

3 RESPONSES TO COMMENTS ON THE DEIS/DEIR

This chapter contains the comment letters (including transcribed comments received during the March 19, 2009 public hearing) received on the Phase 3 DEIS/DEIR and USACE's and SAFCA's individual responses to significant environmental issues raised in those comments. Each letter, as well as each individual comment within the letter, has been given a number for cross-referencing. Responses are sequenced to reflect the order of comments within each letter.

Table 3-1 lists all parties who submitted comments on the Phase 3 DEIS/DEIR during the public review period.

Table 3-1 List of Commenters			
Letter #	Commenter	Date of Comment	Page Number
Federal Agencies (F)			
F1	U.S. Department of the Interior, Office of the Secretary, Office of Environmental Policy and Compliance, Pacific Southwest Region	April 6, 2009	F1-1
F2	U.S. Environmental Protection Agency, Region IX	April 3, 2009	F2-1
State Agencies (S)			
S1	State of California – The Resources Agency, Central Valley Flood Protection Board	February 23, 2009	S1-1
S2	State of California – The Resources Agency, Central Valley Flood Protection Board	April 3, 2009	S2-2
S3	California State Lands Commission	April 2, 2009	S3-2
S4	California Office of Planning and Research	April 7, 2009	S4-2
S5	California Department of Fish and Game	April 9, 2009	S5-2
Local Agencies (L)			
L1	Sacramento Metropolitan Air Quality Management District	March 18, 2009	L1-1
L2	Sutter County, Neal P. Hay PE, Associate Civil Engineer	April 3, 2009	L2-1
L3	Reclamation District 2035 and Conaway Preservation Group	April 6, 2009	L3-1
L4	Twin Rivers Unified School District	April 6, 2009	L4-1
L5	Sacramento County Department of Transportation	April 6, 2009	L5-1
Organizations (O)			
O1	Reach Seven Property Owners	April 2, 2009	O1-1
O2	Garden Highway Community Association	April 3, 2009	O2-1
O3	Sacramento Area Bicycle Advocates	April 5, 2009	O3-1
O4	Valley View Acres Community Association	April 6, 2009	O4-1
O5	Association for the Environmental Preservation of the Garden Highway	April 2, 2009	O5-1

**Table 3-1
List of Commenters**

Letter #	Commenter	Date of Comment	Page Number
Individuals (I)			
I1	Dan Pellissier	February 26, 2009	I1-1
I2	David Lichman	February 26, 2009	I2-1
I3	David Lichman	March 2, 2009	I3-1
I4	Christopher Barabino, Owner Swabbies Restaurant	March 4, 2009	I4-1
I5	Diane Hovey	March 10, 2009	I5-1
I6	Linda Luhman	March 12, 2009	I6-1
I7	Ed Bianci	March 16, 2009	I7-1
I8	Anthony Trujillo	April 6, 2009	I8-1
I9	Chris and Caroll Mortensen	April 6, 2009	I9-1
I10	Gibson Howell	April 6, 2009	I10-1
I11	Laura and Harvey Gilbeau and Don and Anita Glidewell	April 6, 2009	I11-1
I12	Christopher Barabino, Owner Swabbies Restaurant	April 6, 2009	I12-1
I13	Joe and Angela Angel	March 27, 2009	I13-1
Public Hearing (PH)			
PH	March 19, 2009 Public Hearing	March 19, 2009	PH-1



United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
Pacific Southwest Region
1111 Jackson Street, Suite 520
Oakland, California 94607

IN REPLY REFER TO:
ER# 09/210

E-filed

6 April 2009

Elizabeth Holland
Planning Division
Sacramento District
U.S. Army Corps of Engineers
1325 J Street
Sacramento, CA 95814-2992

Subject: Review of the Draft Environmental Impact Statement (DEIS) for the Natomas
Levee Improvement Program, Phase 3 Landslides Improvement Project, CA

Dear Ms. Holland:

The Department of the Interior has received and reviewed the subject document and has no
comments to offer.

Thank you for the opportunity to review this project.

Sincerely,

F1-1

**Letter
F1
Response**

U.S. Department of the Interior, Office of the Secretary, Office of Environmental Policy and Compliance, Pacific Southwest Region
April 6, 2009

F1-1 Comment noted; the U.S. Department of the Interior has reviewed the Phase 3 DEIS/DEIR and has no comments.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

April 3, 2009

Ms. Elizabeth Holland
Planning Division
Sacramento District
U.S. Army Corps of Engineers
1325 J Street
Sacramento, California 95814-2922

Subject: Draft Environmental Impact Statement (DEIS) for the Natomas
Levee Improvement Program, Phase 3 Landside Improvements Project
(CEQ# 20090040)

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

EPA previously reviewed the DEIS and Final EIS (FEIS) for 408 Permission and 404 Permit to Sacramento Area Flood Control Agency (SAFCA) for the Phase 2 Landside Improvements Project and programmatic evaluation of the entire Natomas Levee Improvement Program (NLIP). We provided comments to the U.S. Army Corps of Engineers (Corps) on August 4, 2008 and December 11, 2008, expressing concerns because of our inability to determine whether or not the preferred alternative represents the Least Environmentally Damaging Practicable Alternative (LEDPA). We also expressed concern with the residual flood risk to development in a floodplain protected by levees, and the indirect and cumulative environmental effects of planned development facilitated by this levee project.

F2-1

We continue to have concerns regarding the residual flood risk and the potential indirect and cumulative impacts of future development. We recommend implementation of the Natomas Basin flood safety plan (pps. 2-40 to 2-41) as soon as possible and prior to approval of additional development, so that new development does not compromise the flood-damage-and-risk-reduction achievements of this project.

F2-2

While we commend efforts to avoid and fully compensate for the loss of riparian woodland, Giant garter snake habitat, wetlands, and Swainson's hawk habitat; we continue to have concerns with 371.48 acres of temporary effects and 36.75 acres of permanent effects on waters of the United States (US) for all four phases of the Natomas Levee Improvement Program (2008 – 2010) (p. ES-12, Phase 2 FEIS, November 2008). We recommend continued close consultation and collaboration with the U.S. Fish and

F2-3

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Wildlife Service, California Department of Fish and Game, The Natomas Basin Conservancy, SAFCA, and Sacramento Area Council of Governments to ensure effects on woodlands, threatened and sensitive species habitat, and waters of the US are avoided and minimized.

F2-3
Cont'd

Phases 1 to 4 of the Natomas Landside Improvement Project constitute an "early implementation project" to improve Natomas Basin perimeter levees to meet the 100-year flood protection design criteria adopted by the Federal Emergency Management Agency. The remaining segments of the perimeter levee system would be improved by the Corps to provide flood protection that would meet California standards for the "200-year" flood stage surface water elevation. The Corps plans to seek Congressional authorization for this additional work based on a General Re-evaluation Report for the American River Common Features Project to be presented to Congress in 2010 (p. ES-3). As a reasonably foreseeable future action, the Corps' proposed "200-year" levee improvement project should be included in the evaluation of cumulative effects in the FEIS for the NLIP Phase 3 Landside Improvements Project.

F2-4

Based on the above concerns, we have rated this DEIS as Environmental Concerns – Insufficient Information (EC-2) (see enclosed "Summary of Rating Definitions"). We appreciate the opportunity to review this DEIS. When the FEIS is released for public review, please send one hard copy and a CD ROM to the address above (mail code: CED-2). If you have any questions, please contact me at (415) 972-3521, or contact Laura Fujii, the lead reviewer for this project. Laura can be reached at (415) 972-3852 or fujii.laura@cpa.gov.

F2-5

Sincerely,



Kathleen M. Goforth, Manager
Environmental Review Office
Communities and Ecosystems Division

Enclosures: Summary of Rating Definitions

cc: Ken Sanchez, U.S. Fish and Wildlife Service
Robert Solecki, Central Valley RWQCB
Jeff Drongesen, California Department of Fish and Game
John Bassett, Sacramento Area Flood Control Agency

**U.S. Environmental Protection Agency Rating System for
Draft Environmental Impact Statements
Definitions and Follow-Up Action***

Environmental Impact of the Action

LO – Lack of Objections

The U.S. Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC – Environmental Concerns

EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

EO – Environmental Objections

EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU – Environmentally Unsatisfactory

EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1 – Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2 – Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

Category 3 – Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February, 1987.

- F2-1 USACE and SAFCA received U.S. Environmental Protection Agency's (EPA's) referenced comment letters (dated August 4 and December 11, 2008) on the Phase 2 EIS. Responses were provided in the Phase 2 FEIS (USACE 2008) and Record of Decision (ROD) (USACE 2009), respectively, which are in the record and were considered by USACE and SAFCA in their decision-making on the Phase 2 Project; the content of the letters was also considered during preparation of this FEIR.
- F2-2 Sacramento and Sutter County and the City of Sacramento have developed and are administering flood safety plans affecting the Natomas Basin within their respective jurisdictions. These plans will be updated as additional development in the Natomas Basin is approved.
- Section 2.5.1, "Residual Risk of Flooding," in the Phase 3 DEIS/DEIR describes SAFCA's ongoing efforts to manage the residual risk of flooding in the Natomas Basin, which would remain even with achievement of a "200-year" level of flood risk reduction. As noted in Section 2.5.1, these efforts include providing the state with a safety plan (including a flood preparedness plan, levee patrol plan, flood-fight plan, and evacuation plan). Additionally, SAFCA has implemented a development impact fee program with the objective of avoiding any substantial increase in the expected damage due to an uncontrolled flood as new development proceeds in the floodplain. The revenue generated by the fee program will be used to implement flood risk reduction measures on an ongoing basis and to further reduce flood risk as new development occurs in the floodplain (see also Response to Comment L3-9).
- F2-3 The Natomas Levee Improvement Program (NLIP) includes habitat conservation components as part of each project phase, as well as mitigation measures to avoid and minimize impacts to sensitive habitats and species. For example, Mitigation Measure 4.6-b, "Restore, Replace, or Rehabilitate Degraded SRA Habitat Function and Comply with Section 7 of the Federal Endangered Species Act, Section 1602 of the California Fish and Game Code, and Section 2081 of the California Endangered Species Act Permit Conditions," requires restoration, replacement or rehabilitation of degraded SRA habitat function and compliance with Section 7 of the Federal Endangered Species Act, Section 1602 of the California Fish and Game Code, and Section 2081 of the California Endangered Species Act Permit conditions; and Mitigation Measure 4.7-a, "Minimize Effects on Jurisdictional Waters of the United States, Complete Detailed Design of Habitat Creation Components and Secure Management Agreements to Ensure Compensation of Waters Filled, and Comply with Section 404, Section 401, Section 10, and Section 1602, Permit Processes," requires minimization of effects on jurisdictional Waters of the United States, completion of detailed design of habitat creation components and securing management agreements to ensure compensation of waters filled, and compliance with Section 404, Section 401, Section 10, and Section 1602, permit processes. SAFCA will continue to consult and collaborate closely with Federal, state, regional, and local agencies (including USACE, the U.S. Fish and Wildlife Service [USFWS], the California Department of Fish and Game [DFG], and The Natomas Basin Conservancy [TNBC]) on developing and implementing these measures. SAFCA is working closely with USACE on impacts to Waters of the United States for the NLIP through several NEPA documents covering Clean Water Act Section 404 approval, as well as several permit applications to fill Waters of the United States. SAFCA is also working closely with USFWS, the National Marine Fisheries Service (NMFS), DFG, and TNBC to ensure biological effects are avoided and/or minimized to the extent practicable.

Chapter 7.0, "Consultation and Coordination," of the Phase 3 DEIS/DEIR describes the consultation activities between USACE, SAFCA, USFWS, and DFG that have taken place in connection with the NLIP. Additionally, SAFCA has collaborated with TNBC on the planning, design, and long-term management of the NLIP's proposed habitat conservation components. This has involved multiple meetings and negotiations with the resource agencies and other Natomas Basin land managers such as Reclamation District (RD) 1000, and is ongoing. SAFCA has also coordinated with the Sacramento Area Council of Governments (SACOG), which endorsed SAFCA's White Paper in April 2006 (available on SAFCA's Web site at www.safca.org), to discuss the regional implications of providing improved flood damage reduction to the Natomas Basin. USACE and SAFCA will continue to work collaboratively with USFWS, DFG, TNBC, and SACOG.

- F2-4 The Phase 1 Project, which was analyzed in the Local Funding EIR (SAFCA 2007a), has been constructed. The Phase 2, 3, and 4 Projects were fully analyzed in the Phase 2 EIR (SAFCA 2007b) and Phase 2 EIS (USACE 2008), and constitute the remainder of the NLIP Landside Improvements Project. This project-level EIR is tiered from the above-mentioned documents and involves a portion of that bigger project. As described in Chapter 2.0, "Alternatives," in the Phase 3 DEIS/DEIR, where repairs are required in the Natomas Basin perimeter levee to address 100-year levee height deficiencies, SAFCA would repair the levee to meet the desired minimum of 3 feet of levee height above the "200-year" design water surface profile, thereby laying the groundwork for completion of "200-year" flood risk reduction over time. As part of the Phase 3 Project, the Sacramento River east levee improvements would be constructed with a levee crown at least 3 feet above the "200-year" design water surface profile. The existing height of the NEMDC west levee between Elkhorn Boulevard and Northgate Boulevard is anticipated to meet the "200-year" height requirement. Under SAFCA's approach, this would leave only a minor amount of work for USACE to complete the "200-year" improvements, primarily along the American River north levee and the NEMDC west levee between Elkhorn Boulevard and Sankey Road. These remaining repairs would make a minor contribution to the significant cumulative impacts that have been identified for the NLIP, as discussed in Chapter 5.0, "Cumulative and Growth-Inducing Impacts, and Other Statutory Requirements," in the Phase 3 DEIS/DEIR.
- F2-5 Comment noted; a copy of the FEIR, and subsequently the FEIS to be prepared by USACE, will be provided to EPA as requested.

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CENTRAL VALLEY FLOOD PROTECTION BOARD

3310 El Camino Ave., Rm. LL40
SACRAMENTO, CA 95821
(916) 574-0609 FAX: (916) 574-0682
PERMITS: (916) 574-0685 FAX: (916) 574-0682



February 23, 2009

John Bassett
Sacramento Area Flood Control Agency
1007 7th Street, 7th Floor
Sacramento, CA 95814

Dear Mr. Bassett:

State Clearinghouse (SCH) Number: 2008072060
Natomas Levee Improvement Program, Phase 3 Landslide Improvements Project

Staff for the Department of Water Resources has reviewed the subject document and provides the following comments:

The proposed project is located within the jurisdiction of the Central Valley Flood Protection Board (Formerly known as The Reclamation Board). The Board is required to enforce standards for the construction, maintenance and protection of adopted flood control plans that will protect public lands from floods. The jurisdiction of the Board includes the Central Valley, including all tributaries and distributaries of the Sacramento River and the San Joaquin River, and designated floodways (California Code of Regulations (CCR) Title 23, Section 2).

A Board permit is required prior to starting the work within the Board's jurisdiction for the following:

- The placement, construction, reconstruction, removal, or abandonment of any landscaping, culvert, bridge, conduit, fence, projection, fill, embankment, building, structure, obstruction, encroachment, excavation, the planting, or removal of vegetation, and any repair or maintenance that involves cutting into the levee;
- Existing structures that predate permitting or where it is necessary to establish the conditions normally imposed by permitting. The circumstances include those where responsibility for the encroachment has not been clearly established or ownership and use have been revised (CCR, Title 23, Section 6).

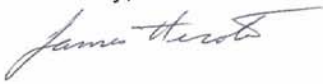
S1-1

The permit application and CCR Title 23 regulations can be found on the Central Valley Flood Protection Board's website at <http://www.cvfpb.ca.gov/>.

If you have any questions please contact me at (916) 574-0651 or jherota@water.ca.gov.

SAFCA '09 FEB 24 PM2:51

Sincerely,



James Herota
Staff Environmental Scientist
Floodway Protection Section
Division of Flood Management

cc:

Governor's Office of Planning and Research
State Clearinghouse
1400 Tenth Street, Room 121
Sacramento, CA 95814

- S1-1 SAFCA recognizes that the Phase 3 Project would involve alterations of levees under the jurisdiction of the Central Valley Flood Protection Board (CVFPB) and would therefore require an encroachment permit from the CVFPB to construct those alterations. (See also Section 1.7.3.2, “State Actions/Permits,” in the Phase 3 DEIS/EIR.) SAFCA would obtain all necessary permits and approvals before project construction.

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CENTRAL VALLEY FLOOD PROTECTION BOARD

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April 3, 2009

John Bassett
 Sacramento Area Flood Control Agency
 1007 7th Street, 7th Floor
 Sacramento, CA 95814

Dear Mr. Bassett:

State Clearinghouse (SCH) Number: 2008072060
 Draft Environmental Impact Statement/Draft Environmental Impact Report (DEIS/DEIR)
 on the Natomas Levee Improvement Program, Phase 3 Landside Improvements Project

The Central Valley Flood Protection Board (Board) is responsible for flood safety within California and maintains the integrity of the existing flood control system and designated floodways through the Board's regulatory authority by issuing permits for encroachments. Development projects within the jurisdiction of the Board are required to meet standards for the construction, maintenance, and protection of adopted plans of flood control that will protect public lands from floods. The jurisdiction of the Board includes the Central Valley, including all tributaries and distributaries of the Sacramento River and the San Joaquin River, and designated floodways (Title 23 California Code of Regulations, Section 2). Working with the Sacramento Area Flood Control Agency staff early in the project planning will help Board staff and other interested parties to identify potential project impacts, appropriate mitigation measures, and thereby improves the safety of floodways.

S2-1

Board staff has reviewed the DEIS/DEIR on the Natomas Levee Improvement Program, Phase 3 Landside Improvements Project and provides the following comments:

- According to the DEIR, p. 2-8 states "Additional construction details for the Proposed Action and Levee Raise-in-Place Alternative are presented in Appendix H, "Construction Details." The Proposed Action and additional action alternative (the Levee Raise-in-Place Alternative) were developed for consideration for the Phase 3 Project with a focus on improvements to the Sacramento River east levee (Reaches 5A-9B). Phase 3 Project improvements to the PGCC west levee, the NEMDC west levee, and landscape and irrigation/drainage system modifications would be similar under the Proposed Action and the Levee Raise-in-Place Alternative."

S2-2

There is limited information as to the irrigation of the vegetation that will be introduced to the levee and drainage canal systems. CVFPB staff reviewed Appendix H, "Construction Details" that includes erosion control measures using a hydroseeding truck to seed disturbed areas, p. H-24. The method of irrigation was not listed, therefore comments are not able to be provided on the irrigation system.

Mr. Bassett
April 3, 2009
Page 2

The irrigation of vegetation on levee slopes is required to be in accordance with Title 23, Section 131 (j).

S2-2
Cont.

- CVFPB staff reviewed the New Giant Garter Snake/Drainage Canal, Appendix H p. H-29, which states "Construction activities for the GGS/Drainage Canal and Elkhorn Canal would be similar, and these components would be constructed concurrently. This approach would facilitate the use of excavated material from the GGS/Drainage Canal north of 1-5 for use as embankment material along the Elkhorn Canal. Habitat enhancement would include planting tules on the sloped banks. Backhoes would be used to prepare the planting areas and a water truck would be used to control dust."

There is limited information as to the analysis conducted to determine how the use of tules for giant garter snake habitat was determined and how the tules would be maintained without adverse impacts to the giant garter snake and flood control. Vegetation requirements in accordance with Title 23, Section 131 (c) states "Vegetation must not interfere with the integrity of the adopted plan of flood control, or interfere with maintenance, inspection, and flood fight procedures." Alternative sites outside of the designated floodway would be a feasible site giant garter snake habitat, without having an adverse impact to flood control.

S2-3

Title 23 CCR can be found on the Central Valley Flood Protection Board's website at <http://www.cvfpb.ca.gov/>. Thank you for your consideration of these comments, please contact me if you have any questions.

Sincerely,



James Herota
Staff Environmental Scientist
Floodway Protection Section
Division of Flood Management

cc: Governor's Office of Planning and Research
State Clearinghouse
1400 Tenth Street, Room 121
Sacramento, California 95814

- S2-1 See Response to Comment S1-1.
- S2-2 There is no plan to irrigate (other than natural rainfall) the perennial grassland sod on the Sacramento River east levee, PGCC, and NCC levees, berms, or levee O&M rights-of-way once the establishment period has been completed. Drainage canal banks would also be dry-seeded and not irrigated with one minor exception: a 1- to 2-foot-wide band at the managed summer waterline would be plug-planted with two rows of native sedges and rushes, which would be sustained by canal water that saturates the toe of the bank.
- S2-3 The habitat value of the new GGS/Drainage Canal is addressed in Impact 4.9-c, “Impacts on Giant Garter Snake Related to Construction Activities,” in the Phase 3 DEIS/DEIR, which notes that tule vegetation provides suitable cover and foraging habitat for giant garter snake. The canal would be designed to reduce the frequency and extent of maintenance disturbance to canal bed and banks, which would reduce disturbance to this giant garter snake habitat. The sides would be sloped at an angle shallow enough to facilitate the shoreline growth of freshwater marsh plants, including native sedges, rushes, and tules that would provide habitat enhancement for giant garter snakes. Perennial grasses would be planted on banks above the row of shoreline marsh plants to provide better cover for giant garter snakes, discourage weeds, raise cutting height above the ground, and reduce the frequency of disturbance to bank vegetation. The GGS/Drainage Canal would be located between 1,000 and 5,000 feet to the landside of the new levee toe (see Plate 17a in the Phase 3 DEIS/DEIR) and would not interfere with maintenance, inspection, or flood fight procedures. This canal would not be located within the designated floodway and therefore would not have an adverse impact related to flood risk reduction.

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CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



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April 2, 2009

File Ref: SCH# 2008072060

John Bassett
Sacramento Area Flood Control Agency (SAFCA)
1007 7th Street, 7th Floor
Sacramento, CA 95814

**Subject: Natomas Levee Improvement Program, Phase 3 Landside
Improvements Project, Draft Environmental Impact Statement/
Environmental Impact Report (DEIS/DEIR)**

Dear Mr. Bassett:

The purpose of this letter is to provide you with comments on the Draft Environmental Impact Statement/ Environmental Impact Report for the Natomas Levee Improvement Program (NLIP), Phase 3 Landside Improvements Project. Under the California Environmental Quality Act (CEQA), the California State Lands Commission (CSLC) may be a Responsible and/or Trustee Agency for this project and has commented on the previous CEQA/NEPA documents prepared for NLIP.

The State acquired sovereign ownership of all tidelands and submerged lands and beds of navigable waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all the people of the State for statewide Public Trust purposes which include waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. The landward boundaries of the State's sovereign interests in areas that are subject to tidal action are generally based upon the ordinary high water marks of these waterways as they last naturally existed. In non-tidal navigable waterways, the State holds a fee ownership in the bed of the waterway between the two ordinary low water marks as they last naturally existed. The entire non-tidal navigable waterway between the ordinary high water marks is subject to the Public Trust easement. Both the easement and fee-owned lands are under the jurisdiction of the CSLC. The locations of the ordinary high and low water marks are often related to the last natural conditions of the river, and may not be apparent from a present day site inspection.

To the extent the proposed project lies waterward of the ordinary high water mark in the Sacramento River, a lease will be required. In addition, to the extent the proposed project involves State-owned sovereign lands in the American River under the jurisdiction of the CSLC, a lease will be required. A portion of the proposed project in the American River may involve sovereign lands granted in trust to the city of

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S3-1

S3-2

Sacramento under Chapter 519, Statutes of 1868. Site specific drawings will need to be submitted to determine if the proposed project involves lands under the granted or ungranted jurisdiction of the CSLC.

S3-2
Cont'd

In the event that a lease is required for the use of sovereign lands, the SAFCA's environmental document will be used by the CSLC for that discretionary action. Staff of the CSLC has concerns with regard to the analysis and mitigation for greenhouse gases (GHGs) in the DEIR/DEIS. The DEIR/DEIS states that 4,170 metric tons of carbon dioxide equivalents (CO_{2(e)}) of GHG emissions will be produced by construction of Phase 2 and Phase 3 of the project in 2009, with the same amount (4,170 metric tons of CO_{2(e)}) for construction activity in 2010 as well. However, the document does not state or identify what the estimated GHG emissions will be during the operation and maintenance of the project, once construction has been completed. Please provide an estimate of GHG emissions per year associated with operation and maintenance of the project.

S3-3

Once all the GHG emissions are quantified, mitigation measures should be considered. The use of the newest and cleanest equipment is recognized as a best management practice and is a common mitigation measure used during construction and maintenance of the project. Additional mitigation measures may need to be considered, perhaps including purchasing carbon offsets in accordance with California Climate Action Registry or the California Air Resources Control Board.

Please contact Mary Hayes, Public Land Manager, at (916) 574-1843 or by email at haysm@slc.ca.gov for information about our leasing requirements. If you have any questions on the environmental review, please contact Christopher Huitt at (916) 574-1938 or by e-mail at huittc@slc.ca.gov.

Sincerely,



Gail Newton, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
State Clearinghouse
C. Huitt, CSLC
M. Hays, CSLC

- S3-1 Comment noted; the California State Lands Commission (CSLC) is recognized as a CEQA trustee and responsible agency.
- S3-2 SAFCA recognizes that to the extent that NLIP construction on the waterside of the Sacramento River east levee would extend below the high watermark, as defined by CSLC, authorization would be required. Site-specific drawings will be submitted to CSLC to allow a determination as to whether the project will involve lands under CSLC's jurisdiction.
- S3-3 As noted in Section 5.1.8.5, "Air Quality," in Chapter 5.0, "Cumulative and Growth-Inducing Impacts and Other Statutory Requirements," in the Phase 3 DEIS/DEIR, the Phase 3 Project would have no net increase in operational greenhouse gas (GHG) emissions. Emissions associated with the long-term operation of the Proposed Action are considered to be nominal and similar to existing conditions. No major sources of GHG emissions would be created and no substantial increase in vehicle miles traveled would occur as a result of project implementation. Therefore, quantification of operational GHG emissions is not necessary and there would be no cumulative contribution to GHG levels due to operation of the Phase 3 Project. Nonetheless, because of the intensity and duration of construction activities, and the lack of available mitigation measures to abate GHG emissions from heavy-duty construction equipment exhaust and on-road hauling emissions, the project's construction emissions would make an incremental temporary contribution to regional GHG emissions. Implementation of Mitigation Measure 4.13-a, "Implement Applicable District-Recommended Control Measures to Minimize Temporary Emissions of ROG, NO_x, and PM₁₀ during Construction," in the Phase 3 DEIR/DEIS would reduce project-generated construction-related emissions, including GHG emissions. Because the project's emissions would be temporary and short-term in nature, and far below the minimum standard for reporting requirements under AB 32, the project's GHG emissions would not result in a cumulatively considerable contribution to a significant cumulative impact on GHG emissions.

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ARNOLD SCHWARZENEGGER
GOVERNOR

STATE OF CALIFORNIA
GOVERNOR'S OFFICE of PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNIT



CYNTHIA BRYANT
DIRECTOR

April 7, 2009

John Bassett
Sacramento Area Flood Control Agency
1007 7th Street, 7th Floor
Sacramento, CA 95814

Subject: Natomas Levee Improvement Program, Phase 3 Landslide Improvements Project
SCH#: 2008072060

Dear John Bassett:

The State Clearinghouse submitted the above named Joint Document to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on April 6, 2009, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Terry Roberts
Director, State Clearinghouse

Enclosures
cc: Resources Agency

S4-1

SAFOR '09 APR 9 PM 2:04

1400 10th Street P.O. Box 3044 Sacramento, California 95812-3044
(916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov

**Document Details Report
State Clearinghouse Data Base**

SCH# 2008072060
Project Title Natomas Levee Improvement Program, Phase 3 Landslide Improvements Project
Lead Agency Sacramento Area Flood Control Agency

Type JD Joint Document
Description The Phase 3 Landslide Improvements Project is part of SAFCA's efforts to reduce the risk of flooding to the Sacramento area. The Phase 3 Project includes flood risk reduction improvements (e.g., levee widening, setback levees, cutoff walls, seepage berms) along the Sacramento River east levee (from just north of Elkhorn Reservoir to just south of I-5), the Pleasant Grove Creek Canal west levee (between Howsley Rd. and Sankey Rd.), and the Natomas East Main Drainage Canal west levee (from Elkhorn Blvd. to Northgate Blvd.) as well as construction of a new canal to provide drainage and giant garter snake habitat (the "GGs/Drainage Canal"), removal of encroachments, and borrow and relandscaping activities in Sacramento and Sutter Counties.

Lead Agency Contact

Name John Bassett
Agency Sacramento Area Flood Control Agency
Phone 916-874-7606 **Fax**
email
Address 1007 7th Street, 7th Floor
City Sacramento **State** CA **Zip** 95814

Project Location

County Sacramento, Sutter
City Sacramento
Region
Lat / Long 38° 41' -" N / 121° 36' -" W
Cross Streets Various
Parcel No.
Township **Range** **Section** **Base**

Proximity to:

Highways 5, 99, 80
Airports Sacramento International
Railways
Waterways Sac & American R., Natomas Cross Can., Natomas East Main Drainage Can., Pleasant Grove Cr. Can.
Schools
Land Use Various, including flood control works, agriculture, and public right-of-way

Project Issues Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Flood Plain/Flooding; Geologic/Seismic; Noise; Public Services; Recreation/Parks; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Wildlife; Growth Inducing; Landuse; Cumulative Effects; Forest Land/Fire Hazard

Reviewing Agencies Resources Agency; Department of Boating and Waterways; Department of Conservation; Department of Fish and Game, Region 2; Cal Fire; Department of Parks and Recreation; Central Valley Flood Protection Board; Department of Water Resources; Office of Emergency Services; California Highway Patrol; Caltrans, District 3; Regional Water Quality Control Bd., Region 5 (Sacramento); Native American Heritage Commission; State Lands Commission

Date Received 02/13/2009 **Start of Review** 02/13/2009 **End of Review** 04/06/2009

Note: Blanks in data fields result from insufficient information provided by lead agency.

CENTRAL VALLEY FLOOD PROTECTION BOARD

3310 El Camino Ave., Rm. LL40
 SACRAMENTO, CA 95821
 (916) 574-0609 FAX: (916) 574-0682
 PERMITS: (916) 574-0685 FAX: (916) 574-0682



February 23, 2009

John Bassett
 Sacramento Area Flood Control Agency
 1007 7th Street, 7th Floor
 Sacramento, CA 95814

*Clear
 4.6.09
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Dear Mr. Bassett:

State Clearinghouse (SCH) Number: 2008072060
 Natomas Levee Improvement Program, Phase 3 Landslide Improvements Project

Staff for the Department of Water Resources has reviewed the subject document and provides the following comments:

The proposed project is located within the jurisdiction of the Central Valley Flood Protection Board (Formerly known as The Reclamation Board). The Board is required to enforce standards for the construction, maintenance and protection of adopted flood control plans that will protect public lands from floods. The jurisdiction of the Board includes the Central Valley, including all tributaries and distributaries of the Sacramento River and the San Joaquin River, and designated floodways (California Code of Regulations (CCR) Title 23, Section 2).

A Board permit is required prior to starting the work within the Board's jurisdiction for the following:

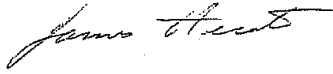
- The placement, construction, reconstruction, removal, or abandonment of any landscaping, culvert, bridge, conduit, fence, projection, fill, embankment, building, structure, obstruction, encroachment, excavation, the planting, or removal of vegetation, and any repair or maintenance that involves cutting into the levee;
- Existing structures that predate permitting or where it is necessary to establish the conditions normally imposed by permitting. The circumstances include those where responsibility for the encroachment has not been clearly established or ownership and use have been revised (CCR, Title 23, Section 6).

The permit application and CCR Title 23 regulations can be found on the Central Valley Flood Protection Board's website at <http://www.cvpfb.ca.gov/>.

If you have any questions please contact me at (916) 574-0651 or jherota@water.ca.gov.

S4-2

Sincerely,



James Herota
Staff Environmental Scientist
Floodway Protection Section
Division of Flood Management

cc:

Governor's Office of Planning and Research
State Clearinghouse
1400 Tenth Street, Room 121 ✓
Sacramento, CA 95814

**Letter
S4
Response**

California Office of Planning and Research
Terry Roberts, Director, State Clearinghouse
April 7, 2009

- S4-1 Comment noted; the State Clearinghouse acknowledges that SAFCA has complied with review requirements for draft environmental documents pursuant to CEQA.
- S4-2 See Response to Comment S1-1.

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DEPARTMENT OF FISH AND GAME

http://www.dfg.ca.gov
North Central Region
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670
916-358-2900



April 9, 2009

John Bassett
Sacramento Area Flood Control Agency
1007 Seventh Street, 7th Floor
Sacramento, CA 95814

Subject: Comments on the Sacramento Area Flood Control Agency's February 2009, Draft Environmental Impact Report on the Natomas Levee Improvement Program Phase 3 Landside Improvement Project

Dear Mr. Bassett:

The California Department of Fish and Game (DFG) has reviewed the Sacramento Area Flood Control Agency's (SAFCA) February 2009, Draft Environmental Impact Report on the proposed Natomas Levee Improvement Program Phase 3 Landside Improvement Project (DEIR/EIS). As described in the DEIR/EIS, the project objectives include: 1) provide at least a 100-year level of flood protection to the Natomas Basin as quickly as possible, 2) provide "200-year" protection to the Natomas Basin over time, and 3) avoid any substantial increase in expected annual damages as new development occurs in the Basin.

S5-1

The DFG is providing comments on the DEIR/EIS as a trustee agency and a responsible agency. As trustee for the State's fish and wildlife resources, the DFG has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of such species. In this capacity the DFG administers the California Endangered Species Act (CESA), the Native Plant Protection Act (NPPA), and other provisions of the California Fish and Game Code that afford protection to the State's fish and wildlife public trust resources. As a responsible agency the DFG will review a Lake and Stream Alteration Agreement notification package for components of the proposed project.

Enforceable Mitigation Measures

CEQA Guidelines §§15126.4 (a)(1)(B) states that formulation of mitigation measures should not be deferred until some future time. Table ES-2 lists a number of mitigation measures for fisheries and aquatic resources (i.e. mitigation measures 4.6a and 4.7a), terrestrial biological resources (i.e. mitigation measures 4.8a, 4.8b, 4.9a, 4.9c, and 4.9f) that rely on future approvals or agreements with the Wildlife Agencies. These entities are entrusted with carrying out the Natomas Basin Habitat Conservation Program's (NBHCP's) permit conditions, Natomas Basin Conservancy (NBC), and agencies entrusted with providing public safety (Federal Aviation Administration (FAA) approval over mitigation on proposed borrow site / Sacramento Airport buffer lands), as a means

S5-2

Conserving California's Wildlife Since 1870

to bring identified significant environmental effects to below a level that is significant. As there is no guarantee that these approvals or cooperation with all of the above entities will ultimately occur, the DFG believes the above mitigation measures are potentially unenforceable and may not bring the impacts to fisheries and aquatic resources to below a level that is significant.

S5-2
Cont'd

Mitigation measures should establish performance standards to evaluate the success of the proposed mitigation, provide a range of options to achieve the performance standards, and must commit the lead agency to successful completion of the mitigation. Mitigation measures should also describe when the mitigation measure will be implemented and explain why the measure is feasible. The DFG recommends the mitigation measures summarized in Table ES-2, include measures that are enforceable and do not defer mitigation details to some future time. The DEIR/EIS should identify the following items: how each measure will be carried out; who will perform the measures; when the measures will be performed; the performance standards and mechanisms for achieving success; and an assured source of funding to acquire and manage identified mitigation lands. The DEIR/EIS could describe a range of enforceable mitigation measures that will be implemented in instances where approval and cooperation with the entities identified above either does or does not occur.

S5-3

CESA

As we have done for previous phases of this project, the Department anticipates issuing an Incidental Take Permit (ITP) for this phase under the provisions of the California Endangered Species Act. Issuance of an ITP is subject to CEQA documentation. Because of this, it is critical that the CEQA analysis and the identification of specific mitigation measures be as thorough as possible in the EIR in order for us to be able to rely on the existing environmental document when making our CEQA findings for the ITP. The DFG may only issue a CESA permit if it is determined that impacts associated with the authorized take of the species are minimized, fully mitigated, and that adequate funding has been ensured to implement the mitigation measures. The DFG may only issue a CESA permit if it determines that issuance of the permit will not jeopardize the continued existence of the species. This determination will be made based on the best scientific information available and shall include consideration of the species capability to survive and reproduce, including the species known population trends and known threats to the species. Issuance of a CESA permit may take up to 180 days from receipt of an application for take authorization.

S5-4

Potential Impacts to Special-Status Plant Species

The DEIR/EIS states that three special-status plant species have the potential to occur within the project area, including Rose Mallow (*Hibiscus lasiocarpus*), Delta Tule Pea (*Lathyrus jepsonii* var. *jepsonii*), and Sanford's Arrowhead (*Sagittaria sanfordii*). The DEIR/EIS states: "no surveys have been conducted to confirm that the species in question are present in these habitats; however, surveys for special-status plants within the Phase 3 Project area will be conducted during the appropriate time for identification in 2009, before project construction". The DFG recommends focused rare-plant surveys be conducted at the appropriate time of year to identify any special-status plants which may be present within the project area. The results of these floristic

S5-5

surveys need to be evaluated in the final EIR/EIS along with appropriate minimization and mitigation measures. Compliance with CEQA is predicated on a complete and accurate description of the existing site conditions that will be altered if the proposed project is approved. Without a complete and accurate description of the existing plant flora in and around the project site the DEIR/EIS likely provides an incomplete analysis of project-related environmental impacts.

S5-5
Cont'd

Mitigation measure 4.9a of the DEIR/EIS states: "if special-status plants are present in areas that cannot be avoided... affected plants may potentially be transplanted to the GGS/Drainage Canal, if feasible". The DFG has found transplantation of herbaceous plants is typically unsuccessful and should be considered experimental. Mitigation measures for any potentially unavoidable impacts to special-status plants should include additional measures to increase the chances of survival for the population in question. If special-status plants cannot be avoided during project activities, seed should be collected and propagated at a DFG approved nursery facility in order to provide additional plantings at an approved mitigation site. Additionally, a mitigation plan approved by the DFG should be developed, which includes a planting plan, monitoring plan, success criteria, and a remediation plan in the event that success criteria are not met. These mitigation sites should be permanently protected and managed in perpetuity.

S5-6

Impacts to Swainson's Hawk and Other Raptor Species

The DFG is concerned with potential impacts to raptor nesting behavior not currently addressed in the DEIR/DEIS. Page 2-25 of the DEIR/DEIS describes construction activities including the 24/7 construction of cutoff walls before the start of flood season (November 1), as well as an estimated 900-1,000 haul trips per day to deliver fill material to construct reaches 5A-9B of the Sacramento River east levee. The DFG believes that each of these activities could potentially result in significant impacts to nesting raptors including nest abandonment, starvation of young, and/or reduced health and vigor of eggs or nestlings that could result in death.

The final EIR/EIS should identify the potential impacts to nesting raptors associated with 24-hour construction schedules along riparian zones such as the Sacramento River, which contains a higher density of nesting raptors than elsewhere in the Natomas Basin. In its current form the DEIR/DEIS does not explore the potential impacts of nighttime construction activities on nesting raptors such as: high-intensity lighting, operation of heavy equipment or the presence of construction personnel at all hours of the night. Furthermore, construction at night poses additional complications for the effectiveness of biological monitors in ensuring that appropriate buffer zones are in place around active nests and that birds do not abandon their nest. The final EIR/EIS should include feasible mitigation measures that reduce these impacts to below a level of significance.

S5-7

Mitigation measure 4.9f states: "surveys for nesting birds shall be conducted before project activities are initiated during the nesting season (March 1-July 31)". The DFG recommends that nesting bird surveys be conducted until September 15th, in accord with current DFG survey protocols for nesting birds. Additionally, mitigation measure 4.9f states: "the biologist shall conduct preconstruction surveys to identify active nests

S5-8

within 0.25-mile of construction areas, in accordance with DFG guidelines". Current DFG guidelines require preconstruction surveys be conducted within 0.5-miles of construction areas, with a 0.25-mile construction buffer zone placed around any active nest that is identified.

S5-8
Cont'd

Northern Harrier

The Northern Harrier (*Circus cyaneus*) (NOHA) is listed in California as a Species of Special Concern, and is protected from take by Fish and Game section 3503.5. The DEIR/EIS does not provide a discussion of potential impacts to these ground nesting raptors associated with construction and borrow site activities and does not consider avoidance or mitigation measures to avoid "take" or lessen potential impacts to below a level that is significant. The DFG recommends that the DEIR/EIS provide a discussion of the project's potential to impact NOHA, and include measures to avoid take of these birds, and their nests and eggs.

S5-9

We appreciate your consideration of our comments. DFG personnel are available for consultation regarding biological resources and strategies to minimize impacts. If you have questions please contact Patrick Moeszinger, Environmental Scientist, at 916-358-2850 or Jeff Drongesen, Senior Environmental Scientist, at 916-358-2919.

Sincerely,

Kent Smith
Habitat Conservation Program Manager

cc: Patrick Moeszinger
Jeff Drongesen
Kent Smith
Department of Fish and Game
North Central Region

USFWS
2800 Cottage Way, W-2606
Sacramento, CA 95825

- S5-1 Comment noted; DFG is providing comments as a trustee agency and responsible agency under CEQA.
- S5-2 **Table 3-2** includes permits and other resource agency coordination activities for current and future NLIP project construction phases.

Table 3-2 NLIP Resource Agency Coordination		
Agency	Regulatory Permit/Issue	Status
Programmatic		
USFWS/NMFS	Programmatic Biological Opinion	Issued October 2008
NMFS	Concurrence of Determination of Not Likely to Adversely Affect	January 2009
DFG, RWQCB, USACE, and USFWS	Long Term Management Plan Approval	Under Review
Phase 2 Project		
USACE	Section 408 Permission	Issued January 2009
USACE	Section 404 Permit	Issued January 2009
RWQCB	Section 401 Water Quality Certification	Issued January 2009
DFG	2081 Incidental-Take Authorization	Expected April 2009
DFG	1602 Streambed Alteration Agreement	Signed and issued January 2009
USFWS/NMFS	Biological Opinion	Issued October 9, 2008
Sacramento County	SMARA Exemption	February 2009
Sutter County	SMARA Exemption	February 2009
DFG, RWQCB, USACE, and USFWS	MMP	Under review
SWRCB	Section 402 NPDES Permit	Notice of Intent filed March 2009
Phase 3 Project²		
USACE	Section 408 Permission	Under review
USACE	Section 404 Permit	Under review
USACE	Section 10 Permit	Under review
RWQCB	Section 401 Water Quality Certification	In preparation
DFG	2081 Incidental Take Authorization	In preparation
DFG	1602 Streambed Alteration Agreement	In preparation
USFWS/NMFS	Biological Opinion	Biological Assessment under review

Table 3-2 NLIP Resource Agency Coordination		
Agency	Regulatory Permit/Issue	Status
Sacramento County	SMARA Exemption	In preparation
Sutter County	SMARA Exemption	In preparation
DFG, RWQCB, USACE, and USFWS	MMP	In preparation
SWRCB	Section 402 NPDES Permit	In preparation
Phase 4a Project		
USACE	Section 408 Permission	Anticipated January 2010
USACE	Section 404 Permit	Anticipated January 2010
USACE	Section 10 Permit	Anticipated January 2010
RWQCB	Section 401 Water Quality Certification	Anticipated January 2010
DFG	2081 Incidental Take Authorization	Anticipated January 2010
DFG	1602 Streambed Alteration Agreement	Anticipated January 2010
USFWS/NMFS	Biological Opinion	Anticipated November 2009
Sacramento County	SMARA Exemptions or Permit	In preparation
DFG, RWQCB, USACE, and USFWS	MMP	Anticipated January 2010
SWRCB	Section 402 NPDES Permit	Anticipated January 2010
Phase 4b and 4c Projects – Anticipated 2010-2012		
Notes: USFWS = U.S. Fish and Wildlife Service; NMFS = National Marine Fisheries Service; DFG = California Department of Fish and Game; RWQCB = Regional Water Quality Control Board; USACE = U.S. Army Corps of Engineers; SMARA = Surface Mining and Reclamation Act; MMP = Mitigation and Monitoring Plan; SWRCB = State Water Resources Control Board; NPDES = National Pollutant Discharge Elimination System		
¹ Although Phase 1 Project permitting requirements were fulfilled, they are not included in this table because construction is complete.		
² The Phase 3 Project permits have been separated into 3 subphases (a, b, and c); status listed in table refers to the Phase 3a permit.		
Source: Data compiled by EDAW in 2009		

It is common to receive permits from these agencies, in their capacities as responsible agencies, after an FEIR is certified. The BOs and incidental take permit, which will contain specific conditions to protect species at a higher performance standard than exists under CEQA (“take” versus no substantial effect), specify that implementation is the responsibility of SAFCA, and establish measurable parameters (performance standards) and actions that SAFCA will be required to implement if the parameters are not met. USFWS, NMFS, and DFG permits include specific and stringent performance standards. These agency documents are not studies, but permits with legally binding and enforceable terms and conditions. If SAFCA does not receive permits from these agencies, SAFCA simply cannot implement the Proposed Action. Permit terms in USFWS, NMFS, and DFG permits are enforceable and must be complied with by SAFCA. The established mitigation in the Phase 3 DEIS/DEIR does not constitute impermissible “deferred mitigation” and meets CEQA requirements for effective and legally adequate mitigation. The following discussion provides additional supportive information.

Impacts to wildlife habitat from project construction would be compensated for through a Natomas Basinwide habitat creation, enhancement, and preservation component as part of the NLIP (See Section 2.3.3, “Habitat Conservation Components,” in the Phase 3 DEIS/DEIR). These components include creation and/or preservation of managed grasslands, aquatic habitat, uplands, woodlands, field crops, and rice that function as wildlife habitat. This conservation strategy is designed to offset impacts to habitat and to contribute towards long-term viability of the giant garter snake, valley elderberry longhorn beetle, Swainson’s hawk, and other nesting raptors and songbirds. Therefore, these conservation components are not “mitigation measures;” rather, they are part of the Proposed Action. Nevertheless, these aspects of the Phase 3 Project will still meet the same requirements of enforceability and approval by permitting agencies as they would if they were mitigation measures. The conservation strategy was designed to meet all the requirements of mitigation specified in the State CEQA Guidelines.

As stated in State CEQA Guidelines (Section 15126.4[a][1][B]), “formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.” Hence, mitigation measures commonly are adopted in which the agency commits to achieving a performance standard and the mitigation measure lists options and alternatives for achieving the performance standard, some or all of which may be selected for implementation as part of a future, specific mitigation or management plan.

S5-3 Section 2.3.3, “Habitat Conservation Components,” in the Phase 3 DEIS/DEIR includes performance criteria for assessing the success of conservation components along with how and when assessment monitoring would be carried out for aquatic habitat, rice and field crops, managed grasslands, and woodlands.

Further description of these conservation components and how they are expected to function can be found in Sections 4.8, “Vegetation and Wildlife,” and 4.9, “Special-Status Terrestrial Species,” in the Phase 3 DEIS/DEIR under the Proposed Action. Construction details for the proposed GGS/Drainage Canal can be found in Appendix H of the Phase 3 DEIS/DEIR along with dates for completion.

See also Section 2.3.3.6, “Long-Term Management of Habitat Components,” in the Phase 3 DEIS/DEIR for a description of land protection and management mechanisms for long-term management of conservation components. Construction of conservation components and assessment monitoring will be carried out by SAFCA or its contractors.

The Draft NLIP Landside Improvements Project Programmatic Long-Term Management Plan (LTMP) and the NLIP Phase 3 Mitigation and Monitoring Plan (MMP) provide further details for ensuring that habitat improvement and compensation sites are managed, monitored, and maintained in perpetuity. The completion of these documents is expected by June 2009. Funding agreements for proposed parties responsible for management are detailed in the LTMP and MMP. Before project construction that could affect agency-regulated habitat can begin, permits must be issued by the applicable resource/regulatory agencies, and the LTMP and MMP documents are subject to their approval. Management responsibilities and protection obligations under these plans will be held by USFWS, DFG, SAFCA, TNBC, Sacramento County, Sacramento County Airport System (SCAS), the Natomas Central Mutual Water Company (NCMWC), and RD 1000.

S5-4 SAFCA acknowledges the Proposed Action could result in take of giant garter snake and Swainson’s hawk, and that a California Endangered Species Act (CESA) 2081 Permit is required for these species. SAFCA will fully comply with the CESA permitting process, including

necessary compensation/mitigation for impacts to state-listed species, funding for said compensation/mitigation, and the amount of time potentially required for issuing a permit.

S5-5 Mitigation Measure 4.9-a, “Conduct Focused Surveys for Special-Status Plants, Minimize Effects, and Develop Detailed Design of Created Habitat and Management Agreements to Ensure Compensation for Loss of Habitat, and Implement all Management Agreements,” in the Phase 3 DEIS/DEIR includes conducting plant surveys at the appropriate time of year to identify any special-status species in the area, ensures no net loss of special-status species if they are found, and includes consultation with appropriate regulatory agencies including DFG. These surveys are planned for the appropriate blooming season in June/July 2009, which is after the FEIR is completed. DFG will be notified of all results of the special-status plant surveys when the surveys are conducted.

Preconstruction surveys must take place immediately prior to construction activities. When preconstruction surveys are coupled with specific actions to be taken if the species are found, and there are specific performance standards established, then the mitigation is adequate under CEQA.

S5-6 SAFCA understands that transplanting herbaceous plants can be unsuccessful. If surveys indicate that special-status plants would be lost as a result of project implementation, Mitigation Measure 4.9-a, “Conduct Focused Surveys for Special-Status Plants, Minimize Effects, and Develop Detailed Design of Created Habitat and Management Agreements to Ensure Compensation for Loss of Habitat, and Implement all Management Agreements,” is revised to include the following: SAFCA commits to implement additional measures to increase the chance of success for establishment of special-status plant populations in created habitats, such as seed collection and propagation at a DFG-approved nursery to provide additional plantings and conducting transplantation during the dormant season, if feasible, to an approved site. SAFCA will develop a mitigation plan to be approved by DFG, and mitigation lands will be protected and managed in perpetuity, as recommended. See Chapter 4.0, “Revisions to the DEIS/DEIR,” of this FEIR for the text revision.

S5-7 Mitigation Measure 4.9-f, “Minimize Potential Impacts on Swainson’s Hawk and Other Special-Status Birds Foraging and Nesting Habitat, Monitor Active Nests during Construction, Develop and Implement a Management Plan in Consultation with DFG, Obtain Incidental Take Authorization, and Implement Mitigation Measure 4.8-a, [Minimize Effects on Woodland Habitat, Complete Detailed Design of Woodland Creation and Management Agreements to Ensure Compensation for Loss of Quantity and Quality of Habitat, Implement all Agreements, and Comply with the DFG Section 1602 Permit Process],” in the Phase 3 DEIS/DEIR is intended to (1) be encompassing enough to mitigate any and all construction activities, day or night, (2) provide for monitoring to identify any unanticipated nest disturbance, and (3) provide flexibility to determine an appropriate course of action in consultation with DFG if unanticipated effects occur. This measure addresses any impacts that may occur from 24/7 construction and haul trips.

S5-8 Mitigation Measure 4.9-f, “Minimize Potential Impacts on Swainson’s Hawk and Other Special-Status Birds Foraging and Nesting Habitat, Monitor Active Nests during Construction, Develop and Implement a Management Plan in Consultation with DFG, Obtain Incidental Take Authorization, and Implement Mitigation Measure 4.8-a, [Minimize Effects on Woodland Habitat, Complete Detailed Design of Woodland Creation and Management Agreements to Ensure Compensation for Loss of Quantity and Quality of Habitat, Implement all Agreements, and Comply with the DFG Section 1602 Permit Process],” in the Phase 3 DEIS/DEIR has been revised to reflect these updates to DFG protocol for nesting raptors. See Chapter 4.0, “Revisions to the DEIS/DEIR,” of this FEIR for the text revision.

The northern harrier is discussed as a special-status species in Section 3.3.9.2, “Special-Status Wildlife Species,” and in Table 3.9-2 in the Phase 3 DEIS/DEIR. Impacts 4.7-a, “Impacts on Jurisdictional Waters of the United States,” and 4.9-f, “Impacts on Swainson’s Hawk and Other Special-Status Birds,” in the Phase 3 DEIS/DEIR describe and evaluate the Phase 3 Project’s potential impacts to potential nesting habitat for Swainson’s hawk and other special-status birds, including grasslands, croplands, and marsh. To provide additional clarification, northern harrier will be specifically identified in Impact 4.9-f as a special-status bird. See Chapter 4.0, “Revisions to the DEIS/DEIR,” of this FEIR for the text revision.

Mitigation Measure 4.9-f, “Minimize Potential Impacts on Swainson’s Hawk and Other Special-Status Birds Foraging and Nesting Habitat, Monitor Active Nests during Construction, Develop and Implement a Management Plan in Consultation with DFG, Obtain Incidental Take Authorization, and Implement Mitigation Measure 4.8-a, [Minimize Effects on Woodland Habitat, Complete Detailed Design of Woodland Creation and Management Agreements to Ensure Compensation for Loss of Quantity and Quality of Habitat, Implement all Agreements, and Comply with the DFG Section 1602 Permit Process],” provides measures that cover surveys and avoidance for all nesting special-status birds, including the northern harrier. Focused transect surveys will be used to survey for northern harrier nests. If an occupied nest is found, this measure requires developing an appropriate buffer that minimizes potential disturbance of the nest to be determined by the biologist and in coordination with DFG.

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March 18, 2009

Mr. John Bassett
 Director of Engineering
 Sacramento Area Flood Control Agency (SAFCA)
 1007 Seventh Street, 7th Floor
 Sacramento, CA 95814

Ms. Elizabeth Holland
 Planning Division
 USACE, Sacramento District
 1325 J Street
 Sacramento, CA 95814

Natomas Levee Improvement Program (NLIP), Phase 3 Landside
 Improvements Project DEIS/DEIR, SAC200701184c

Dear Mr. Bassett and Ms. Holland:

Thank you for providing the NLIP Phase 3 Landside Improvements Project DEIS/DEIR to the Sacramento Metropolitan Air Quality Management District (SMAQMD) for review. SMAQMD staff comments follow.

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| <ol style="list-style-type: none"> 1. Page 4.13-9, last paragraph, indicates "SAFCA will submit a construction emissions dust control plan(s) to SMAQMD...and shall receive approval of the plan(s)."
 Generally, the SMAQMD does not review and approve dust control plans unless the construction is located in an area of known naturally occurring asbestos. The SMAQMD supports the development and implementation of the plan to ensure the project complies with SMAQMD rules and reduces particulate emissions. | | L1-1 |
| <ol style="list-style-type: none"> 2. Page 4.13-10, fourth bullet, discusses an off-site mitigation fee. Recognizing the estimate in the document is just that, the SMAQMD supports the approach to recalculate the emissions and mitigation fee prior to groundbreaking activities for each project phase. | | L1-2 |
| <ol style="list-style-type: none"> 3. Page 4.13-11, last bullet, indicates idling time shall be limited to 10 minutes. State law for most sectors of diesel-fueled equipment allows only 5 minutes of idling. | | L1-3 |
| <ol style="list-style-type: none"> 4. Page 4.13-12, first bullet, indicates diesel-fueled construction equipment operating on the site for more than 40 hours shall be equipped with diesel particulate filters (DPFs) that meet ARB level 3 verification. The SMAQMD doesn't believe that it is currently feasible for all construction equipment to be equipped with level 3 DFPs. There are less than 10 verified devices currently listed on ARB's webpage, but not all of these devices will work on all pieces of construction equipment. The SMAQMD recommends that this measure be replaced with either a certain number (i.e., 2-5) or percentage of pieces of equipment be retrofitted, or go in a different direction and require only construction equipment with tier 2 or higher certified engines be used on the project, unless the tier 0 or tier 1 engine is retrofitted with ARB certified level 3 diesel particulate filters. | | L1-4 |

5. Page 4.13-13, there are two references to Table 4.13-3. One reference indicates the emissions in the table are from the Levee Raise-in-Place Alternative and the other reference indicates the emissions in the table are from the Proposed Action. Please clarify which reference is correct and if necessary provide a separate emissions table for the other reference.

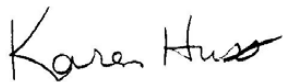
L1-5

All projects are subject to SMAQMD rules in effect at the time of construction. I have attached a list of rules that may apply to this project. For more information on SMAQMD rules call 916-874-4800 or visit www.AirQuality.org.

L1-6

Please contact me at 916-874-4881 or khuss@airquality.org if you have any questions regarding these comments.

Sincerely,



Karen Huss
Associate Air Quality Planner/Analyst

Attachment

Cc: Larry Robinson, Sacramento Metropolitan Air Quality Management District
Sondra Andersson, Feather River Air Quality Management District

SMAQMD Rules & Regulations Statement (revised 1/07)

The following statement is recommended as standard condition of approval or construction document language for all development projects within the Sacramento Metropolitan Air Quality Management District (SMAQMD):

All projects are subject to SMAQMD rules and regulations in effect at the time of construction. A complete listing of current rules is available at www.airquality.org or by calling 916.874.4800. Specific rules that may relate to construction activities or building design may include, but are not limited to:

Rule 201: General Permit Requirements. Any project that includes the use of equipment capable of releasing emissions to the atmosphere may require permit(s) from SMAQMD prior to equipment operation. The applicant, developer, or operator of a project that includes an emergency generator, boiler, or heater should contact the District early to determine if a permit is required, and to begin the permit application process. Portable construction equipment (e.g. generators, compressors, pile drivers, lighting equipment, etc) with an internal combustion engine over 50 horsepower are required to have a SMAQMD permit or a California Air Resources Board portable equipment registration.

Other general types of uses that require a permit include dry cleaners, gasoline stations, spray booths, and operations that generate airborne particulate emissions.

Rule 403: Fugitive Dust. The developer or contractor is required to control dust emissions from earth moving activities or any other construction activity to prevent airborne dust from leaving the project site.

Rule 417: Wood Burning Appliances. Effective October 26, 2007, this rule prohibits the installation of any new, permanently installed, indoor or outdoor, uncontrolled fireplaces in new or existing developments.

Rule 442: Architectural Coatings. The developer or contractor is required to use coatings that comply with the volatile organic compound content limits specified in the rule.

Rule 902: Asbestos. The developer or contractor is required to notify SMAQMD of any regulated renovation or demolition activity. Rule 902 contains specific requirements for surveying, notification, removal, and disposal of asbestos containing material.

- L1-1 Comment noted; the Sacramento Metropolitan Air Quality Management District (SMAQMD) does not review and approve dust control plans, however, SMAQMD does support the development and implementation of such plans. The fugitive dust control plan shall remain in the Phase 3 DEIS/DEIR as written (see Mitigation Measure 4.13-a, “Implement Applicable District-Recommended Control Measures to Minimize Temporary Emissions of ROG, NO_x, and PM₁₀ during Construction”), however the dust control plan will not require SMAQMD approval for implementation. See Chapter 4.0, “Revisions to the DEIS/DEIR,” of this FEIR for the text revision.
- L1-2 Comment noted; SMAQMD supports the existing methodology and timing of the off-site mitigation fee.
- L1-3 The commenter states that idling should be limited to 5 minutes for diesel-fueled equipment. See Chapter 4.0, “Revisions to the DEIS/DEIR,” of this FEIR for the text revision.
- L1-4 The commenter states that mitigation in the form of diesel particulate filters may not be feasible at this time and recommends substitute measures. See Chapter 4.0, “Revisions to the DEIS/DEIR,” of this FEIR for the text revision.
- L1-5 Because only the Proposed Action is required to meet general conformity de minimis thresholds, Table 4.13-3 in the Phase 3 DEIS/DEIR only presents the annual Proposed Action emissions.
- L1-6 Comment noted; all projects are subject to SMAQMD rules at the time of construction. The impact discussion and mitigation measures in the Phase 3 DEIS/DEIR require that SAFCA will comply with SMAQMD rules in place at the time of construction.

From: Neal Hay [mailto:NHay@co.sutter.ca.us]
Sent: Friday, April 03, 2009 5:13 PM
To: Bassett, John (MSA)
Cc: Al Sawyer
Subject: SAFCA NLIP Phase 3 Landside Improvements

Mr. Bassett, Director of Engineering,
In reviewing the draft EIS / EIR for the above mentioned project, under the proposed action for Mitigation Measure 4.12-a, Sutter County requests that the EIS / EIR mention the agreement between Sutter County and SAFCA for road repairs dated August 21, 2008.

L2-1

Neal P Hay PE
Associate Civil Engineer
Sutter County
530-822-4402 Direct

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**Letter
L2
Response**

Sutter County
Neal P. Hay, PE, Associate Civil Engineer
April 3, 2009

- L2-1 SAFCA will, as the commenter requests, coordinate with Sutter County for its review and approval of roadway improvement plans. Mitigation Measure 4.12-a, “Prepare and Implement a Traffic Safety and Control Plan for Construction-Related Truck Trips,” in the Phase 3 DEIS/DEIR states that before the start of the first construction season, SAFCA shall coordinate with Sacramento and Sutter Counties and the City of Sacramento to address maintenance and repair of affected roadways resulting from increased truck traffic. This would include public roadways that may be modified as part of the Phase 3 Project.