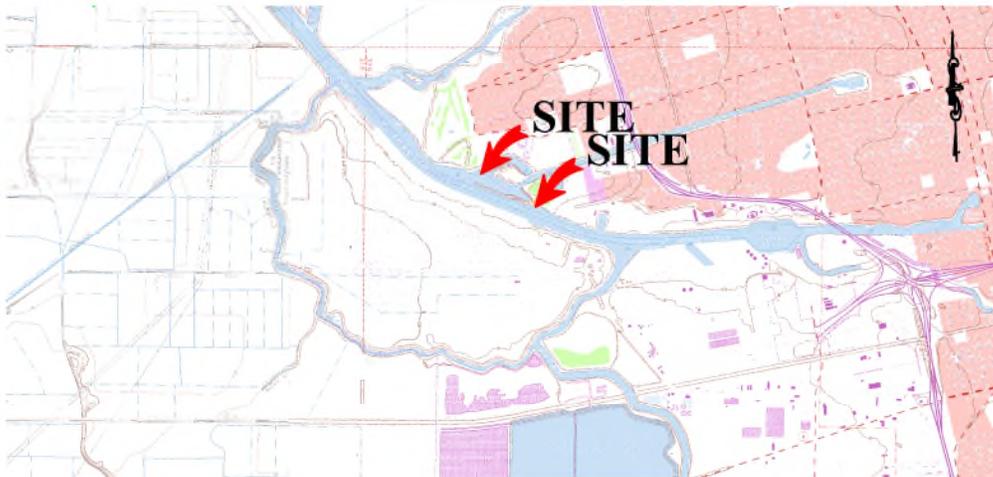
**LEASE AREA  
(EXHIBIT A-1)**  
UNIT A (SOVEREIGN)  
UNIT B (PROPRIETARY)



Stockton Deep Water Channel, Dad's Point, Stockton

NO SCALE

### LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

### **Exhibit B**

W 27210  
SAN JOAQUIN AREA  
FLOOD CONTROL AGENCY  
GENERAL LEASE -  
PUBLIC AGENCY USE  
SAN JOAQUIN COUNTY



**EXHIBIT C**  
**CALIFORNIA STATE LANDS COMMISSION**  
**MITIGATION MONITORING PROGRAM**

**SMITH CANAL GATE PROJECT**  
(W 27210, State Clearinghouse No. 2014062079)

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The California State Lands Commission (Commission) is a responsible agency under the California Environmental Quality Act (CEQA) for the Smith Canal Gate Project (Project). The CEQA lead agency for the Project is San Joaquin Area Flood Control Agency (Applicant).

In conjunction with approval of this Project, the Commission adopts this Mitigation Monitoring Program (MMP) for the implementation of mitigation measures (MMs) for the portion(s) of the Project located on Commission lands. The purpose of a MMP is to impose feasible measures to avoid or substantially reduce the significant environmental impacts from a project identified in an Environmental Impact Report (EIR) or a Mitigated Negative Declaration (MND). State CEQA Guidelines section 15097, subdivision (a), states in part:<sup>1</sup>

*In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.*

The Applicant, as lead agency, has certified an EIR, State Clearinghouse No. 2014062079, adopted a MMP for the whole of the Project (see Exhibit C, Attachment C-1), and remains responsible for ensuring that implementation of the MMs occurs in accordance with its MMP. After certifying the EIR, the Applicant also approved an Addendum on November 16, 2017, and an Addendum II on September 20, 2018. The Commission's action and authority as a responsible agency apply only to the MMs listed in Table C-1 below. The full text of each MM, as set forth in the MMP prepared by the CEQA lead agency and listed in Table C-1, is incorporated by reference in this Exhibit C. As provided in Attachment C-1, the CEQA lead agency listed MMs in its MMP without identifying what impact the MM addresses, beyond the general resource impact area. Therefore, the Commission staff relied on the Final EIR and the Addenda to identify the impacts and corresponding proposed MMs that would help reduce these impacts on lands under Commission's jurisdiction.

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<sup>1</sup> The State CEQA Guidelines are found at California Code of Regulations, title 14, section 15000 et seq.

**Table C-1. Project Impacts and Applicable Mitigation Measures**

Potential Impact	Mitigation Measure (MM) <sup>2</sup>
<b>Impact WQ-1:</b> Violation of Water Quality Standards for Turbidity as a Result of Construction Activities.	<b>MM WQ-1a:</b> Prepare and Implement a Turbidity Monitoring Program.
<b>Impact WQ-2:</b> Release of Contaminants into Adjacent Surface Water Bodies from Construction-Related Activities.	<b>MM WQ-1b:</b> Implement Construction Best Management Practices.
	<b>MM WQ-1c:</b> Prepare and Implement a Stormwater Pollution Prevention Plan.
<b>Impact TRA-2:</b> Increase in Safety Hazard Attributable to Construction-Generated Deterioration of Roads.	<b>MM TRA-2:</b> Implement Pavement Repairs.
<b>Impact TRA-3:</b> Conflicts between Construction Traffic and Local Traffic, Pedestrians, Bicyclists, and Bus Services.	<b>MM TRA-3:</b> Implement a Construction Traffic Management Plan.
<b>Impact TRA-4:</b> Temporary Reduction in Parking Spaces.	<b>MM TRA-4a:</b> Provide Satellite Construction Parking Areas.
	<b>MM TRA-4b:</b> Provide Additional Recreational Parking Areas.
<b>Impact AQ-1:</b> Generation of Construction-Related Criteria Pollutant Emissions in Excess of San Joaquin Valley Air Pollution Control District Thresholds.	<b>MM AQ-1a:</b> Prepare and Implement a Dust Control Plan to Reduce Fugitive Dust Emissions.
<b>Impact AQ-3:</b> Exposure of Sensitive Receptors to Substantial Pollutant Concentrations.	
<b>Impact NOI-1:</b> Exposure of Noise-Sensitive Land Uses to Noise during Construction of Wall Structures.	<b>MM NOI-1a:</b> Employ Noise-Reducing Construction Practices during Construction.
	<b>MM NOI-1b:</b> Prior to Construction, Initiate a Complaint/Response Tracking Program.
<b>Impact VEG-1:</b> Loss of Special-Status Plants.	<b>MM VEG-1a:</b> Conduct Floristic Surveys for Special Status Plants during Appropriate Identification

<sup>2</sup> See Attachment C-1 for the full text of each MM taken from the MMP prepared by the CEQA lead agency.

Potential Impact	Mitigation Measure (MM) <sup>2</sup>
	<p>Periods.</p> <p><b>MM VEG-1b:</b> Avoid or Compensate for Effects on Special-Status Plants.</p> <p><b>MM VEG-1c:</b> Install Exclusion Fencing Around Sensitive Resource Areas.</p> <p><b>MM VEG-1d:</b> Conduct Mandatory Contractor/Worker Awareness Training for Construction Personnel.</p> <p><b>MM VEG-1e:</b> Retain a Biological Monitor.</p>
<b>Impact VEG-2:</b> Loss of Nonnative Riparian Habitat.	<p>See <b>MM VEG-1c</b> through <b>MM VEG- 1e</b> and</p> <p><b>MM VEG-2:</b> Compensate for Loss of Nonnative Riparian Habitat.</p>
<b>Impact VEG-3:</b> Loss of Tidal Emergent Wetland.	<p>See <b>MM VEG-1c</b> through <b>MM VEG- 1e</b> and</p> <p><b>MM VEG-3:</b> Compensate for Loss of Tidal Emergent Wetlands.</p>
<b>Impact VEG-4:</b> Loss of Tidal Perennial Drainage.	<p>See <b>MM VEG-1c</b> through <b>MM VEG-1e</b> and</p> <p><b>MM VEG-4:</b> Compensate for Loss of Tidal Perennial Drainage.</p>
<b>Impact VEG-7:</b> Spread of Invasive Plant Species.	<p>See <b>MM VEG-1d</b>, <b>MM VEG-1e</b>, and</p> <p><b>MM VEG-7:</b> Avoid and Minimize Spread or Introduction of Invasive Plant Species.</p>
<b>Impact AQU-1:</b> Temporary Disturbance of Fish and Degradation of Aquatic Habitat during Construction Activities.	<p><b>MM AQU-1:</b> Limit In-Water Construction Activity to Periods of the Year That Minimize Effects on Fish.</p>
<b>Impact AQU-2:</b> Temporary Noise Disturbance to Fish during Construction Activities.	<p>See <b>MM AQU-1</b> and</p> <p><b>MM AQU-2a:</b> Minimize Exceedance of Interim Threshold Sound Levels during Pile Driving to Minimize Effects on Fish.</p> <p><b>MM AQU-2b:</b> Develop and Implement a Hydroacoustic Monitoring Plan to Minimize Noise Effects on Fish.</p>
<b>Impact AQU-3:</b> Adverse Effects on Fish Health and Survival Associated with Potential Discharge of Contaminants during Construction Activities.	<p>See <b>MM HAZ-1</b> below.</p>
<b>Impact AQU-4:</b> Adverse Effects on Special-Status Fish	<p><b>MM AQU-4:</b> Hire a Qualified Fisheries Biologist during Dewatering Activities to Minimize Fish</p>

Potential Impact	Mitigation Measure (MM) <sup>2</sup>
Species Associated with Potential Stranding during Dewatering.	Mortality.
<b>Impact WILD-1:</b> Loss or Disturbance of Western Pond Turtles and Their Habitat.	See <b>MM VEG-1c</b> through <b>MM VEG-1e</b> and <b>MM WILD-1:</b> Conduct a Preconstruction Survey and Monitor for Western Pond Turtle during Instream Water Work.
<b>Impact WILD-2:</b> Loss of Swainson’s Hawk Nesting Habitat.	See <b>MM VEG-1c</b> through <b>MM VEG-1e</b> , <b>MM VEG-6b</b> , and <b>MM WILD-2:</b> Avoid Disturbance of Tree-Shrub-, Ground-Nesting Special-Status and Non-Special-Status Migratory Birds and Raptors and Conduct Preconstruction Nesting Bird Surveys.
<b>Impact WILD-3:</b> Loss or Disturbance of Western Burrowing Owls and Their Habitat.	See <b>MM VEG-1d</b> , <b>MM VEG-1e</b> , and <b>MM WILD-3a:</b> Conduct Preconstruction Surveys for Active Burrowing Owl Burrows and Implement the 2012 California Department of Fish and Game Guidelines for Burrowing Owl Mitigation, if Necessary. <b>MM WILD-3b:</b> Compensate for Loss of Burrowing Owl Habitat.
<b>Impact WILD-4:</b> Loss or Disturbance of Tree-, Shrub- and Ground-Nesting Special-Status and Non-Special–Status Migratory Birds and Raptors.	See <b>MM VEG-1d</b> , <b>MM VEG-1e</b> , and <b>MM WILD-2</b> .
<b>Impact WILD-5:</b> Loss or Disturbance of Bats and Bat Roosts.	See <b>MM VEG-1d</b> , <b>MM VEG-1e</b> , and <b>MM WILD-5:</b> Conduct Preconstruction Surveys for Roosting Bats and Implement Protective Measures.
<b>Impact WILD-6:</b> Loss or Disturbance of Protected Marine Mammals.	See <b>MM VEG-1d</b> , <b>MM VEG-1e</b> , and <b>MM WILD-6:</b> Ensure Staging Area are Located away from California Sea Lions.
<b>Impact VIS-1:</b> Temporary Visual Impacts Caused by Construction Activities.	<b>MM VIS-1a:</b> Limit Activities That Would Require High-Intensity Lighting to Be Used for Illumination to Daylight Hours.
<b>Impact VIS-2:</b> Substantial Degradation of the Existing Visual Character or Quality of	<b>MM VIS-2a:</b> Apply Aesthetic Surface treatments to Ancillary Project Features
	<b>MM VIS-2b:</b> Work with Affected Stakeholders to

<b>Potential Impact</b>	<b>Mitigation Measure (MM)<sup>2</sup></b>
the Site and Its Surroundings.	Determine Appropriate Sheet Pile Wall Aesthetic Treatments
<b>Impact VIS-3:</b> Creation of a New Source of Substantial Light or Glare That Would Adversely Affect Daytime or Nighttime Views in the Area.	See <b>MM VIS-2a</b> and <b>MM VIS-2b</b> .
<b>Impact REC-1:</b> Interference with Access to Public Recreation Facilities as a Result of Project Construction.	<b>MM REC-1:</b> Direct Displaced Recreationists to Under-Utilized Recreation Facilities.
<b>Impact REC-2:</b> Disruption or Impairment of the Quality or Ease of Recreational Boating Activities as a Result of Project Construction.	<b>MM REC-2:</b> Implement Measures to Aid Navigation.
<b>Impact REC-3:</b> Disruption or Impairment of the Quality or Ease of Recreational Boating Activities as a Result of Project Operation and Maintenance.	See <b>MM REC-2</b> .
<b>Impact UTL-1:</b> Damage of Public Utility and Communication Infrastructure and Disruption of Service as a Result of Project Construction.	<b>MM UTL-1:</b> Coordinate with Utility Providers, Prepare a Response Plan, and Conduct Worker Training.
<b>Impact UTL-3:</b> Increase in Emergency Response Times during Project Construction.	See <b>MM TRA-3</b> and <b>MM UTL-3:</b> Coordinate with Public Service Providers.
<b>Impact HAZ-1:</b> Incidental Release of Hazardous Materials during Construction.	<b>MM HAZ-1:</b> Prepare and Implement a Spill Prevention, Control, and Countermeasure Plan.
<b>Impact HAZ-2:</b> Exposure of Hazardous Materials Encountered at Project Site.	<b>MM HAZ-2:</b> Implement Measures to Maintain Soil and Groundwater Conditions.
<b>Impact HAZ-3:</b> Access to the Construction Site and Vehicles by the Public.	<b>MM HAZ-3:</b> Notify the Public of Construction Area Closure and Secure Staging Areas.
<b>Impact CUL-2:</b> Substantial Adverse Change in the Significance of an Archaeological Historical Resource Pursuant to State	<b>MM CUL-2:</b> Halt Work if Previously Unidentified Archaeological Resources are Encountered until a Qualified Archaeologist Assesses the Find and Native American Consultation has been Conducted.

<b>Potential Impact</b>	<b>Mitigation Measure (MM)<sup>2</sup></b>
CEQA Guidelines Section 15064.5 or a Unique Archaeological Resource Pursuant to PRC Section 21083.2.	
<b>Impact CUL-3:</b> Disturbance of any Human Remains, Including Those Interred Outside of Formal Cemeteries Pursuant to CHSC Section 7050.5.	<b>MM CUL-3:</b> Stop Work in Case of Accidental Discovery of Buried Human Remains until Procedures in PRC Section 5097 have been Completed.

## **ATTACHMENT C-1**

**Mitigation Monitoring Program Adopted by the  
San Joaquin Area Flood Control Agency**

# Attachment C-1

## Smith Canal Gate Project Mitigation Monitoring and Reporting Program

### Mitigation Monitoring and Reporting Program for the Smith Canal Gate Project Environmental Impact Report

Description of Measure	Implementation Schedule	Party Responsible for Implementation/ Verification	Signature	Date
<b>Flood Risk, Hydrology, and Geomorphology</b>				
None				
<b>Water Quality and Groundwater Resources</b>				
WQ-MM-1a: Prepare and Implement a Turbidity Monitoring Program	Prior to and during construction	SJAFCA/Contractor		
WQ-MM-1b: Implement Construction Best Management Practices	During construction	SJAFCA/Contractor		
WQ-MM-1c: Prepare and Implement a Stormwater Pollution Prevention Plan	Prior to and during construction	SJAFCA/Contractor		
<b>Transportation and Navigation</b>				
TRA-MM-2: Implement Pavement Repairs	Prior to and during construction	SJAFCA/Contractor		
TRA-MM-3: Implement a Construction Traffic Management Plan	Prior to and during construction	SJAFCA/Contractor		
TRA-MM-4a: Provide Satellite Construction Parking Areas	During construction	SJAFCA/Contractor		
TRA-MM-4b: Provide Additional Recreational Parking Areas	During construction	SJAFCA/Contractor		
<b>Air Quality</b>				
AQ-MM-1a: Prepare and Implement a Dust Control Plan to Reduce Fugitive Dust Emissions	Prior to and during construction	Contractor		

Description of Measure	Implementation Schedule	Party Responsible for Implementation/ Verification	Signature	Date
<b>Greenhouse Gases and Climate Change</b>				
None				
<b>Noise</b>				
NOI-MM-1a: Employ Noise-Reducing Construction Practices during Construction	During construction	SJAFCA/Contractor		
NOI-MM-1b: Prior to Construction, Initiate a Complaint/Response Tracking Program	Prior to construction	SJAFCA		
<b>Vegetation and Wetlands</b>				
VEG-MM-1a: Conduct Floristic Surveys for Special-Status Plants during Appropriate Identification Periods	Prior to construction	SJAFCA		
VEG-MM-1b: Avoid or Compensate for Effects on Special-Status Plants	Prior to and after construction	SJAFCA, in coordination with CDFW and/or FWS		
VEG-MM-1c: Install Exclusion Fencing around Sensitive Resource Areas	Prior to and during construction	SJAFCA/Contractor		
VEG-MM-1d: Conduct Mandatory Contractor/Worker Awareness Training for Construction Personnel	Prior to construction	SJAFCA/Contractor		
VEG-MM-1e: Retain a Biological Monitor	During construction	SJAFCA/Contractor		
VEG-MM-2: Compensate for Loss of Nonnative Riparian Habitat	After construction	SJAFCA		
VEG-MM-3: Compensate for Loss of Tidal Emergent Wetland	Prior to construction	SJAFCA		
VEG-MM-4: Compensate for Loss of Tidal Perennial Drainage	Prior to construction	SJAFCA		
VEG-MM-5: Conduct an Assessment of Potential Waters of the United States within Project Staging Area	Prior to construction	SJAFCA		
VEG-6a: Protect Trees to Be Preserved in the Project Area	Prior to and during construction	SJAFCA		

<b>Description of Measure</b>	<b>Implementation Schedule</b>	<b>Party Responsible for Implementation/ Verification</b>	<b>Signature</b>	<b>Date</b>
VEG -MM-6b: Compensate for Loss of Heritage Trees	Prior to and after construction	SJAFCA		
VEG -MM-7: Avoid and Minimize Spread or Introduction of Invasive Plant Species	Prior to and during construction	SJAFCA/Contractor		
<b>Fish and Aquatic Resources</b>				
AQU-MM-1: Limit In-Water Construction Activity to Periods of the Year That Minimize Effects on Fish	During construction	SJAFCA/Contractor		
AQU-MM-2a: Minimize Exceedance of Interim Threshold Sound Levels during Pile Driving to Minimize Effects on Fish	During construction	SJAFCA/Contractor		
AQU-MM-2b: Develop and Implement a Hydroacoustic Monitoring Plan to Minimize Noise Effects on Fish	Prior to and during construction	SJAFCA/Contractor		
AQU-MM-4: Hire a Qualified Fisheries Biologist during Dewatering Activities to Minimize Fish Mortality	During construction	SJAFCA/Contractor		
<b>Wildlife</b>				
WILD-MM-1: Conduct a Preconstruction Survey and Monitor for Western Pond Turtle during Instream Water Work	Prior to construction	SJAFCA		
WILD-MM-2: Avoid Disturbance of Tree-, Shrub-, and Ground-Nesting Special-Status and Non-Special-Status Migratory Birds and Raptors and Conduct Preconstruction Nesting Bird Surveys	Prior to and during construction	SJAFCA		
WILD-MM-3a: Conduct Preconstruction Surveys for Active Burrowing Owl Burrows and Implement the 2012 California Department of Fish and Game Guidelines for Burrowing Owl Mitigation, if Necessary	Prior to construction	SJAFCA, in coordination with CDFW		
WILD-MM-3b: Compensate for Loss of Burrowing Owl Habitat	Prior to construction	SJAFCA		

<b>Description of Measure</b>	<b>Implementation Schedule</b>	<b>Party Responsible for Implementation/ Verification</b>	<b>Signature</b>	<b>Date</b>
WILD-MM-5: Conduct Preconstruction Surveys for Roosting Bats and Implement Protective Measures	Prior to and during construction	SJAFCA/Contractor		
WILD-MM-6: Ensure Staging Areas are Located away from California Sea Lions	Prior to and during construction	Contractor		
<b>Visual Resources</b>				
VIS-MM-1a: Limit Activities That Would Require High-Intensity Lighting to Be Used for Illumination to Daylight Hours	During construction	Contractor		
VIS-MM-1b: Limit Traffic Delays at Moreing Road to Off-Peak Commute Hours	During construction	Contractor		
VIS-MM-2a: Apply Aesthetic Surface Treatments to Ancillary Project Features	During and after construction	SJAFCA/Contractor/Appropriate Operating Agency or Organization		
VIS-MM-2b: Work with Affected Stakeholders to Determine Appropriate Sheet Pile Wall Aesthetic Treatments	Prior to and during construction	SJAFCA		
<b>Recreation</b>				
REC-MM-1: Direct Displaced Recreationists to Under-Utilized Recreation Facilities	During construction	SJAFCA		
REC-MM-2: Implement Measures to Aid Navigation	During construction	SJAFCA/Contractor		
<b>Utilities and Public Services</b>				
UTL-MM-1: Coordinate with Utility Providers, Prepare a Response Plan, and Conduct Worker Training	Prior to and during construction	SJAFCA/Contractor		
UTL-MM-3: Coordinate with Public Service Providers	Prior to and during construction	SJAFCA/Contractor		

Description of Measure	Implementation Schedule	Party Responsible for Implementation/ Verification	Signature	Date
<b>Public Health and Environmental Hazards</b>				
HAZ-MM-1: Prepare and Implement a Spill Prevention, Control, and Countermeasure Plan	Prior to and during construction	SJAFCA/Contractor		
HAZ-MM-2: Implement Measures to Maintain Soil and Groundwater Conditions	During construction	SJAFCA/Contractor		
HAZ-MM-3: Notify the Public of Construction Area Closure and Secure Staging Areas	Prior to and during construction	SJAFCA/Contractor		
<b>Cultural Resources</b>				
CUL-MM-2: Halt Work if Previously Unidentified Archaeological Resources are Encountered until a Qualified Archaeologist Assesses the Find and Native American Consultation has been Conducted	During construction	Contractor		
CUL-MM-3: Stop Work in Case of Accidental Discovery of Buried Human Remains until Procedures in PRC Section 5097 have been Completed	During construction	Contractor		

# EXHIBIT D – SMITH CANAL GATE PROJECT

## CALIFORNIA STATE LANDS COMMISSION STATEMENT OF FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS

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### 1.0 INTRODUCTION

The California State Lands Commission (Commission), acting as a responsible agency under the California Environmental Quality Act (CEQA), makes these findings and this Statement of Overriding Considerations to comply with CEQA as part of its discretionary approval to authorize issuance of a General Lease – Public Agency Use lease, to San Joaquin Area Flood Control Agency (Applicant), for use of sovereign land associated with the proposed Smith Canal Gate Project (Project). (See generally Pub. Resources Code, § 21069; State CEQA Guidelines, § 15381.)<sup>1</sup> The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions. (Pub. Resources Code, §§ 6301, 6306, 6009, subd. (c).) All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust.

The Commission is a responsible agency under CEQA for the Project because the Commission must approve a lease for the Project to go forward and because the Applicant, as the CEQA lead agency, has the principal responsibility for approving the Project and has completed its environmental review under CEQA. The Applicant analyzed the environmental impacts associated with the Project in a Final Environmental Impact Report (EIR) (State Clearinghouse [SCH] No. 2014062079) and, in November 19, 2015, certified the EIR and adopted a Mitigation Monitoring Program (MMP) and Findings, and a Statement of Overriding Considerations. After certifying the EIR, the Applicant also approved an Addendum on November 16, 2017, and an Addendum II on September 20, 2018.

The Project involves construction, use, and maintenance of a fixed wall, gate structure, flood wall, bank protection, and maintenance dredging of up to 8,650 cubic yards for installation of the fixed wall. The gate would be at the mouth of Smith Canal adjacent to the San Joaquin River (River) and a flood wall would be between the Dad's Point and Louis Park on lands under Commission's jurisdiction.

The Applicant determined that the Project could have significant environmental effects on the following environmental resources:

- Water Quality and Groundwater Resources

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<sup>1</sup> CEQA is codified in Public Resources Code section 21000 et seq. The State CEQA Guidelines are found in California Code of Regulations, title 14, section 15000 et seq.

- Transportation and Navigation
- Air Quality
- Noise
- Vegetation and Wetlands
- Fish and Aquatic Resources
- Wildlife
- Visual Resources
- Recreation
- Utilities and Public Services
- Public Health and Environmental Hazards
- Cultural Resources

Of the 12 resources areas noted above, Project components within the Commission's jurisdiction (i.e., gate and flood wall) could have significant environmental effects on 2 of the resource areas, as follows:

- Noise
- Visual Resources

In certifying the Final EIR and approving the Project, the Applicant imposed various mitigation measures (MMs) for Project-related significant effects on the environment as conditions of Project approval and concluded that Project-related impacts would be substantially lessened with implementation of these MMs such that the impacts would be less than significant for most resource areas. However, even with the integration of all feasible mitigation, the Applicant concluded in the EIR that some of the identified impacts would remain significant. As a result, the Applicant adopted a Statement of Overriding Considerations to support its approval of the Project despite the significant and unavoidable impacts. The Applicant determined that, after mitigation, the Project may still have significant impacts on Noise and Visual Resources. Because some of these significant impacts may occur on lands under the jurisdiction of the Commission, the Commission also adopts the Statement of Overriding Considerations set forth in this exhibit as part of its approval.

As a responsible agency, the Commission complies with CEQA by considering the EIR and reaching its own conclusions on whether, how, and with what conditions to approve a project. In doing so, the Commission may require changes in a project to lessen or avoid the effects, either direct or indirect, of that part of the project which the Commission will be called on to carry out or approve. In order to ensure the identified MMs and/or Project revisions are implemented, the Commission adopts the Mitigation Monitoring Program (MMP) as set forth in Exhibit C as part of its Project approval.

## **2.0 ADMINISTRATIVE RECORD OF PROCEEDINGS AND CUSTODIAN OF THE RECORD**

These Findings are supported by substantial evidence contained in the EIR and other relevant information provided to the Commission or existing in its files, all of which is contained in the administrative record. The administrative record is located at the

California State Lands Commission, 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825. The custodian for the administrative record is the Commission's Division of Environmental Planning and Management.

### 3.0 FINDINGS

The Commission's role as a responsible agency affects the scope of, but not the obligation to adopt, findings required by CEQA. Findings are required under CEQA by each "public agency" that approves a project for which an EIR has been certified that identifies one or more significant impacts on the environment (Pub. Resources Code, § 21081, subd. (a); State CEQA Guidelines, § 15091, subd. (a).) Because the EIR certified by the Applicant for the Project identifies potentially significant impacts that fall within the scope of the Commission's approval, the Commission makes the Findings set forth below as a responsible agency under CEQA. (State CEQA Guidelines, § 15096, subd. (h); *Riverwatch v. Olivenhain Mun. Water Dist.* (2009) 170 Cal.App.4th 1186, 1202, 1207.

While the Commission must consider the environmental impacts of the Project as set forth in the EIR, the Commission's obligation to mitigate or avoid the direct or indirect environmental impacts of the Project is limited to those parts which it decides to carry out, finance, or approve (Pub. Resources Code, § 21002.1, subd. (d); State CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g).) Accordingly, because the Commission's exercise of discretion involves only issuing a General Lease- Public Agency Use lease for this Project, the Commission is responsible for considering only the environmental impacts related to lands or resources subject to the Commission's jurisdiction. With respect to all other impacts associated with implementation of the Project, the Commission is bound by the legal presumption that the EIR fully complies with CEQA.

The Commission has reviewed and considered the information contained in the Project EIR. All significant adverse impacts of the Project identified in the EIR relating to the Commission's approval of a General Lease – Public Agency Use, which would allow construction of this gate, flood wall, and riprap, as well as maintenance dredging, on lands under Commission's jurisdiction, are included herein and organized according to the resource affected.

These Findings, which reflect the independent judgment of the Commission, are intended to comply with CEQA's mandate that no public agency shall approve or carry out a project for which an EIR has been certified that identifies one or more significant environmental effects unless the agency makes written findings for each of those significant effects. Possible findings on each significant effect are:

- (1) Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the Commission. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
- (3) Specific economic, legal, social, technological or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the MMs or project alternatives identified in the Final EIR.<sup>2</sup>

A discussion of supporting facts follows each Finding.

- Whenever Finding (1) occurs, the MMs that lessen the significant environmental impact are identified in the facts supporting the Finding.
- Whenever Finding (2) occurs, the agencies with jurisdiction are specified. These agencies, within their respective spheres of influence, have the responsibility to adopt, implement, and enforce the mitigation discussed.
- Wherever Finding (3) is made, the Commission has determined that, even after implementation of all feasible MMs and consideration of feasible alternatives, the identified impact will exceed the significance criteria set forth in the EIR. Furthermore, to the extent that potentially feasible measures have been alleged or proposed, the Findings explain why certain economic, legal, social, technological or other considerations render such possibilities infeasible. The significant and unavoidable impacts requiring Finding (3) are identified in the Final EIR, discussed in the Responses to Comments, and explained below. Having done everything it can to avoid and substantially lessen these effects consistent with its legal authority and CEQA, the Commission finds in these instances that overriding economic, legal, social, and other benefits of the approved Project outweigh the resulting significant and unavoidable impacts. The Statement of Overriding Considerations adopted as part of this exhibit applies to all such unavoidable impacts as required by CEQA. (Pub. Resources Code, § 21081, subd. (b); State CEQA Guidelines, §§ 15092 and 15093.)

The MMs are briefly described in these Findings; more detail on the MMs is included in the Final EIR.

## **A. SUMMARY OF FINDINGS**

Based on public scoping, the proposed Project will not have significant impacts on the following environmental issue areas (pages 3.15-1 and 3.15-2 of the Final EIR). These are therefore not discussed in detail, in accordance with State CEQA Guidelines Section 15128:

- Geology and Soils
- Agricultural Resources and Land Use

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<sup>2</sup> See Public Resources Code section 21081, subdivision (a) and State CEQA Guidelines section 15091, subdivision (a).

The EIR identified the following impacts as less than significant:

- Flood Risk, Hydrology, and Geomorphology
- Greenhouse Gases and Climate Change

For the remaining potentially significant effects, the Findings are organized by significant impacts within the EIR issue areas as presented below.

**B. POTENTIALLY SIGNIFICANT IMPACTS**

The impacts identified in Table 1 were determined in the Final EIR to be potentially significant absent mitigation. After application of mitigation, however, several impacts were determined to be less than significant with mitigation. For the full text of each MM, please refer to Exhibit C, Attachment C-1.

However, even with the integration of all feasible mitigation, the Applicant concluded in the EIR that the other identified potentially significant impacts will remain significant. Table 1 identifies those impacts that the Applicant determined would be, after mitigation, significant and unavoidable.

**Table 1 – Significant Impacts by Issue Area**

Environmental Issue Area	Impact Numbers	
	Less Than Significant with Mitigation	Significant and Unavoidable
Water Quality and Groundwater Resources	Impact WQ-1, Impact WQ-2	
Transportation and Navigation	Impact TRA-2, Impact TRA-3, Impact TRA-4	
Air Quality	Impact AQ-1, Impact AQ-3	
Noise		Impact NOI-1
Vegetation and Wetlands	Impact VEG-1, Impact VEG-2, Impact VEG-3, Impact VEG-4, Impact VEG-7	
Fish and Aquatic Resources	Impact AQU-1, Impact AQU-2, Impact AQU-3, Impact AQU-4	
Wildlife	Impact WILD-1, Impact WILD-2, Impact WILD-3, Impact WILD-4, Impact WILD-5, Impact WILD-6,	
Visual Resources		Impact VIS-1, Impact VIS-2, Impact VIS-3
Recreation	Impact REC-1, Impact REC-2, Impact REC-3	

Utilities and Public Services	Impact UTL-1, Impact UTL-3	
Public Health and Environmental Hazards	Impact HAZ-1, Impact HAZ-2, Impact HAZ-3	
Cultural Resources	Impact CUL-2, Impact CUL-3	

As a result, the Commission adopts the Statement of Overriding Considerations set forth as part of this Exhibit to support its approval of the Project despite the significant and unavoidable impacts.

**C. IMPACTS REDUCED TO LESS THAN SIGNIFICANT LEVELS WITH MITIGATION**

The impacts identified below were determined in the Final EIR to be potentially significant absent mitigation; after application of mitigation, however, the impacts were determined to be less than significant.

**1. WATER QUALITY AND GROUNDWATER RESOURCES (WQ)**

<b>CEQA FINDING NO. WQ-1 AND WQ-2</b>	
Impacts:	<b>Impact WQ-1. Violation of Water Quality Standards for Turbidity as a Result of Construction Activities</b>
	<b>Impact WQ-2. Release of Contaminants into Adjacent Surface Water Bodies from Construction-Related Activities</b>
Finding(s):	(1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

There is some risk that in-water excavation during certain phases of construction could cause turbidity levels to exceed the thresholds specified in the Central Valley Regional Water Quality Control Board’s *Water Quality Control Plan for the Sacramento River and San Joaquin River Basin*. Contaminants associated with construction equipment, such as gasoline, lubricants, other petroleum-based products, and concrete, could enter the water as a result of spills during construction, contamination of stormwater runoff from the construction site, or disturbance of sediments that contain contaminants. The use of construction equipment could be a direct source of contamination if proper equipment and construction practices are not followed.

Implementation of MM(s) MM WQ-1a, MM WQ-1b, and MM WQ-1c has been incorporated into the Project to reduce this impact to a less than significant level.

- **MM WQ-1a:** Prepare and Implement a Turbidity Monitoring Program.
- **MM WQ-1b:** Implement Construction Best Management Practices.

- **MM WQ-1c:** Prepare and Implement a Stormwater Pollution Prevention Plan.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

## 2. Transportation and Navigation (TRA)

### CEQA FINDING NO. TRA-2

Impact: **Impact TRA-2. Increase in Safety Hazard Attributable to Construction-Generated Deterioration of Roads**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

#### FACTS SUPPORTING THE FINDING(S)

Use of heavy-duty trucks during construction may lead to the accelerated deterioration of roadway pavement for haul routes utilized for the Project and may increase safety hazards for automobiles.

Implementation of MM(s) MM TRA-2 has been incorporated into the Project to reduce this impact to a less than significant level.

- **MM TRA-2:** Implement Pavement Repairs.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

### CEQA FINDING NO. TRA-3

Impact: **Impact TRA-3. Conflicts between Construction Traffic and Local Traffic, Pedestrians, Bicyclists, and Bus Services**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

#### FACTS SUPPORTING THE FINDING(S)

The construction phase of the Project would add short-term truck traffic on local roads and involve short-term closures to roadways and parking areas within the vicinity of the Project area, which would disrupt local roadways and create conflicts with local traffic, pedestrians, bicyclists, and bus services.

Implementation of MM(s) MM TRA-3 has been incorporated into the Project to reduce this impact to a less than significant level.

- **MM TRA-3:** Implement a Construction Traffic Management Plan.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. TRA-4**

Impact: **Impact TRA-4. Temporary Reduction in Parking Spaces**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Implementation of the Project could impact the overall supply of parking spaces in the Project area if construction employees choose to park in the vicinity of the Project work sites.

Implementation of MM(s) MM TRA-4a and MM TRA-4b has been incorporated into the Project to reduce this impact to a less than significant level.

- **MM TRA-4a:** Provide Satellite Construction Parking Areas.
- **MM TRA-4b:** Provide Additional Recreational Parking Areas.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**3. Air Quality (AQ)**

**CEQA FINDING NO. AQ-1 AND AQ-3**

Impacts: **Impact AQ-1. Generation of Construction-Related Criteria Pollutant Emissions in Excess of San Joaquin Valley Air Pollution Control District Thresholds**

**Impact AQ-3. Exposure of Sensitive Receptors to Substantial Pollutant Concentrations**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Construction of the Project has the potential to create air quality impacts through the use of heavy-duty construction equipment, construction employees' vehicle trips, and

truck hauling trips. In addition, fugitive dust emissions would result from site preparation and grading. Project construction would generate diesel particulate matter, resulting in the exposure of nearby existing sensitive receptors (e.g., residences) to increased diesel particulate matter concentrations. In addition, the disturbance of soil that contains the *C. immitis* fungus could expose the general public to spores that are known to cause Valley Fever.

Implementation of MM(s) MM AQ-1a has been incorporated into the Project to reduce this impact to a less than significant level.

- **MM AQ-1a:** Prepare and Implement a Dust Control Plan to Reduce Fugitive Dust Emissions.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

#### 4. Vegetation and Wetlands (VEG)

##### **CEQA FINDING NO. VEG-1**

Impact: **Impact VEG-1. Loss of Special-Status Plants**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

##### FACTS SUPPORTING THE FINDING(S)

Project construction could result in the removal of special-status plants, if they are present. Use of the proposed staging area that is adjacent to the San Joaquin River for receiving materials transported by barge could affect special-status plants, if any occur on the banks where barges would access the area.

Implementation of MM(s) MM VEG-1a, MM VEG-1b, MM VEG-1c, MM VEG-1d, and MM VEG-1e has been incorporated into the Project to reduce this impact to a less than significant level.

- **MM VEG-1a:** Conduct Floristic Surveys for Special Status Plants during Appropriate Identification Periods.
- **MM VEG-1b:** Avoid or Compensate for Effects on Special-Status Plants.
- **MM VEG-1c:** Install Exclusion Fencing Around Sensitive Resource Areas.
- **MM VEG-1d:** Conduct Mandatory Contractor/Worker Awareness Training for Construction Personnel.
- **MM VEG-1e:** Retain a Biological Monitor.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. VEG-2**

Impact: **Impact VEG-2. Loss of Nonnative Riparian Habitat**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Project construction would require the removal of nonnative riparian vegetation in the Project area.

Implementation of MM(s) MM VEG-1c, MM VEG-1d, MM VEG-1e, and MM VEG-2 has been incorporated into the Project to reduce this impact to a less than significant level.

- See **MM VEG-1c, MM VEG-1d, MM VEG-1e** above.
- **MM VEG-2:** Compensate for Loss of Nonnative Riparian Habitat.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. VEG-3**

Impact: **Impact VEG-3. Loss of Tidal Emergent Wetland**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Project construction would result in a permanent loss of tidal emergent wetlands and would require the removal of wetland vegetation. Additional temporary impacts on tidal emergent wetland would occur during construction.

Implementation of MM(s) MM VEG-1c, MM VEG-1d, MM VEG-1e, and MM VEG-3 has been incorporated into the Project to reduce this impact to a less than significant level.

- See **MM VEG-1c, MM VEG-1d, MM VEG-1e** above.
- **MM VEG-3:** Compensate for Loss of Tidal Emergent Wetlands.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. VEG-4**

Impact: **Impact VEG-4. Loss of Tidal Perennial Drainage**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Project construction would result in a permanent loss of, and temporary impacts to, tidal perennial drainage.

Implementation of MM(s) MM VEG-1c, MM VEG-1d, MM VEG-1e, and MM VEG-4 has been incorporated into the Project to reduce this impact to a less than significant level.

- See **MM VEG-1c, MM VEG-1d, MM VEG-1e** above.
- **MM VEG-4:** Compensate for Loss of Tidal Perennial Drainage.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. VEG-7**

Impact: **Impact VEG-7. Spread of Invasive Plant Species**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Construction activities could introduce new invasive plants to the Project area or contribute to the spread of existing invasive plants to un-infested areas outside the Project area.

Implementation of MM(s) MM VEG-1d, MM VEG-1e, and MM VEG-7 has been incorporated into the Project to reduce this impact to a less than significant level.

- See **MM VEG-1d** and **MM VEG-1e** above.
- **MM VEG-7:** Avoid and Minimize Spread or Introduction of Invasive Plant Species.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

### 5. Fish and Aquatic Resources (AQU)

#### CEQA FINDING NO. AQU-1

Impact: **Impact AQU-1. Temporary Disturbance of Fish and Degradation of Aquatic Habitat during Construction Activities**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

#### FACTS SUPPORTING THE FINDING(S)

Ground-disturbing activities during construction of the Project would increase the potential for erosion and discharge of fine sediment into aquatic habitat.

Implementation of MM(s) MM AQU-1 has been incorporated into the Project to reduce this impact to a less than significant level.

- **MM AQU-1:** Limit In-Water Construction Activity to Periods of the Year That Minimize Effects on Fish.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

#### CEQA FINDING NO. AQU-2

Impact: **Impact AQU-2. Temporary Noise Disturbance to Fish during Construction Activities**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

#### FACTS SUPPORTING THE FINDING(S)

Construction activities would result in temporary noise and physical disturbance that may cause injury or death of fish by disrupting normal behaviors and potentially increasing the susceptibility of some individuals to predation.

Implementation of MM(s) MM AQU-1, MM AQU-2a, and MM AQU-2b has been incorporated into the Project to reduce this impact to a less than significant level.

- See **MM AQU-1** above.

- **MM AQU-2a:** Minimize Exceedance of Interim Threshold Sound Levels during Pile Driving to Minimize Effects on Fish.
- **MM AQU-2b:** Develop and Implement a Hydroacoustic Monitoring Plan to Minimize Noise Effects on Fish.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. AQU-3**

Impact: **Impact AQU-3. Adverse Effects on Fish Health and Survival Associated with Potential Discharge of Contaminants during Construction Activities**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Construction could result in accidental spills or leakage of contaminants such as gasoline, lubricants, other petroleum-based products, and concrete, which could kill or injure fish in the Project area, as well as making them more susceptible to disease and other sources of mortality.

Implementation of MM(s) MM HAZ-1 has been incorporated into the Project to reduce this impact to a less than significant level.

- See **MM HAZ-1** below.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. AQU-4**

Impact: **Adverse Effects on Special-Status Fish Species Associated with Potential Stranding during Dewatering**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Due to Smith Canal's connection to the San Joaquin River, there is a potential for special-status fish species to be present in Smith Canal during dewatering activities after cofferdam placement. If stranded, fish could die in the dewatered areas.

Implementation of MM(s) MM AQU-4 has been incorporated into the Project to reduce this impact to a less than significant level.

- **MM AQU-4:** Hire a Qualified Fisheries Biologist during Dewatering Activities to Minimize Fish Mortality.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

## 6. Wildlife (WILD)

### CEQA FINDING NO. WILD-1

Impact: **Impact WILD-1. Loss or Disturbance of Western Pond Turtles and Their Habitat**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

#### FACTS SUPPORTING THE FINDING(S)

Implementation of the Project would include temporary disturbance to upland nesting or basking habitat and the potential for loss of individual pond turtles.

Implementation of MM(s) MM VEG-1c through MM VEG-1e, and MM WILD-1 has been incorporated into the Project to reduce this impact to a less than significant level.

- See **MM VEG-1c** through **MM VEG-1e** above.
- **MM WILD-1:** Conduct a Preconstruction Survey and Monitor for Western Pond Turtle during Instream Water Work.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

### CEQA FINDING NO. WILD-2

Impact: **Impact WILD-2. Loss of Swainson's Hawk Nesting Habitat**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

#### FACTS SUPPORTING THE FINDING(S)

Direct impacts on Swainson's hawks include the loss of nesting habitat (including riparian woodland and landscaped/developed habitats with large trees) associated with

Project construction, as well as the potential for disturbance of actively nesting Swainson’s hawks if an active nest is present in or near the construction areas.

Implementation of MM(s) MM VEG-1c through MM VEG-1e, MM VEG-6b, and MM WILD-2 has been incorporated into the Project to reduce this impact to a less than significant level.

- See **MM VEG-1c** through **MM VEG-1e**, and **MM VEG-6b** above.
- **MM WILD-2:** Avoid Disturbance of Tree-Shrub-, Ground-Nesting Special-Status and Non-Special-Status Migratory Birds and Raptors and Conduct Preconstruction Nesting Bird Surveys.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. WILD-3**

Impact: **Impact WILD-3. Loss or Disturbance of Western Burrowing Owls and Their Habitat**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Direct impacts on burrowing owls include the potential for disturbance of nesting birds and injury or mortality of birds if they are present in or adjacent to the construction area.

Implementation of MM(s) MM VEG-1d, MM VEG-1e, MM WILD-3a, and MM WILD-3b has been incorporated into the Project to reduce this impact to a less than significant level. The 2012 California Department of Fish and Wildlife (formerly known as the California Department of Fish and Game)’s Staff Report on Burrowing Owl Mitigation is available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline=true>.

- See **MM VEG-1d** and **MM VEG-1e** above.
- **MM WILD-3a:** Conduct Preconstruction Surveys for Active Burrowing Owl Burrows and Implement the 2012 California Department of Fish and Game Guidelines for Burrowing Owl Mitigation, if Necessary.
- **MM WILD-3b:** Compensate for Loss of Burrowing Owl Habitat.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. WILD-4**

Impact: **Impact WILD-4. Loss or Disturbance of Tree-, Shrub- and Ground-Nesting Special-Status and Non-Special-Status Migratory Birds and Raptors**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Implementation of the Project could result in direct impacts on both special-status and non-special-status birds and raptors, including the loss of nesting habitat associated with Project construction and the potential for disturbance of actively nesting birds if an active nest is present in or near the construction areas.

Implementation of MM(s) MM VEG-1d, MM VEG-1e, and MM WILD-2 has been incorporated into the Project to reduce this impact to a less than significant level.

- See **MM VEG-1d**, **MM VEG-1e**, and **MM WILD-2** above.

**LEVEL OF SIGNIFICANCE AFTER MITIGATION.** With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. WILD-5**

Impact: **Impact WILD-5. Loss or Disturbance of Bats and Bat Roosts**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Construction activities associated with the implementation of the Project, such as tree removal and trimming or construction noise, could result in direct impacts on roosting bats, including the destruction of active roosts, the loss of individuals, or roost failure.

Implementation of MM(s) MM VEG-1d, MM VEG-1e, and MM WILD-5 has been incorporated into the Project to reduce this impact to a less than significant level.

- See **MM VEG-1d** and **MM VEG-1e** above.
- **MM WILD-5:** Conduct Preconstruction Surveys for Roosting Bats and Implement Protective Measures.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. WILD-6**

Impact: **Impact WILD-6. Loss or Disturbance of Protected Marine Mammals**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

There is potential for disturbance to sea lions if a staging area is placed in the vicinity of where the sea lions haul out onto Rough and Ready Island or its vicinity.

Implementation of MM(s) MM VEG-1d, MM VEG-1e, and MM WILD-6 has been incorporated into the Project to reduce this impact to a less than significant level.

- See **MM VEG-1d** and **MM VEG-1e** above.
- **MM WILD-6:** Ensure staging area are located away from California sea lions.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**7. Recreation (REC)**

**CEQA FINDING NO. REC-1**

Impact: **Impact REC-1. Interference with Access to Public Recreation Facilities as a Result of Project Construction**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Project construction would include situating staging areas in the Louis Park parking area near the boat launch at the base of Dad's Point. In addition, Monte Diablo Avenue, which terminates at the boat launch parking lot, would be used as a haul route.

Implementation of MM(s) MM REC-1 has been incorporated into the Project to reduce this impact to a less than significant level.

- **MM REC-1:** Direct Displaced Recreationists to Under-Utilized Recreation Facilities.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. REC-2**

Impact: **Impact REC-2. Disruption or Impairment of the Quality or Ease of Recreational Boating Activities as a Result of Project Construction**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

The width of the Smith Canal channel opening from the Project area to the San Joaquin River would be limited during construction due to the presence of construction equipment and barges.

Implementation of MM(s) MM-REC-2 has been incorporated into the Project to reduce this impact to a less than significant level.

- **MM REC-2:** Implement Measures to Aid Navigation.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. REC-3**

Impact: **Impact REC-3. Disruption or Impairment of the Quality or Ease of Recreational Boating Activities as a Result of Project Operation and Maintenance**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Implementation of the Project would result in obstruction of channel flow from the presence of the gate fixed sheet pile wall structure, which has the potential to create localized eddies near the entrance to Atherton Cove and Smith Canal, which could result in some shoaling near the entrance of the canal.

Implementation of MM(s) MM REC-2 has been incorporated into the Project to reduce this impact to a less than significant level.

- See **MM REC-2** above.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

### 8. Utilities and Public Services (UTL)

#### **CEQA FINDING NO. UTL-1**

Impact: **Damage of Public Utility and Communication Infrastructure and Disruption of Service as a Result of Project Construction**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

#### FACTS SUPPORTING THE FINDING(S)

Project construction would necessitate the relocation of utility infrastructure, which could result in temporary loss of service for communication, water, sanitary sewer, gas, electricity, and other utility lines.

Implementation of MM(s) MM UTL-1 has been incorporated into the Project to reduce this impact to a less than significant level

- **MM UTL-1:** Coordinate with Utility Providers, Prepare a Response Plan, and Conduct Worker Training.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

#### **CEQA FINDING NO. UTL-3**

Impact: **Increase in Emergency Response Times during Project Construction**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

#### FACTS SUPPORTING THE FINDING(S)

Project construction could temporarily disrupt local roadways, create conflicts with local traffic, pedestrians, bicyclists, and bus services; and result in temporary road closures that would affect the existing surrounding community. Construction would also involve temporarily reducing traffic to a single lane on Moreing Road, which is the only access road to Atherton Island.

Implementation of MM(s) MM TRA-3 and MM UTL-3 has been incorporated into the Project to reduce this impact to a less than significant level

- See **MM TRA-3** above.
- **MM UTL-3**: Coordinate with Public Service Providers.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

### 9. Public Health and Environmental Hazards (HAZ)

#### **CEQA FINDING NO. HAZ-1**

Impact: **Impact HAZ-1. Incidental Release of Hazardous Materials during Construction**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

#### FACTS SUPPORTING THE FINDING(S)

Project construction would require the use of hazardous materials, such as gasoline, lubricants, other petroleum-based products, and concrete, in connection with operation of construction equipment and vehicles, which could be released accidentally into the environment at the construction site or along access routes.

Implementation of MM(s) MM HAZ-1 has been incorporated into the Project to reduce this impact to a less than significant level.

- **MM HAZ-1**: Prepare and Implement a Spill Prevention, Control, and Countermeasure Plan.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

#### **CEQA FINDING NO. HAZ-2**

Impact: **Impact HAZ-2. Exposure of Hazardous Materials Encountered at Project Site**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

#### FACTS SUPPORTING THE FINDING(S)

There is potential that undocumented hazardous materials could be encountered at the Project site. Excavation and construction activities at or near areas of currently

unrecorded soil or groundwater contamination could result in the exposure of construction workers, the general public, and the environment to hazardous materials.

Implementation of MM(s) MM HAZ-2 has been incorporated into the Project to reduce this impact to a less than significant level.

- **MM HAZ-2:** Implement Measures to Maintain Soil and Groundwater Conditions.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. HAZ-3**

Impact: **Impact HAZ-3. Access to the Construction Site and Vehicles by the Public**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

The public could be exposed to heavy equipment at the construction site, particularly in areas where there is regular public access, such as Louis Park. In addition, people may walk, ride bicycles, or otherwise use the roadways adjacent to the Project site during the construction period when heavy machinery and haul trucks would be accessing the site.

Implementation of MM(s) MM HAZ-3 has been incorporated into the Project to reduce this impact to a less than significant level.

- **MM HAZ-3:** Notify the Public of Construction Area Closure and Secure Staging Areas.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

## 10. Cultural Resources (CUL)

### CEQA FINDING NO. CUL-2

Impact: **Impact CUL-2. Substantial Adverse Change in the Significance of an Archaeological Historical Resource Pursuant to State CEQA Guidelines Section 15064.5 or a Unique Archaeological Resource Pursuant to PRC Section 21083.2**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

#### FACTS SUPPORTING THE FINDING(S)

Implementation of the Project includes the possibility that construction would unearth archaeological materials or shipwrecks from beneath the ground surface that cannot currently be identified because of limited access and because of the infeasibility of identifying all buried resources prior to construction.

Implementation of MM(s) MM CUL-2 has been incorporated into the Project to reduce this impact to a less than significant level.

- **MM CUL-2:** Halt Work if Previously Unidentified Archaeological Resources are Encountered until a Qualified Archaeologist Assesses the Find and Native American Consultation has been Conducted.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

### CEQA FINDING NO. CUL-3

Impact: **Impact CUL-3. Disturbance of any Human Remains, Including Those Interred Outside of Formal Cemeteries Pursuant to CHSC Section 7050.5**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

#### FACTS SUPPORTING THE FINDING(S)

It is possible that buried human remains are present in the Project area, but not identified during the archaeological survey due to their subsurface location. As such, there is still the potential that human remains would be encountered during Project ground-disturbing activities.

Implementation of MM(s) MM CUL-3 has been incorporated into the Project to reduce this impact to a less than significant level.

- **MM CUL-3:** Stop Work in Case of Accidental Discovery of Buried Human Remains until Procedures in PRC Section 5097 have been Completed.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

#### **D. SIGNIFICANT AND UNAVOIDABLE IMPACTS**

The following impacts were determined in the Final EIR to be significant and unavoidable. The Statement of Overriding Considerations adopted as part of this exhibit applies to all such unavoidable impacts as required by CEQA. (Pub. Resources Code, § 21081, subd. (b); State CEQA Guidelines, §§ 15092 and 15093.)

##### **1. Noise (NOI)**

###### **CEQA FINDING NO. NOI-1**

Impact: **Impact NOI-1. Exposure of Noise-Sensitive Land Uses to Noise during Construction of Wall Structures**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the MMs or alternatives identified in the EIR.

##### **FACTS SUPPORTING THE FINDING(S)**

Implementation of the Project would include construction-related activities, including operation of heavy equipment, that could expose noise-sensitive receivers to construction noise in excess of the Federal Transit Administration suggested daytime standard.

Implementation of MM(s) MM NOI-1a and MM NOI-1b has been incorporated into the Project and would reduce the severity of Impact NOI-1, although not necessarily to a less than significant level.

- **MM NOI-1a:** Employ Noise-Reducing Construction Practices during Construction.
- **MM NOI-1b.** Prior to Construction, Initiate a Complaint/Response Tracking Program.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. This impact is considered significant and unavoidable.

## 2. Visual Resources (VIS)

### CEQA FINDING NO. VIS-1

Impact: **Impact VIS-1. Temporary Visual Impacts Caused by Construction Activities**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the MMs or alternatives identified in the EIR.

#### FACTS SUPPORTING THE FINDING(S)

Construction of the Project would result in a temporary increase in traffic, would temporarily affect residential and recreational views, and would possibly require construction high-intensity lighting if construction starts before sunrise.

Implementation of MM(s) MM VIS-1a has been incorporated into the Project and would reduce the severity of Impact VIS-1, although not necessarily to a less than significant level.

- **MM VIS-1a:** Limit Activities That Would Require High-Intensity Lighting to Be Used for Illumination to Daylight Hours.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. This impact is considered significant and unavoidable.

### CEQA FINDING NO. VIS-2

Impact: **Impact VIS-2. Substantial Degradation of the Existing Visual Character or Quality of the Site and Its Surroundings**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the MMs or alternatives identified in the EIR.

#### FACTS SUPPORTING THE FINDING(S)

Implementation of the Project would result in substantial visual changes associated with Dad's Point that are likely to be perceived as negative. Project implementation would also alter the existing visual character and quality of views associated with the study area.

Implementation of MM(s) MM VIS-2a and MM VIS-2b has been incorporated into the Project and would reduce the severity of Impact VIS-2, although not necessarily to a less than significant level.

- **MM VIS-2a.** Apply Aesthetic Surface treatments to Ancillary Project Features.
- **MM VIS-2b.** Work with Affected Stakeholders to Determine Appropriate Sheet Pile Wall Aesthetic Treatments.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. This impact is considered significant and unavoidable.

**CEQA FINDING NO. VIS-3**

Impact: **Impact VIS-3. Creation of a New Source of Substantial Light or Glare That Would Adversely Affect Daytime or Nighttime Views in the Area**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the MMs or alternatives identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Project implementation would result in new sources of glare by introducing light-colored surfaces with large surface areas that would reflect light off of those surfaces and increase glare, especially when combined with the removal of vegetation that absorbs light, provides shade, and screens glare.

Implementation of MM(s) MM VIS-2a and MM VIS-2b has been incorporated into the Project and would reduce the severity of Impact VIS-3, although not necessarily to a less than significant level.

- See **MM VIS-2a** and **MM VIS-2b** above.

LEVEL OF SIGNIFICANCE AFTER MITIGATION. This impact is considered significant and unavoidable.

## E. FINDINGS ON ALTERNATIVES

As explained in *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1000:

*When it comes time to decide on project approval, the public agency's decisionmaking body evaluates whether the alternatives [analyzed in the EIR] are actually feasible.... At this final stage of project approval, the agency considers whether [s]pecific economic, legal, social, technological, or other considerations...make infeasible the mitigation measures or alternatives identified in the environmental impact report.' Broader considerations of policy thus come into play when the decisionmaking body is considering actual feasibility than when the EIR preparer is assessing potential feasibility of the alternatives [citations omitted].*

The four alternatives analyzed in the EIR represent a reasonable range of potentially feasible alternatives that could reduce one or more significant impacts of the Project. These alternatives include:

- 1) No-Project Alternative
- 2) Alternative 1: Single Gated Wall to Dad's Point (Proposed Project)
- 3) Alternative 2: Atherton Cove Floodwall with Smith Canal Gate
- 4) Alternative 3: Dual Gated Walls to Atherton Cove and Smit Canal

As presented in the EIR, the alternatives were described and compared with each other and with the proposed Project. The Alternative 1: Single Gated Wall to Dad's Point was the proposed Project and was adopted by the Applicant with the Findings (Exhibit D, Attachment D-1).

Under State CEQA Guidelines section 15126.6, subdivision (e)(2), if the No Project Alternative is identified as the environmentally superior alternative, the EIR must also identify an environmentally superior alternative among the other alternatives. Based on the analysis contained in the EIR, there is no alternative that is both feasible and environmentally superior alternative to the proposed Project that is capable of achieving the Project objective. No one alternative would eliminate the significant and adverse impacts of the proposed Project.

The Applicant independently reviewed and considered the information on alternatives provided in the EIR and in the record. The EIR reflects the Applicant's independent judgment as to alternatives. The Applicant found that the Project provides the best balance between the Project goals and objectives and the Project's benefits. The three CEQA alternatives proposed and evaluated in the EIR were rejected as being infeasible for reasons provided in the Applicant's Findings Regarding Alternatives (Attachment D, Attachment D-1).

Based upon the objectives identified in the Final EIR and the detailed MMs imposed upon the Project, the Commission has determined that the Project should be approved, subject to such MMs (Exhibit C, Mitigation Monitoring Program), and that any remaining

unmitigated environmental impacts attributable to the Project are outweighed by the following specific economic, fiscal, social, environmental, land use, and other overriding considerations.

**4.0 STATEMENT OF OVERRIDING CONSIDERATIONS**

**A. INTRODUCTION**

This section addresses the Commission’s obligations under Public Resources Code section 21081, subdivisions (a)(3) and (b). (See also State CEQA Guidelines, §§ 15091, subd. (a)(3), 15093.) Under these provisions, CEQA requires the Commission to balance, as applicable, the economic, legal, social, technological, or other benefits, including regionwide or statewide environmental benefits, of the Lease approval related to the Applicant’s proposed Project against the backdrop of the Project’s unavoidable significant environmental impacts. For purposes of CEQA, if the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable significant environmental effects, those effects may be considered acceptable and the decision-making agency may approve the underlying project. (State CEQA Guidelines § 15092, subd. (b)(2)(B).) CEQA, in this respect, does not prohibit the Commission from approving the Lease even if the Project activities as authorized under the Lease may cause significant and unavoidable environmental effects.

This Statement of Overriding Considerations presents a list of the following:

- 1) the specific significant effects on the environment attributable to the approved Project that cannot feasibly be mitigated to below a level of significance
- 2) benefits derived from the approved Project
- 3) specific reasons for approving the Project

Although the Applicant and Commission have imposed MMs to reduce impacts, impacts remain that are considered significant after application of all feasible mitigation. Significant impacts of the approved Project fall under two resource areas: Noise and Visual Resources (see Table 2). These impacts are specifically identified and discussed in more detail in the Commission’s CEQA Findings and in the Applicant’s Final EIR and Addenda. While the Commission has required all feasible MMs, these impacts remain significant for purposes of adopting this Statement of Overriding Considerations.

**Table 2 – Significant and Unavoidable Impacts Identified for the Approved Project**

Impact	Impact Description
<b>Noise</b>	
<b>Impact NOI-1. Exposure of Noise-Sensitive Land Uses to Noise during</b>	The proposed Project would result in significant unavoidable construction-related adverse noise impacts, even after the implementation of feasible standard conditions and MMs. The residences and outdoor activity areas within approximately 275 feet of an active construction site could be exposed to construction noise that is higher than the noise thresholds for

Impact	Impact Description
<b>Construction of Wall Structures</b>	<p>this area.</p> <p>While the identified MMs would reduce this impact, it would remain significant and adverse because it would exceed the recommended noise thresholds. There are no other feasible MMs that are available to offset this significant impact. Therefore, the cumulative construction noise impacts of the proposed Project would remain significant.</p>
<b>Visual Resources</b>	
<b>Impact VIS-1. Temporary Visual Impacts Caused by Construction Activities</b>	<p>The proposed Project would result in significant unavoidable construction-related adverse visual impacts, even after the implementation of feasible standard conditions and MMs. The construction-related activities would temporarily increase traffic, block River views, and possibly require high-intensity lighting if construction starts before sunrise.</p> <p>While the identified MMs would reduce this impact, it would remain significant and adverse because it would continue to block residents' and recreationalists' views of the River. There are no other feasible MMs that are available to offset this significant impact. Therefore, the cumulative construction visual resources impacts of the proposed Project would remain significant.</p>
<b>Impact VIS-2. Substantial Degradation of the Existing Visual Character or Quality of the Site and Its Surroundings</b>	<p>The proposed Project would result in significant unavoidable construction-related adverse visual impacts, even after the implementation of feasible standard conditions and MMs. The large-scale industrial-looking wall and gate structure would close off views of the River to the local residents and visiting recreationalists. The proposed riprap would further reduce the River views, require removal of the existing vegetation along Dad's Point and the bank adjacent to the golf course, and prevent vegetation from growing in that area in the future.</p> <p>While the identified MMs would reduce this impact, it would remain significant and adverse because it would continue to block views of the River. There are no other feasible MMs that are available to offset this significant impact. Therefore, the cumulative construction visual resources impacts of the proposed Project would remain significant.</p>
<b>Impact VIS-3. Creation of a New Source of Substantial Light or Glare That Would Adversely Affect Daytime or</b>	<p>The proposed Project would result in significant unavoidable construction-related adverse visual impacts, even after the implementation of feasible standard conditions and MMs. There would be new sources of glare from the introduction of new light-colored surfaces. These new large light-colored surfaces would have large surface areas that would reflect light s and increase glare. This glare situation would be worsened by</p>

Impact	Impact Description
<b>Nighttime Views in the Area</b>	removal of the existing vegetation, because the existing vegetation absorbs light, provides shade, and screens glare. While the identified MMs would reduce this impact, it would remain significant and adverse because it would create new sources of substantial light or glare. There are no other feasible MMs that are available to offset this significant impact. Therefore, the cumulative construction visual resources impacts of the proposed Project would remain significant.

**B. BALANCING OF BENEFITS AND RISKS ASSOCIATED WITH LEASE APPROVAL**

State CEQA Guidelines section 15093, subdivision (a) requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project.

Currently, Federal Emergency Management Agency (FEMA) identifies approximately 5,000 properties and approximately 15,000 residents within the 100-year floodplain, an area identified by FEMA as having an increased risk of flooding, which elevates the level of risk to human health and safety, property, and adverse environmental and economic effects that would be caused by serious flooding. An additional 3,000 parcels and 9,000 residents may be included in a remapping of the 100-year floodplain if the current flood protection infrastructure is not improved.

The proposed Project would result in the ability for the Smith Canal levees to reacquire FEMA accreditation. The areas behind the levees are currently designated as a special flood hazard area by FEMA. Implementation of the Project would remove the areas behind the levees from the 100-year floodplain and allow for FEMA to remove the special flood hazard area designation. Residents carrying federally-backed mortgages would no longer be required to purchase flood insurance, and restrictions on building and improvements in the area would be lifted. Residents would face less risk of harm to their health and safety, property, and other adverse effects of flooding.

Although the proposed Project will have unavoidable noise and visual impacts, the Project has important long-term benefits. It will contribute to contribute to flood protection goals (such as SB 5 (Machado, 2007)’s mandate for 200-year protection for urbanized areas), reduce risk of harm to life and property, and provide additional recreational opportunities including a multi-use interpretive trail and fishing platform.

**C. COMMISSION ADOPTION OF STATEMENT OF OVERRIDING CONSIDERATIONS**

As noted above, under Public Resources Code section 21081, subdivisions (a)(3) and

(b) and State CEQA Guidelines section 15093, subdivision (a), the decision-making agency is required to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or state-wide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve a project.

For purposes of CEQA, if the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable significant environmental effects, the decision-making agency may approve the underlying project. CEQA, in this respect, does not prohibit the Commission from approving the Project, even if the activities authorized by that approval may cause significant and unavoidable environmental effects. This balancing is particularly difficult given the significant and unavoidable impacts on the resources discussed in the EIR and these Findings. Nevertheless, the Commission finds, as set forth below, that the benefits anticipated by implementing the Project outweigh and override the expected significant effects.

The Commission has balanced benefits of the Project against the significant unavoidable impacts that will remain after selection of the Approved Project and with implementation of all feasible mitigation in the EIR that is adopted as enforceable conditions of the Commission's approval of the Project. Based on all available information, the Commission finds that the benefits of the approved Project outweigh the significant and unavoidable adverse environmental effects, and considers such effects acceptable. The Commission adopts and makes this Statement of Overriding Considerations with respect to the impacts identified in the EIR and these Findings that cannot be reduced to a less than significant level. Each benefit set forth above or described below constitutes an overriding consideration warranting approval of the project, independent of the other benefits, despite each and every significant unavoidable impact.

#### **D. CONCLUSION**

The Commission has considered the Final EIR and all of the environmental impacts described therein including those that cannot be mitigated to a less than significant level and those that may affect Public Trust uses of State sovereign land. The Commission has considered the fiscal, economic, legal, social, environmental, and public health and safety benefits of the Project and has balanced them against the Project's unavoidable and unmitigated adverse environmental impacts and, based upon substantial evidence in the record, has determined that the benefits of the Project outweigh the adverse environmental effects. Based on the foregoing and pursuant to Public Resources Code section 21081 and State CEQA Guidelines sections 15096 subdivision (h) and 15093, the Commission finds that the remaining significant unavoidable impacts of the Project are acceptable in light of the economic, fiscal, social, environmental, and public health and safety benefits of the Project. Such benefits outweigh such significant and unavoidable impacts of the Project and provide the substantive and legal basis for this Statement of Overriding Considerations.

The Commission finds that to the extent that any impacts identified in the Final EIR remain unmitigated, MMs have been required to the extent feasible, although the impacts could not be reduced to a less than significant level.

Based on the above discussion, the Commission finds that the benefits of the Project outweigh the significant unavoidable impacts that could remain after mitigation is applied and considers such impacts acceptable.

**ATTACHMENT D-1**

**San Joaquin Area Flood Control Agency**

**Findings of Fact and  
Statement of Overriding Considerations**

# Attachment D-1

## **SAN JOAQUIN AREA FLOOD CONTROL AGENCY SMITH CANAL GATE PROJECT**

### **FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS**

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**November 2015**



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## Acronyms and Abbreviations

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Board	San Joaquin Area Flood Control Agency Board
CCR	California Code of Regulations
CEQA	California Environmental Quality Act
DEIR	Draft Environmental Impact Report
CDFW	California Department of Fish and Wildlife
Delta	Sacramento-San Joaquin Delta
DPM	diesel particulate matter
DWR	California Department of Water Resources
DWSC	Deep Water Ship Channel
EIR	environmental impact report
FEIR	Final Environmental Impact Report
FEMA	Federal Emergency Management Agency
Findings	Findings of Fact
FIRMs	Flood Insurance Rate Maps
FTA	Federal Transit Administration
MMRP	Mitigation Monitoring and Reporting Plan
NOA	Notice of Availability
NOP	Notice of Preparation
PRC	Public Resources Code
SFHA	Special Flood Hazard Area
Smith Canal project or project	Smith Canal Gate Project
Statement	Statement of Overriding Considerations
ULDC	Urban Levee Design Criteria
SJAFCA	San Joaquin Area Flood Control Agency

This document provides a brief summary of the Smith Canal Gate Project (Smith Canal project or project) and the environmental review process. It contains the Findings of Fact (Findings) of the San Joaquin Area Flood Control Agency's (SJAFCA) Board (Board) for each significant environmental effect of the project, identified in the FEIR as Alternative 1 (California Environmental Quality Act [CEQA] Guidelines Section 15091). This document also provides a Statement of Overriding Considerations (Statement), as required by State CEQA Guidelines Section 15093, providing rationale in support of the Board's determination that the benefits of the project outweigh its unavoidable significant environmental effects.

## Project Summary

The Smith Canal project involves the construction of a gate-type closure structure at the mouth of Smith Canal adjacent to the San Joaquin River in and adjacent to the city of Stockton, in the county of San Joaquin, California. The Smith Canal is a backwater slough of the Sacramento-San Joaquin Delta (Delta), south of the Calaveras River. The existing levees along Smith Canal are heavily encroached upon and cannot be certified as meeting Federal Emergency Management Agency (FEMA) standards or the state's Urban Levee Design Criteria (ULDC). The gate structure would isolate Smith Canal from the San Joaquin River and allow existing levees to function as a secondary flood risk-reduction measure.

The primary purpose of the project is to reacquire FEMA accreditation that was revoked in 2009 and remove the Special Flood Hazard Area (SFHA) designation from a large portion of central Stockton. Approximately 5,000 properties and approximately 15,000 residents were identified by FEMA as being in the FEMA 100-year floodplain, an area identified by FEMA as having an increased risk of flooding. In addition, based on topographical data recently developed by the California Department of Water Resources (DWR), FEMA is currently proposing to remap the region to include an additional 3,000 parcels and 9,000 residents in the 100-year floodplain. Further, SJAFCA has a goal consistent with state law to provide a minimum 200-year level of flood risk-reduction performance by 2025. Isolation of Smith Canal from the San Joaquin River would remove the affected area from the 100-year floodplain, thereby improving the FEMA rating, and would contribute toward ultimate 200-year level of performance in combination with other area projects, in compliance with state law.

## Environmental Review Process

In June 2015, SJAFCA circulated a draft environmental impact report (EIR) in compliance with CEQA (Public Resources Code [PRC] Section 21000 et seq.) and the State CEQA Guidelines (Title 14, California Code of Regulations [CCR], Section 15000 et seq.). Certification of SJAFCA's final EIR for the project completes the CEQA analysis process. For the purposes of these Findings and Statement, SJAFCA's environmental documents are referred to herein as draft environmental impact report (DEIR) and final environmental impact report (FEIR), respectively.

The FEIR document contains the DEIR's alternatives and analysis of impacts on resource areas, modified as necessary in response to public comment. A new chapter was added to the FEIR as Chapter 9, *Response to Comments*, which includes comments received on the DEIR, a list of the commenters, and responses to comments. The FEIR identified significant effects of the project and its alternatives, as well as proposed mitigation measures to reduce those effects in the following areas.

- Water Quality and Groundwater Resources
- Transportation and Navigation
- Air Quality
- Noise
- Vegetation and Wetlands
- Fish and Aquatic Resources
- Wildlife
- Visual Resources
- Recreation
- Utilities and Public Services
- Public Health and Environmental Hazards
- Cultural Resources

The FEIR also identified significant and unavoidable effects in the following areas; for these effects, no feasible mitigation measures are available, or implementation of feasible mitigation measures would not reduce the effect to a less-than-significant level.

- Noise
- Visual Resources

Having received, reviewed, and considered the FEIR, as well as all other information in the administrative record on this matter, the following Findings are made, and a Statement is adopted by SJAFCA in its capacity as the CEQA lead agency. These Findings and Statement set forth the environmental basis for discretionary actions to be undertaken by SJAFCA and responsible agencies to implement the project.

## California Environmental Quality Act Process

In accordance with CEQA Guidelines Section 15082, SJAFCA, as lead agency, circulated a notice of preparation (NOP) for the DEIR on June 24, 2014. On the afternoon of June 24, 2014, the NOP was hand-delivered to the State Clearinghouse and filed with the County of San Joaquin Clerk/Recorder's Office. The 30-day comment period on the NOP began on June 25, 2014, and ended on July 25, 2014. On June 26, 2014, the NOP was mailed by certified mail directly to 18 responsible, trustee, and interested agencies, as well as parties who had previously submitted written requests for information concerning the project. Receipt of all copies was confirmed by USPS return receipt.

During this 30-day review period, a public scoping meeting was held on July 16, 2014 from 6:00 p.m. to 8:00 p.m., at the Ambler's Club at 2000 Amblers Lane in Stockton to inform the public of the proposed project. Twenty-one comment letters were received from the public and state and Federal agencies during the public scoping period.

Consistent with CEQA, the DEIR for the project was prepared and circulated for a 45-day public comment period (June 25, 2015 to August 10, 2015). SJAFCA prepared a notice of availability (NOA) to signal the availability of the DEIR to the public on June 24, 2015. The NOA was filed with the San Joaquin County Clerk Recorder's office on June 24, 2015, effectively beginning the 45-day review period on June 25, 2015. On June 24, 2015, SJAFCA mailed the NOA directly to responsible and trustee agencies, cooperating Federal agencies, and other interested parties who had previously requested notice of the DEIR's release in writing,

During the 45-day review period of the DEIR, one public meeting was held to inform the public of, and receive public comment regarding, the project alternatives analyzed in the DEIR and the likely environmental effects of these alternatives. The meeting was held on July 8, 2015 from 5 p.m. to 7 p.m. The public meeting was held at the Stockton Civic Auditorium, South Hall, located at 525 North Center Street in Stockton.

Twenty-three comment letters were received from the public and state and Federal agencies on the DEIR. All comments received during the public comment period were addressed in Chapter 9, "Responses to Comments," of the FEIR. Consistent with CEQA, SJAFCA provided all commenting public agencies with an opportunity to review proposed responses to agency comments at least 10 days prior to certification of the FEIR. A copy of the FEIR was made available to the public on SJAFCA's website on November 12, 2015. Following certification, the full document will be made available to the public in hard copy form at the San Joaquin County Public Library, Chavez Central, 605 North El Dorado Street, Stockton, California, 95202, and Stockton City Hall, 425 North El Dorado Street, Stockton, California, 95202, as well as at the SJAFCA offices.

Upon approving the project, the Board will adopt these Findings regarding the project's significant effects and Statement explaining that the project's benefits outweigh the significant unavoidable impacts identified in the FEIR.

Pursuant to PRC Section 21081.6, an MMRP has been prepared for the Proposed Project, defined in the FEIR as Alternative 1, and is adopted concurrently with these Findings (see Public Resources Code, § 21081.6, subd. (a)(1)), that includes the mitigation measures incorporated into the Proposed Project to avoid or substantially lessen significant environmental effects. The MMRP establishes a program to ensure that the adopted mitigation measures identified in the FEIR will be implemented. SJAFCA will use the MMRP, which is a separate, stand-alone document, to track compliance with the mitigation measures.

## California Environmental Quality Act Requirements

CEQA, PRC Section 21000 et seq., requires a lead agency to make written findings of project effects (or “effects”) when a lead agency decides to approve a project for which an EIR has been certified (PRC Section 21081). Section 15091 of the State CEQA Guidelines (CCR Title 14) states, in part:

- (a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effect of the project unless the public agency makes one or more written finding for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:
- (1) Changes or alterations have been required in, or incorporated into, the project, which avoid or substantially lessen the significant environmental effect as identified in the final EIR.
  - (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
  - (3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

The findings required by subsection (a) shall be supported by substantial evidence in the record.

The documents and other materials that constitute the administrative record upon which SJAFCA based its decision and these findings are held by SJAFCA and can be reviewed at the following location.

22 East Weber Avenue, Room 301  
Stockton, CA 95202

## Findings of Fact

In accordance with State CEQA Guidelines Section 15091, the following findings and supporting facts address each significant environmental effect of the project that has been changed (including adoption of mitigation measures) to avoid or substantially reduce the magnitude of the effect as identified in the FEIR. The findings described below are organized by resource issue, in the same order as the effects are discussed in Chapter 3, *Environmental Setting and Impacts*, of the FEIR. The findings reference the FEIR (which is part of the record upon which SJAFCA based its decision), project measures, and mitigation measures. For specific resource mitigation measures, the section

and page number where the full text of the mitigation measure occurs is noted in the finding. Findings of infeasibility for the project alternatives, where relevant, follow the individual effect findings.

## Findings Regarding Impacts That Will be Mitigated to Below a Level of Significance (State CEQA Guidelines Section 15091[a][1])

SJAFCA, having reviewed and considered the information contained in the FEIR and pursuant to PRC Section 21081 and State CEQA Guidelines Section 15091(a)(1), adopts the following findings regarding the significant effects of the Smith Canal project.

### Impact WQ-1: Violation of Water Quality Standards for Turbidity as a Result of Construction Activities

Findings: SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

#### Facts Supporting the Finding:

1. There is some risk that in-water excavation during certain phases of construction could cause turbidity levels to exceed the thresholds specified in the Central Valley Regional Water Quality Control Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basin*.
2. This effect on surface water quality would be significant.
3. Implementation of *Mitigation Measures WQ-MM-1a: Prepare and Implement a Turbidity Monitoring Program* (p 3.2-8), *WQ-MM-1b: Implement Construction Best Management Practices* (p. 3.2-8), and *WQ-MM-1c: Prepare and Implement a Stormwater Pollution Prevention Plan* (p. 3.2-9) would reduce this effect to a less-than-significant level.

### Impact WQ-2: Release of Contaminants into Adjacent Surface Water Bodies from Construction-Related Activities

Findings: SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

#### Facts Supporting the Finding:

1. Contaminants associated with construction equipment, such as gasoline, lubricants, other petroleum-based products, and concrete, could enter the water as a result of spills during construction, contamination of stormwater runoff from the construction site, or disturbance of sediments that contain contaminants. The use of construction equipment could be a direct source of contamination if proper equipment and construction practices are not followed.
2. These effects on surface and groundwater quality would be significant.
3. Implementation of *Mitigation Measures WQ-MM-1a: Prepare and Implement a Turbidity Monitoring Program* (p 3.2-8), *WQ-MM-1b: Implement Construction Best Management Practices* (p. 3.2-8), and *WQ-MM-1c: Prepare and Implement a Stormwater Pollution Prevention Plan* (p. 3.2-9) would reduce this effect to a less-than-significant level.

### **Impact TRA-2: Increase in Safety Hazard Attributable to Construction-Generated Deterioration of Roads**

Findings: SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

Facts Supporting the Findings:

1. Use of heavy-duty trucks during construction may lead to the accelerated deterioration of roadway pavement for haul routes utilized for the project and may increase safety hazards for automobiles.
2. These effects on transportation would be significant.
3. Implementation of *Mitigation Measure TRA-MM-2: Implement Pavement Repairs* (p. 3.3-14), would reduce this effect to a less-than-significant level.

### **Impact TRA-3: Conflicts between Construction Traffic and Local Traffic, Pedestrians, Bicyclists, and Bus Services**

Findings: SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

Facts Supporting the Findings:

1. The construction phase of the project would add short-term truck traffic on local roads and involve short-term closures to roadways and parking areas within the vicinity of the project area, which would disrupt local roadways and create conflicts with local traffic, pedestrians, bicyclists, and bus services.
2. These effects on transportation would be significant.
3. Implementation of *Mitigation Measure TRA-MM-3: Implement a Construction Traffic Management Plan* (p. 3.3-15) would reduce this effect to a less-than-significant level.

### **Impact TRA-4: Temporary Reduction in Parking Spaces**

Findings: SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

Facts Supporting the Findings:

1. Implementation of the project could impact the overall supply of parking spaces in the project area if construction employees choose to park in the vicinity of the project work sites.
2. This effect on transportation would be significant.
3. Implementation of *Mitigation Measures TRA-MM-4a: Provide Satellite Construction Parking Areas* (p. 3.3-17) and *TRA-MM-4b: Provide Additional Recreational Parking Areas* (p. 3.3-17) would reduce this effect to a less-than-significant level.

### **Impact AQ-1: Generation of Construction-Related Criteria Pollutant Emissions in Excess of San Joaquin Valley Air Pollution Control District Thresholds**

**Findings:** SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

**Facts Supporting the Findings:**

1. Construction of the project has the potential to create air quality impacts through the use of heavy-duty construction equipment, construction employees' vehicle trips, and truck hauling trips. In addition, fugitive dust emissions would result from site preparation and grading.
2. These effects on air quality would be significant.
3. Implementation of *Mitigation Measure AQ-MM-1a: Prepare and Implement a Dust Control Plan to Reduce Fugitive Dust Emissions* (3.4-14) would reduce this effect to a less-than-significant level.

### **Impact AQ-3: Exposure of Sensitive Receptors to Substantial Pollutant Concentrations**

**Findings:** SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

**Facts Supporting the Findings:**

1. Project construction would generate diesel particulate matter (DPM), resulting in the exposure of nearby existing sensitive receptors (e.g., residences) to increased DPM concentrations. In addition, the disturbance of soil that contains the *C. immitis* fungus could expose the general public to spores that are known to cause Valley Fever.
2. These effects would be significant because it would expose nearby land uses, especially residences located downwind of the project sites, to dust generated during construction activities, resulting in potential adverse health effects.
3. Implementation of *Mitigation Measure AQ-MM-1a: Prepare and Implement a Dust Control Plan to Reduce Fugitive Dust Emissions* (3.4-14) would reduce this effect to a less-than-significant level.

### **Impact VEG-1: Loss of Special-Status Plants**

**Findings:** SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

**Facts Supporting the Findings:**

1. Project construction could result in the removal of special-status plants, if they are present. Use of the proposed staging area that is adjacent to the San Joaquin River for receiving materials transported by barge could affect special-status plants, if any occur on the banks where barges would access the area.
2. This effect is significant due to the potential loss of special-status plants.
3. Implementation of *Mitigation Measures VEG-MM-1a: Conduct Floristic Surveys for Special-Status Plants during Appropriate Identification Periods* (p. 3.7-12), *VEG-MM-1b: Avoid or Compensate for Effects on Special-Status Plants* (p. 3.7-13), *VEG-MM-1c: Install Exclusion Fencing around Sensitive Resource Areas* (p. 3.7-13), *VEG-MM-1d: Conduct Mandatory Contractor/Worker Awareness*

*Training for Construction Personnel* (p. 3.7-14), and *VEG-MM-1e: Retain a Biological Monitor* (p. 3.7-14) would reduce this effect to a less-than-significant level.

### **Impact VEG-2: Loss of Nonnative Riparian Habitat**

**Findings:** SJAFCA hereby makes findings (a)(1) as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

#### Facts Supporting the Findings:

1. Project construction would require the removal of nonnative riparian vegetation in the project area.
2. Because Dad's Point would function as a levee under the project, replacement of the removed vegetation with native trees, shrubs, and grasses would only occur to the extent permitted under ULDC guidelines.
3. This effect is significant because riparian communities are considered sensitive natural communities and are regulated by the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service.
4. Implementation of *Mitigation Measures VEG-MM-1c: Install Exclusion Fencing around Sensitive Resource Areas* (p. 3.7-13), *VEG-MM-1d: Conduct Mandatory Contractor/Worker Awareness Training for Construction Personnel* (p. 3.7-14), *VEG-MM-1e: Retain a Biological Monitor* (p. 3.7-14), and *VEG-MM-2: Compensate for Loss of Nonnative Riparian Habitat* (p. 3.7-16) would reduce this effect to a less-than-significant level.

### **Impact VEG-3: Loss of Tidal Emergent Wetland**

**Findings:** SJAFCA hereby makes findings (a)(1) as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

#### Facts Supporting the Findings:

1. Project construction would result in a permanent loss of tidal emergent wetlands and would require the removal of wetland vegetation. Additional temporary impacts on tidal emergent wetland would occur during construction.
2. This impact is considered significant because project construction would directly remove and permanently fill a Federally protected water of the United States.
3. Implementation of *Mitigation Measures VEG-MM-1c: Install Exclusion Fencing around Sensitive Resource Areas* (p. 3.7-13), *VEG-MM-1d: Conduct Mandatory Contractor/Worker Awareness Training for Construction Personnel* (p. 3.7-14), *VEG-MM-1e: Retain a Biological Monitor* (p. 3.7-14), and *VEG-MM-3: Compensate for Loss of Tidal Emergent Wetland* (p. 3.7-17) would reduce this effect to a less-than-significant level.

### **Impact VEG-4: Loss of Tidal Perennial Drainage**

**Findings:** SJAFCA hereby makes findings (a)(1) as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

#### Facts Supporting the Findings:

1. Project construction would result in a permanent loss of, and temporary impacts to, tidal perennial drainage.
2. This direct impact is considered significant because project construction would place permanent fill in a Federally protected water of the United States.
3. Implementation of *Mitigation Measures VEG-MM-1c: Install Exclusion Fencing around Sensitive Resource Areas* (p. 3.7-13), *VEG-MM-1d: Conduct Mandatory Contractor/Worker Awareness Training for Construction Personnel* (p. 3.7-14), *VEG-MM-1e: Retain a Biological Monitor* (p. 3.7-14), and *VEG-MM-4: Compensate for Loss of Tidal Perennial Drainage* (p. 3.7-19) would reduce this effect to a less-than-significant level.

### **Impact VEG-5: Potential Loss of Wetlands or Other Waters of the United States**

**Findings:** SJAFCA hereby makes findings (a)(1) as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

#### Facts Supporting the Findings:

1. The potential staging area that is adjacent to the San Joaquin River was not accessible for the purpose of the delineation of waters of the United States, as survey access to the parcel was not granted by the property owner. If waters of the United States are present in the staging area, movement of equipment and materials in this area during construction could result in direct impacts from alteration of, or placement of fill in, wetlands or other waters of the United States.
2. Direct impacts on wetlands and other waters would be considered significant because project construction activities in the staging area could place permanent fill in a Federally protected water of the United States.
3. Implementation of *Mitigation Measures VEG-MM-1c: Install Exclusion Fencing around Sensitive Resource Areas* (p. 3.7-13), *VEG-MM-1d: Conduct Mandatory Contractor/Worker Awareness Training for Construction Personnel* (p. 3.7-14), and *VEG-MM-5: Conduct an Assessment of Potential Waters of the United States within Project Staging Area* (p. 3.7-20) would reduce this effect to a less-than-significant level.

### **Impact VEG-6: Loss of Heritage Trees**

**Findings:** SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

#### Facts Supporting the Findings:

1. Project implementation would result in the removal of a tree considered to be a heritage tree under the City of Stockton tree ordinance.
2. Heritage trees are protected under the tree ordinance and are considered a limited resource locally, and therefore the loss of a heritage tree would be a significant direct impact.
3. Implementation of *Mitigation Measures VEG-MM-1c: Install Exclusion Fencing around Sensitive Resource Areas* (p. 3.7-13), *VEG-MM-1d: Conduct Mandatory Contractor/Worker Awareness Training for Construction Personnel* (p. 3.7-14), *VEG-MM-1e: Retain a Biological Monitor* (p. 3.7-14), *VEG-6a: Protect Trees to Be Preserved in the Project Area* (p. 3.7-20), and *VEG-MM-6b: Compensate for Loss of Heritage Trees* (p. 3.7-21) would reduce this effect to a less-than-significant level.

### **Impact VEG-7: Spread of Invasive Plant Species**

**Findings:** SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

**Facts Supporting the Findings:**

1. Construction activities could introduce new invasive plants to the project area or contribute to the spread of existing invasive plants to un-infested areas outside the project area.
2. The introduction or spread of invasive plants as a result of the project could have significant direct and indirect effects on sensitive natural communities within and outside the project area by displacing native flora.
3. Implementation of *Mitigation Measures VEG-MM-1d: Conduct Mandatory Contractor/Worker Awareness Training for Construction Personnel* (p. 3.7-14), *VEG-MM-1e: Retain a Biological Monitor* (p. 3.7-14), and *VEG-MM-7: Avoid and Minimize Spread or Introduction of Invasive Plant Species* (p. 3.7-22) would reduce this effect to a less-than-significant level.

### **Impact AQU-1: Temporary Disturbance of Fish and Degradation of Aquatic Habitat during Construction Activities**

**Findings:** SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

**Facts Supporting the Findings:**

1. Ground-disturbing activities during construction of the project would increase the potential for erosion and discharge of fine sediment into aquatic habitat.
2. Erosion and discharge of fine sediment may cause injury or death of fish by disrupting normal behaviors and potentially increasing the susceptibility of some individuals to predation, which would be a significant effect.
3. Implementation of *Mitigation Measures WQ-MM-1c: Prepare and Implement a Stormwater Pollution Prevention Plan* (p. 3.2-9) and *AQU-MM-1: Limit In-Water Construction Activity to Periods of the Year That Minimize Impacts on Fish and Fish Habitat* (p. 3.8-14) would reduce this effect to a less-than-significant level.

### **Impact AQU-2: Temporary Noise Disturbance to Fish during Construction Activities**

**Findings:** SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

**Facts Supporting the Findings:**

1. Construction activities would result in temporary noise and physical disturbance that may cause injury or death of fish by disrupting normal behaviors and potentially increasing the susceptibility of some individuals to predation.
2. Peak sound levels generated by pile driving activities would be outside of the established thresholds for the protection of fish, which would be a direct and significant effect.
3. Implementation of *Mitigation Measures AQU-MM-1: Limit In-Water Construction Activity to Periods of the Year That Minimize Effects on Fish* (p. 3.8-14), *AQU-MM-2a: Minimize Exceedance of*

*Interim Threshold Sound Levels during Pile Driving to Minimize Effects on Fish* (p. 3.8-18), and *AQU-MM-2b: Develop and Implement a Hydroacoustic Monitoring Plan to Minimize Noise Effects on Fish* (3.8-19) would reduce this effect to a less-than-significant level.

### **Impact AQU-3: Adverse Effects on Fish Health and Survival Associated with Potential Discharge of Contaminants during Construction Activities**

Findings: SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

#### Facts Supporting the Findings:

1. Construction could result in accidental spills or leakage of contaminants such as gasoline, lubricants, other petroleum-based products, and concrete, which could kill or injure fish in the project area, as well as making them more susceptible to disease and other sources of mortality.
2. Direct and indirect impacts related to contaminant spills and leaks are potentially significant.
3. Implementation of *Mitigation Measure HAZ-MM-1: Prepare and Implement a Spill Prevention, Control and Countermeasure Plan* (p. 3.13-7) would reduce this effect to a less-than-significant level.

### **Impact AQU-4: Adverse Effects on Special-Status Fish Species Associated with Potential Stranding during Dewatering**

Findings: SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

#### Facts Supporting the Findings:

1. Due to Smith Canal's connection to the San Joaquin River, there is a potential for special-status fish species to be present in Smith Canal during dewatering activities after cofferdam placement. If stranded, fish could die in the dewatered areas.
2. Loss of a special-status fish would be a direct and significant impact.
3. Implementation of *Mitigation Measure AQU-MM-4: Hire a Qualified Fisheries Biologist during Dewatering Activities to Minimize Fish Mortality* (p. 3.8-19) would reduce this effect to a less-than-significant level.

### **Impact WILD-1: Loss or Disturbance of Western Pond Turtles and Their Habitat**

Findings: SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

#### Facts Supporting the Findings:

1. Implementation of the project would include temporary disturbance to upland nesting or basking habitat and the potential for loss of individual pond turtles.
2. Potential effects on western pond turtle are significant because it is a species of special concern in California.
3. Implementation of *Mitigation Measures VEG-MM-1c: Install Exclusion Fencing around Sensitive Resource Areas* (p. 3.7-13), *VEG-MM-1d: Conduct Mandatory Contractor/Worker Awareness*

*Training for Construction Personnel* (p. 3.7-14), *VEG-MM-1e: Retain a Biological Monitor* (p. 3.7-14), and *WILD-MM-1: Conduct a Preconstruction Survey and Monitor for Western Pond Turtle during Instream Water Work* (p. 3.9-12) would reduce this effect to a less-than-significant level.

### **Impact WILD-2: Loss of Swainson's Hawk Nesting Habitat**

Findings: SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

#### Facts Supporting the Findings:

1. Direct impacts on Swainson's hawks include the loss of nesting habitat (including riparian woodland and landscaped/developed habitats with large trees) associated with project construction, as well as the potential for disturbance of actively nesting Swainson's hawks if an active nest is present in or near the construction areas.
2. Effects on Swainson's hawk are significant because the hawk is listed as threatened under the California Endangered Species Act, and the project could result in a substantial decrease in the local population of Swainson's hawks.
3. Implementation of *Mitigation Measures VEG-MM-1c: Install Exclusion Fencing around Sensitive Resource Areas* (p. 3.7-13), *VEG-MM-1d: Conduct Mandatory Contractor/Worker Awareness Training for Construction Personnel* (p. 3.7-14), *VEG-MM-1e: Retain a Biological Monitor* (p. 3.7-14), *VEG-MM-2: Compensate for Loss of Nonnative Riparian Habitat* (p. 3.7-16), *VEG-MM-6b: Compensate for Loss of Heritage Trees* (p. 3.7-21), and *WILD-MM-2: Avoid Disturbance of Tree-, Shrub-, and Ground-Nesting Special-Status and Non-Special-Status Migratory Birds and Raptors and Conduct Preconstruction Nesting Bird Surveys* (p. 3.9-13) would reduce this effect to a less-than-significant level.

### **Impact WILD-3: Loss or Disturbance of Western Burrowing Owls and Their Habitat**

Findings: SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

#### Facts Supporting the Findings:

1. Direct impacts on burrowing owls include the potential for disturbance of nesting birds and injury or mortality of birds if they are present in or adjacent to the construction area.
2. Effects on a state species of special concern and species protected under the Migratory Bird Treaty Act are significant.
3. Implementation of *Mitigation Measures VEG-MM-1d: Conduct Mandatory Contractor/Worker Awareness Training for Construction Personnel* (p. 3.7-14), *VEG-MM-1e: Retain a Biological Monitor* (p. 3.7-14), *WILD-MM-3a: Conduct Preconstruction Surveys for Active Burrowing Owl Burrows and Implement the 2012 California Department of Fish and Game Guidelines for Burrowing Owl Mitigation, if Necessary* (p. 3.9-15), and *WILD-MM-3b: Compensate for Loss of Burrowing Owl Habitat* (p. 3.9-16) would reduce this effect to a less-than-significant level.

#### **Impact WILD-4: Loss or Disturbance of Tree-, Shrub- and Ground-Nesting Special-Status and Non-Special-Status Migratory Birds and Raptors**

Findings: SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

Facts Supporting the Findings:

1. Implementation of the project could result in direct impacts on both special-status and non-special-status birds and raptors, including the loss of nesting habitat associated with project construction and the potential for disturbance of actively nesting birds if an active nest is present in or near the construction areas.
2. Effects on nesting special-status birds are significant because these birds have special status under state and/or Federal laws.
3. Implementation of *Mitigation Measures VEG-MM-1d: Conduct Mandatory Contractor/Worker Awareness Training for Construction Personnel* (p. 3.7-14), *VEG-MM-1e: Retain a Biological Monitor* (p. 3.7-14), and *WILD-MM-2: Avoid Disturbance of Tree-, Shrub-, and Ground-Nesting Special-Status and Non-Special-Status Migratory Birds and Raptors and Conduct Preconstruction Nesting Bird Surveys* (p. 3.9-13) would reduce this effect to a less-than-significant level.

#### **Impact WILD-5: Loss or Disturbance of Bats and Bat Roosts**

Findings: SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

Facts Supporting the Findings:

1. Construction activities associated with the implementation of the project, such as tree removal and trimming or construction noise, could result in direct impacts on roosting bats, including the destruction of active roosts, the loss of individuals, or roost failure.
2. If bat species are present, these effects could be significant if the subsequent population decline was large and affected the viability of the local populations of bats. CDFW considers bat roosts of special-status species and non-special-status species a sensitive resource.
3. Implementation of *Mitigation Measures VEG-MM-1d: Conduct Mandatory Contractor/Worker Awareness Training for Construction Personnel* (p. 3.7-14), *VEG-MM-1e: Retain a Biological Monitor* (p. 3.7-14), and *WILD-MM-5: Conduct Preconstruction Surveys for Roosting Bats and Implement Protective Measures* (p. 3.9-18) would reduce this effect to a less-than-significant level.

#### **Impact WILD-6: Loss or Disturbance of Protected Marine Mammals**

Findings: SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

Facts Supporting the Findings:

1. There is potential for disturbance to sea lions if a staging area is placed in the vicinity of where the sea lions haul out onto Rough and Ready Island or its vicinity.

2. Effects on sea lions would be significant because sea lions have special status under the Marine Mammal Protection Act of 1972.
3. Implementation of *Mitigation Measure WILD-MM-6: Ensure Staging Areas are Located away from California Sea Lions* (p. 3.9-20) would reduce this effect to a less-than-significant level.

**Impact REC-1: Interference with Access to Public Recreation Facilities as a Result of Project Construction**

Findings: SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

Facts Supporting the Findings:

1. Project construction would include situating staging areas in the Louis Park parking area near the boat launch at the base of Dad's Point. In addition, Monte Diablo Avenue, which terminates at the boat launch parking lot, would be used as a haul route.
2. The project would temporarily interfere with access to public recreation facilities, including the boat launch, the boat launch parking lot, and Dad's Point, which would be a direct and significant effect.
3. Implementation of *Mitigation Measure REC-MM-1: Direct Displaced Recreationists to Under-Utilized Recreation Facilities* (p. 3.11-9) would reduce this effect to a less-than-significant level.

**Impact REC-2: Disruption or Impairment of the Quality or Ease of Recreational Boating Activities as a Result of Project Construction**

Findings: SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

Facts Supporting the Findings:

1. The width of the Smith Canal channel opening from the project area to the San Joaquin River would be limited during construction due to the presence of construction equipment and barges.
2. This effect on the quality or ease of the boating experience would be significant.
3. Implementation of *Mitigation Measure REC-MM-2: Implement Measures to Aid Navigation* (p. 3.11-10) would reduce this effect to a less-than-significant level.

**Impact REC-3: Disruption or Impairment of the Quality or Ease of Recreational Boating Activities as a Result of Project Operation and Maintenance**

Findings: SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

Facts Supporting the Findings:

1. Implementation of the project would result in obstruction of channel flow from the presence of the gate fixed sheet pile wall structure, which has the potential to create localized eddies near the entrance to Atherton Cove and Smith Canal, which could result in some shoaling near the entrance of the canal.

2. The project could disrupt the ease and quality of the boating experience, which would be a significant effect.
3. Implementation of *Mitigation Measure REC-MM-2: Implement Measures to Aid Navigation* (p. 3.11-10) would reduce this effect to a less-than-significant level.

### **Impact UTL-1: Damage of Public Utility and Communication Infrastructure and Disruption of Service as a Result of Project Construction**

Findings: SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

#### Facts Supporting the Findings:

1. Project construction would necessitate the relocation of utility infrastructure, which could result in temporary loss of service for communication, water, sanitary sewer, gas, electricity, and other utility lines.
2. Damage of public utility or disruption of service would result in a significant direct effect.
3. Implementation of *Mitigation Measure UTL-MM-1: Coordinate with Utility Providers, Prepare a Response Plan, and Conduct Worker Training* (p. 3.12-6) would reduce this effect to a less-than-significant level.

### **Impact UTL-3: Increase in Emergency Response Times during Project Construction**

Findings: SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

#### Facts Supporting the Findings:

1. Project construction could temporarily disrupt local roadways, create conflicts with local traffic, pedestrians, bicyclists, and bus services; and result in temporary road closures that would affect the existing surrounding community. Construction would also involve temporarily reducing traffic to a single lane on Moreing Road, which is the only access road to Atherton Island.
2. This effect is significant because the delay would potentially increase emergency response times during construction.
3. Implementation of *Mitigation Measures UTL-MM-3: Coordinate with Public Service Providers* (p. 3.12-8) and *TRA-MM-3: Implement a Construction Traffic Management Plan* (p. 3.3-15) would reduce this effect to a less-than-significant level.

### **Impact HAZ-1: Incidental Release of Hazardous Materials during Construction**

Findings: SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

#### Facts Supporting the Findings:

1. Project construction would require the use of hazardous materials, such as gasoline, lubricants, other petroleum-based products, and concrete, in connection with operation of construction equipment and vehicles, which could be released accidentally into the environment at the construction site or along access routes.

2. The accidental release of hazardous materials could cause environmental or human exposure to these hazards, which would be a direct and significant impact.
3. Implementation of *Mitigation Measure HAZ-MM-1: Prepare and Implement a Spill Prevention, Control, and Countermeasure Plan* (p. 3.13-7) would reduce this effect to a less-than-significant level.

### **Impact HAZ-2: Exposure of Hazardous Materials Encountered at Project Site**

Findings: SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

#### Facts Supporting the Findings:

1. There is potential that undocumented hazardous materials could be encountered at the project site. Excavation and construction activities at or near areas of currently unrecorded soil or groundwater contamination could result in the exposure of construction workers, the general public, and the environment to hazardous materials.
2. The accidental release of hazardous materials could cause environmental or human exposure to these hazards, which would be a direct and significant impact.
3. Implementation of *Mitigation Measure HAZ-MM-2: Implement Measures to Maintain Soil and Groundwater Conditions* (p. 3.13-9) would reduce this effect to a less-than-significant level.

### **Impact HAZ-3: Access to the Construction Site and Vehicles by the Public**

Findings: SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

#### Facts Supporting the Findings:

1. The public could be exposed to heavy equipment at the construction site, particularly in areas where there is regular public access, such as Louis Park. In addition, people may walk, ride bicycles, or otherwise use the roadways adjacent to the project site during the construction period when heavy machinery and haul trucks would be accessing the site.
2. This effect could have a direct and significant impact on public health.
3. Implementation of *Mitigation Measure HAZ-MM-3: Notify the Public of Construction Area Closure and Secure Staging Areas* (p. 3.13-9) would reduce this effect to a less-than-significant level.

### **Impact CUL-2: Substantial Adverse Change in the Significance of an Archaeological Historical Resource Pursuant to State CEQA Guidelines Section 15064.5 or a Unique Archaeological Resource Pursuant to PRC Section 21083.2**

Findings: SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

#### Facts Supporting the Findings:

1. Implementation of the project includes the possibility that construction would unearth archaeological materials or shipwrecks from beneath the ground surface that cannot currently be identified because of limited access and because of the infeasibility of identifying all buried resources prior to construction.

2. Damage to archaeological resources or shipwrecks, if they meet the significance criteria of the National Register of Historic Places and/or the California Register of Historic Resources would be a significant effect.
3. Implementation of *Mitigation Measure CUL-MM-2: Halt Work if Previously Unidentified Archaeological Resources are Encountered until a Qualified Archaeologist Assesses the Find and Native American Consultation has been Conducted* (p. 3.14-18) would reduce this effect to a less-than-significant level.

**Impact CUL-3: Disturbance of any Human Remains, Including Those Interred Outside of Formal Cemeteries Pursuant to CHSC Section 7050.5**

Findings: SJAFCA hereby makes finding (a)(1), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

Facts Supporting the Findings:

1. It is possible that buried human remains are present in the project area, but not identified during the archaeological survey due to their subsurface location. As such, there is still the potential that human remains would be encountered during project ground-disturbing activities.
2. The disturbance of any human remains is considered a significant effect.
3. Implementation of *Mitigation Measure CUL-MM-3: Stop Work in Case of Accidental Discovery of Buried Human Remains until Procedures in PRC Section 5097 have been Completed* (p. 3.14-19) would reduce this effect to a less-than-significant level.

## **Findings Regarding Significant and Unavoidable Impacts (State CEQA Guidelines Section 15093[b])**

SJAFCA, having reviewed and considered the information contained in the FEIR, and in accordance with PRC Section 21081 and State CEQA Guidelines Sections 15093 and 15091 (a)(3), makes the following findings regarding the significant and unavoidable effects of the Smith Canal project. The FEIR identifies mitigation measures that could reduce the severity of significant effects, but in some cases, implementation of these mitigation measures cannot be assured to reduce the severity of significant effects to below a level of significance.

These findings are appropriate because there are no feasible mitigation measures available that would reduce the identified effects to below a level of significance. “Feasible” is defined in Section 15364 of the State CEQA Guidelines to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” Section 15019(a)(3) of the State CEQA Guidelines also provide that “other” considerations may form the basis for a finding of infeasibility.

**Impact NOI-1: Exposure of Noise-Sensitive Land Uses to Noise during Construction of Wall Structures**

Findings: SJAFCA hereby makes finding (a)(3), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

Facts Supporting the Findings:

1. Implementation of the project would include construction-related activities, including operation of heavy equipment, that could expose noise-sensitive receivers to construction noise in excess of the Federal Transit Administration (FTA)-suggested daytime standard.
2. Exceedance of the FTA standards is considered a significant effect.
3. Implementation of *Mitigation Measures NOI-MM-1a: Employ Noise-Reducing Construction Practices during Construction* (p. 3.6-10) and *NOI-MM-1b: Prior to Construction, Initiate a Complaint/Response Tracking Program* (p. 3.6-10) would reduce the severity of this effect, but not to a less-than-significant level. This effect would remain significant and unavoidable.
4. SJAFCA considered three other alternatives in the DEIR: the No Project Alternative and Alternatives 2 and 3. Under the No Project Alternative, SJAFCA would not implement flood risk-reduction measures. The levees surrounding the canal would continue to require risk-reduction measures to meet minimum FEMA-acceptable level of performance, as well as continue being deficient relative to the state's requirement for urbanized areas. In addition, the associated risk to human health and safety and property and the adverse economic effect that serious flooding could cause would continue, and the risk of a flood would remain high, as described in further detail in Section 2.4, *No Project Alternative*, of the FEIR. Alternatives 2 and 3 also would contribute to a significant and unavoidable effect on noise.
5. This impact is overridden by the significant improvements to health and safety and economic benefits that this project will bring to the region by eliminating the risk of serious flooding.

**Impact VIS-1: Temporary Visual Impacts Caused by Construction Activities**

Findings: SJAFCA hereby makes finding (a)(3), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

Facts Supporting the Findings:

1. Construction of the project would result in a temporary increase in traffic, would temporarily affect residential and recreational views, and would possibly require construction high-intensity lighting if construction starts before sunrise.
2. The construction's proximity to residential and recreational viewers who are highly sensitive would result in significant effects on visual resources.
3. Implementation of *Mitigation Measures VIS-MM-1a: Limit Activities That Would Require High-Intensity Lighting to Be Used for Illumination to Daylight Hours* (p. 3.10-13) and *VIS-MM-1b: Limit Traffic Delays at Moreing Road to Off-Peak Commute Hours* (p. 3.10-13) would reduce the severity of this effect, but not to a less-than-significant level. This effect would remain significant and unavoidable.
4. SJAFCA considered three other alternatives in the DEIR: the No Project Alternative and Alternatives 2 and 3. Under the No Project Alternative, SJAFCA would not implement flood risk-reduction measures. The levees surrounding the canal would continue to require risk-reduction measures to meet minimum FEMA-acceptable level of performance, as well as continue being deficient relative to the state's requirement for urbanized areas. In addition, the associated risk to human health and safety and property and the adverse economic effect that serious flooding

could cause would continue, and the risk of a flood would remain high, as described in further detail in Section 2.4, *No Project Alternative*, of the FEIR. Alternatives 2 and 3 also would contribute to a significant and unavoidable effect on visual resources.

5. This impact is overridden by the significant improvements to health and safety and economic benefits that this project will bring to the region by eliminating the risk of serious flooding.

### **Impact VIS-2: Substantial Degradation of the Existing Visual Character or Quality of the Site and Its Surroundings**

Findings: SJAFCA hereby makes finding (a)(3), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

#### Facts Supporting the Findings:

1. Implementation of the project would result in substantial visual changes associated with Dad's Point that are likely to be perceived as negative. Project implementation would also alter the existing visual character and quality of views associated with the study area.
2. The project's proximity to residential and recreational viewers who are highly sensitive would result in significant effects on visual resources.
3. Implementation of *Mitigation Measures VIS-MM-2a: Apply Aesthetic Surface Treatments to Ancillary Project Features* (p. 3.10-14) and *VIS-MM-2b: Work with Affected Stakeholders to Determine Appropriate Sheet Pile Wall Aesthetic Treatments* (p. 3.10-15) would reduce the severity of this effect, but not to a less-than-significant level. This effect would remain significant and unavoidable.
4. SJAFCA considered three other alternatives in the DEIR: the No Project Alternative and Alternatives 2 and 3. Under the No Project Alternative, SJAFCA would not implement flood risk-reduction measures. The levees surrounding the canal would continue to require risk-reduction measures to meet minimum FEMA-acceptable level of performance, as well as continue being deficient relative to the state's requirement for urbanized areas. In addition, the associated risk to human health and safety and property and the adverse economic effect that serious flooding could cause would continue, and the risk of a flood would remain high, as described in further detail in Section 2.4, *No Project Alternative*, of the FEIR. Alternatives 2 and 3 also would contribute to a significant and unavoidable effect on visual resources.
5. This impact is overridden by the significant improvements to health and safety and economic benefits that this project will bring to the region by eliminating the risk of serious flooding.

### **Impact VIS-3: Creation of a New Source of Substantial Light or Glare That Would Adversely Affect Daytime or Nighttime Views in the Area**

Findings: SJAFCA hereby makes finding (a)(3), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

#### Facts Supporting the Findings:

1. Project implementation would result in new sources of glare by introducing light-colored surfaces with large surface areas that would reflect light off of those surfaces and increase glare,

especially when combined with the removal of vegetation that absorbs light, provides shade, and screens glare.

2. The project's proximity to residential and recreational viewers who are highly sensitive would result in significant effects on visual resources.
3. Implementation of *Mitigation Measures VIS-MM-2a: Apply Aesthetic Surface Treatments to Ancillary Project Features* (p. 3.10-14) and *VIS-MM-2b: Work with Affected Stakeholders to Determine Appropriate Sheet Pile Wall Aesthetic Treatments* (p. 3.10-15) would reduce the severity of this effect, but not to a less-than-significant level. This effect would remain significant and unavoidable.
4. SJAFCA considered three other alternatives in the DEIR: the No Project Alternative and Alternatives 2 and 3. Under the No Project Alternative, SJAFCA would not implement flood risk-reduction measures. The levees surrounding the canal would continue to require risk-reduction measures to meet minimum FEMA-acceptable level of performance, as well as continue being deficient relative to the state's requirement for urbanized areas. In addition, the associated risk to human health and safety and property and the adverse economic effect that serious flooding could cause would continue, and the risk of a flood would remain high, as described in further detail in Section 2.4, *No Project Alternative*, of the FEIR. Alternatives 2 and 3 also would contribute to a significant and unavoidable effect on visual resources.
5. This impact is overridden by the significant improvements to health and safety and economic benefits that this project will bring to the region by eliminating the risk of serious flooding.

## Significant Cumulative Impacts

### Visual Resources

Findings: SJAFCA hereby makes finding (a)(3), as stated in State CEQA Guidelines Section 15091 and as required by PRC Section 21081, with respect to the above-identified effect.

Facts Supporting the Findings:

1. The Smith Canal project would result in temporary changes in the visual quality of construction areas and access routes as a result of construction activities and equipment in areas that do not normally include construction-associated views.
2. This effect may contribute to a significant cumulative impact on visual resources because of the potential to compound viewer response when factoring this project with other large-scale flood and water control projects that could occur in the region. The increasing number of such projects is likely to result in negative public opinion, and thus negative viewer response, to the amount of large-scale projects being constructed and affecting local waterways and private properties that are highly valued.
3. SJAFCA considered three other alternatives in the DEIR: the No Project Alternative and Alternatives 2 and 3. Under the No Project Alternative, SJAFCA would not implement flood risk-reduction measures. The levees surrounding the canal would continue to require risk-reduction measures to meet minimum FEMA acceptable level of performance, as well as continue being deficient relative to the state's requirement for urbanized areas. In addition, the associated risk to human health and safety and property and the adverse economic effect that serious flooding

could cause would continue, and the risk of a flood would remain high, as described in further detail in Section 2.4, *No Project Alternative*, of the FEIR. Visual impacts associated with construction and operation of the project would be cumulatively considerable. However, Alternatives 2 and 3 would contribute a similar significant and unavoidable impact on visual resources as Alternative 1.

4. This impact is overridden by the significant improvements to health and safety and economic benefits that this project will bring to the region by eliminating the risk of serious flooding.

## Findings Regarding Alternatives (State CEQA Section 15091[a][3])

Because the Smith Canal project would cause one or more unavoidable significant environmental effect, SJAFCA must make findings with respect to the alternatives to the project considered in the FEIR, evaluating whether these alternatives could feasibly avoid or substantially lessen the unavoidable significant effects while achieving most of the project's goals and objectives (listed in Section 1.4.3, *Project Objectives*, of the FEIR).

SJAFCA, having reviewed and considered the information contained in the FEIR and in accordance with PRC Section 21081 and State CEQA Guidelines Section 15091(a)(3), finds no alternative is both feasible and environmentally superior with respect to the unavoidable significant impacts identified in the FEIR. SJAFCA makes the following specific findings with respect to the alternatives identified in the FEIR..

### No-Project Alternative

**Findings:** Under the No Project Alternative, SJAFCA would not implement flood risk–reduction measures. The FEMA accreditation would not be secured and the project area would continue to remain in the FEMA-designated Special Flood Hazard Area. Flood risks in the area would not be reduced, and all residents would be required to obtain mandatory flood insurance and adhere to building restrictions. SJAFCA rejects this alternative for these reasons:

1. The No Project Alternative fails to achieve the project's goals and objectives with regard to flood protection, achieving FEMA accreditation, and eliminating the need for area residents to secure mandatory flood insurance and adhere to certain building restrictions.
2. Selection of the No Project Alternative would result in the area not being resilient to sea level rise resulting from climate change.

### Alternative 2: Atherton Cove Floodwall with Smith Canal Gate

**Findings:** This alternative would reduce flood risk for approximately 8,000 properties behind the existing Smith Canal levee and attain 100-year performance by constructing a gated fixed wall structure across Smith Canal to isolate Smith Canal from the San Joaquin River during high flow events. SJAFCA rejects this alternative for these reasons:

1. Alternative 2 meets the project's goals of achieving 100-year level of performance and acquiring FEMA accreditation, contributing to 200-year level of performance, constructing improvements in accordance with the ULDC, and eliminating the need for mandatory flood insurance, but at a greater financial cost to area residents and SJAFCA. Alternative 2 exceeds SJAFCA's current funding capability and requiring additional property owner contribution by voter referendum for implementation.

2. Alternative 2 would have a longer construction schedule, greater equipment emissions, greater habitat effects, and greater construction-related disturbances to recreation facilities and the visual landscape than Alternative 1.
3. Alternative 2 is not expected to be resilient to climate change and associated sea level rise.

### **Alternative 3: Dual Gated Walls to Atherton Cove and Smith Canal**

**Findings:** This alternative would reduce flood risk for approximately 8,000 properties behind the existing Smith Canal levees by construction two gated fixed wall structures across Smith Canal and Atherton Cove to isolate Atherton Cove and Smith Canal from the San Joaquin River. SJAFCA rejects this alternative for these reasons:

1. Alternative 3 meets the project's goals of achieving 100-year level of performance and acquiring FEMA accreditation, contributing to 200-year level of performance, constructing improvements in accordance with the ULDC, and eliminating the need for mandatory flood insurance, but at a greater financial cost to area residents and SJAFCA. Alternative 3 exceeds SJAFCA's current funding capability and requiring additional property owner contribution by voter referendum for implementation.
2. Alternative 3 would have a longer construction schedule, greater equipment emissions, greater habitat effects, and greater construction-related disturbances to recreation facilities and the visual landscape than Alternative 1.
3. Alternative 3 is not expected to be resilient to climate change and associated sea level rise.

## Chapter 3

# Statement of Overriding Considerations

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## CEQA Requirements

CEQA prohibits an agency from approving a project that will have significant, unavoidable environmental impacts unless the agency adopts a statement describing the specific benefits provided by the project that will outweigh its expected unavoidable impacts. If the project's specific economic, legal, social, technological, or other benefits outweigh the unavoidable adverse environmental effects, those effects may be considered acceptable, notwithstanding the fact that they cannot be avoided. This "statement of overriding considerations" must be supported by substantial evidence (State CEQA Guidelines Section 15093).

SJAFCA recognizes that despite full implementation of the environmental commitments and mitigation measures, the Smith Canal project would have significant, unavoidable impacts on the environment, as addressed in the FEIR. These impacts are listed below.

- Impact NOI-1: Exposure of Noise-Sensitive Land Uses to Noise during Construction of Wall Structures
- Impact VIS-1: Temporary Visual Impacts Caused by Construction Activities
- Impact VIS-2: Substantial Degradation of the Existing Visual Character or Quality of the Site and Its Surroundings
- Impact VIS-3: Creation of a New Source of Substantial Light or Glare That Would Adversely Affect Daytime or Nighttime Views in the Area
- Cumulative Impacts on Visual Resources

## Overriding Considerations

As required by the State CEQA Guidelines Section 15093, SJAFCA finds that the unavoidable significant effects listed above are outweighed by the public safety improvements and environmental and economic benefits offered by the Smith Canal Gate project. As described in detail in Section 1.4, *Project Need, Purpose, and Objectives*, of the FEIR and summarized below, SJAFCA finds the project would reacquire FEMA accreditation, as well as safeguard public health and safety by providing significant, urgently needed flood risk reduction benefits.

## Reacquire FEMA Accreditation and Minimum 100-Year Level of Levee Performance

In 2005, as part of the FEMA Flood Map Modernization Program, FEMA began requiring levee owners/maintaining agencies to submit documentation showing that their levees provided a 100-year level of flood protection. Primarily due to extensive encroachments onto the levees that prevented access for maintenance and inspection, Smith Canal levees were not able to meet the levee certification requirements. As such, the Smith Canal levees lost FEMA accreditation, and in

January 2008, FEMA released preliminary Flood Insurance Rate Maps (FIRMS) placing the areas behind the levees in an SFHA. SFHAs are defined as areas that will be inundated by a 100-year flood. Updated FIRMS for San Joaquin County became effective October 16, 2009. The loss of FEMA accreditation requires mandatory flood insurance for the residents in the area carrying Federally-backed mortgages. The loss of FEMA accreditation also restricts building and improvements in the area.

Implementation of the project will reacquire FEMA accreditation by isolating Smith Canal from the San Joaquin River during high water events, which would remove the affected area from the 100-year floodplain in compliance with state law, and would thereby improve the FEMA rating. Mandatory flood insurance for residents in the area carrying Federally-backed mortgages would no longer be required and flood-related restrictions on building and improvements in the area would be removed.

## Contribute to Achievement of the State-Mandated Minimum 200-Year Level of Flood Protection

Implementation of the project will reduce flood risk toward a state-mandated target of 200-year protection from San Joaquin River flows, in compliance with State Senate Bill 5 mandates for 200-year protection for urbanized areas.

## Reduce Risk of Harm to Life and Property

Approximately 5,000 properties and approximately 15,000 residents were identified by FEMA as being in the FEMA 100-year floodplain, an area identified by FEMA as having an increased risk of flooding, which elevates the level of risk to human health and safety, property, and adverse environmental and economic effects that serious flooding would cause. In addition, based on topographical data recently developed by DWR, FEMA is currently proposing to remap the region to include an additional 3,000 parcels and 9,000 residents in the 100-year floodplain.

Implementation of the project will remove the affected area from the 100-year floodplain, thereby reducing the risk of injury, death, and property and other economic damage that could be caused by a catastrophic flood in SJAFCA's planning area, which includes the city of Stockton and surrounding unincorporated county areas to the north and east of the city boundary.

## Additional Objectives

In addition to achieving the goals listed above, the Smith Canal project would meet objectives below.

- Construct improvements in accordance with DWR's ULDC.
- Integrate compatibly with regional flood risk-reduction projects, including the *Lower San Joaquin River Feasibility Study* and the *Lower San Joaquin and Delta South Regional Flood Management Plan*.
- Construct a project that is economically, environmentally, politically, and socially acceptable.
- Provide multi-objective benefits where consistent with other project objectives, such as water quality and recreation enhancements.

- Facilitate compatibility with recreation goals for the area, including continued recreational boating access.
- Facilitate compatibility with existing land use in the area.
- Avoid the use of eminent domain to obtain the necessary rights-of-way for project construction and maintenance corridors.

SJAFCA finds that the above-referenced benefits outweigh the Smith Canal project's significant and unavoidable environmental effects. Therefore, SJAFCA has adopted these Findings and Statement.