STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 2009-07

FINDINGS AND DECISION AUTHORIZING ISSUANCE OF
ENCROACHMENT PERMIT NO. 18159-2
NATOMAS CROSS CANAL SOUTH LEVEE PHASE II IMPROVEMENTS
AND
ENCROACHMENT PERMIT NO. 18159-3
SACRAMENTO RIVER EAST LEVEE PHASE I IMPROVEMENT PROJECT
REACHES 1 THROUGH 4A
SACRAMENTO AREA FLOOD CONTROL AGENCY
SUTTER AND SACRAMENTO COUNTIES

WHEREAS, the Sacramento Area Flood Control Agency ("SAFCA") has begun a multi-year Natomas Levee Improvement Program; and

WHEREAS, SAFCA as lead agency under the California Environmental Quality Act, Public Resources Code sections 21000 *et seq*. ("CEQA") prepared an Environmental Impact Report on the Natomas Levee Improvement Program Landside Improvements Project ("EIR") (incorporated herein by reference and available at the Central Valley Flood Protection Board offices or SAFCA offices); and

WHEREAS, SAFCA, as lead agency, certified the EIR, adopted mitigation measures and a Mitigation Monitoring Reporting Plan ("MMRP") (incorporated herein by reference and available at the Central Valley Flood Protection Board or at SAFCA), approved findings and a statement of overriding considerations pursuant to CEQA and the CEQA Guidelines (incorporated herein by reference); and approved the Project as identified in Alternative 1of the EIR; and

WHEREAS, SAFCA submitted Application No. 18159-2 to the Reclamation Board on November 7, 2007, and submitted an updated application to the Central Valley Flood Protection Board on January 13, 2009. The application proposes to place fill to raise and realign approximately 28,750 linear feet of levee and to construct approximately 19,050 linear feet of seepage cutoff wall along the left (south) project levee.

WHEREAS, SAFCA submitted Application No. 18159-3 to the Reclamation Board on November 7, 2007, and submitted an updated application to the Central Valley Flood Protection Board on January 13, 2009. The application proposes to construct approximately 11,000-linear-feet of seepage cutoff wall at 20 to 63-feet in depth, construct approximately 8,100-linear-feet of seepage berm varying in width from 100 to 300-feet-wide, and construct a 18,800-linear-foot setback levee 3-foot-higher than the existing levee on the landside slope of the existing left (east) bank levee.

WHEREAS, on January 1, 2008, the new Central Valley Flood Protection Board came into being, and succeeded to all of the responsibilities of the former Reclamation Board; and

WHEREAS, on January 18, 2008, the Central Valley Flood Protection Board held a hearing on Application 18159-2, adopted CEQA Findings and a Statement of Overriding Considerations, and conditionally approved the proposed permit subject to 33 U.S.C. 408 approval by the U.S. Army Corps of Engineers.

WHEREAS, on March 21, 2008, the Central Valley flood Protection Board held a hearing on Application 18159-3, adopted CEQA Findings and a Statement of Overriding Considerations, and conditionally approved the proposed permit subject to 33 U.S.C. 408 approval by the U.S. Army Corps of Engineers.

WHEREAS, since the events above, SAFCA proposed modifications to the Phase 2 Project.

WHEREAS, SAFCA prepared a Supplement to the Environmental Impact Report on the Natomas Levee Improvement Program Landside Improvements Project – Phase 2 Project (State Clearinghouse No. 2007062016) ("SEIR"), which analyzes the modifications to the Phase 2 Project, which are fully described in Chapter 2 of the November 2008 Draft SEIR, as amended by the January 2009 Final Supplement to the Environmental Impact Report on the Natomas Levee Improvement Program Landside Improvements Project – Phase 2 Project (together, the "Final SEIR"). The SEIR is available at http://www.safca.org/Programs_Natomas.html and http://www.cvfpb.ca.gov/meetings/2009/03-27-2009.cfm or at SAFCA and Board offices.

WHEREAS, the Draft SEIR was published on November 18, 2008, for a 45-day public review period that ended on January 2, 2009. In addition, members of the public were invited by formal public notice to submit comments on the Draft SEIR in testimony at a public hearing held for that purpose on December 11, 2008. Additional public comments were received at this hearing.

WHEREAS, the Final SEIR was published in January, 2009. SAFCA also prepared a Mitigation Monitoring and Reporting Program (MMRP). On January 29, 2009, the SAFCA Board certified the Final SEIR, made CEQA Findings, and adopted a Statement of Overriding Considerations and approved the modifications to the Phase 2 project (Exhibit A to SAFCA Resolution 09-022).

WHEREAS, the Director of Civil Works for the U.S. Army Corps of Engineers, based on his review of the 33 U.S.C. 408 recommendation package, the Final Environmental Impact Statement, the views of other Federal, State, and local agencies, and input from the public, found that the recommended Natomas Levee Improvement Program Phase 2 project to be technically adequate and not an impairment to the usefulness of existing Federal project; to be in accordance with environmental statutes; to be without significant adverse hydraulic impacts; and to not be injurious to the public interest.

WHEREAS, the Director of Civil Works for the U.S. Army Corps of Engineers approved the request under 33 U.S.C. 408 made by the State of California Central Valley Flood Protection Board on behalf of SAFCA to alter the Sacramento River Flood Control Project by construction of the Natomas Levee Improvement Program Phase 2 Project.

WHEREAS, the Central Valley Flood Protection Board has conducted a hearing and has reviewed the updated applications, the Reports of its staff, the documents and correspondence in its file, and the environmental documents prepared by SAFCA;

NOW, THEREFORE, BE IT RESOLVED THAT,

Findings of Fact.

1. The Central Valley Flood Protection Board hereby adopts as findings the facts set forth in the Staff Report.

2. The Board has reviewed the Figures, Attachments, and References listed in the Staff Report.

CEQA Findings.

3. The Central Valley Flood Protection Board, as a responsible agency, has independently reviewed the analysis in the SEIR, MMRP, and the findings prepared by the lead agency, SAFCA, and has reached its own conclusions regarding them.

4. The Central Valley Flood Protection Board, after consideration of the SEIR, and SAFCA findings, adopts the project description, analysis and findings in the SEIR and SAFCA Findings which are relevant to activities authorized by issuance of final encroachment permits consistent with Draft Permit No. 18159-2, Natomas Cross Canal South Levee Phase II Improvements, and Draft Permit No. 18159-3, the Sacramento River East Levee Phase I Improvement Project, Reaches 1 Through 4A.

5. **Findings regarding significant impacts**. Pursuant to CEQA Guidelines sections 15096(h) and 15091, the Central Valley Flood Protection Board determines that the SAFCA Findings, attached to the Staff Report, and incorporated herein by reference, summarize the SEIR's determinations regarding impacts of the modifications to the Phase 2 Project before and after mitigation. Having reviewed the SEIR and the SAFCA Findings, the Central Valley Flood Protection Board makes its findings as follows:

a. Findings regarding Significant and Unavoidable Impacts.

The Central Valley Flood Protection Board finds that the modifications to the Phase II Project may have the following significant, unavoidable impacts, as more fully described in the SEIR and the SAFCA Findings. Mitigation has been adopted for each of these impacts,

although it does not reduce the impact to less than significant. The impacts and mitigation measures are set forth in more detail in the SEIR and SAFCA Findings.

A. Impact 3.4-b. Potential Construction Impacts on Cultural Resource CA-SAC-485/H

Mitigation Measure 3.4-b: Avoid Ground Disturbance near Known Archeological Site CA-Sac-485/H to the Extent Feasible and Prepare and Implement a Historic Properties Treatment Plan.

B. Impact 3.4-c. Damage to or Destruction of Other Identified Prehistoric Cultural Resources

Mitigation Measure 3.4-c: Evaluate NLIP-7 and NLIP-22. If the Resources are Eligible, Avoid Disturbance to the Extent Feasible, and Prepare and Implement a Historic Properties Treatment Plan.

C. Impact 3.4-d. Damage to or Destruction of Previously Undiscovered Cultural Resources

Mitigation Measure 3.4-d: Conduct Additional Backhoe and Canine Forensic Investigations As Appropriate

D. Impact 3.4-e. Damage to or Destruction of Previously Undiscovered Interred Human Remains

Mitigation Measure 3.4-e: Halt Work Within 50 Feet of the Find, Notify the County Coroner and Most Likely Descendant, and Implement Appropriate Treatment of Remains

E. Impact 3.5-a. Generation of Temporary, Short-Term Construction Noise

Mitigation Measure 3.5-a: Implement Noise-Reducing Construction Practices, Prepare and Implement a Noise Control Plan, and Monitor and Record Construction Noise Near Sensitive Receptors.

Finding: The Board finds that changes or alterations have been required in, or incorporated into, the project which substantially lessen such impacts, as set forth more fully in the SAFCA Findings, but that each of the above impacts remains significant after mitigation. Such mitigation measures are within the responsibility of another agency, SAFCA, and SAFCA can and should implement the described mitigation measures. Specific economic, legal, social, technological or other considerations, rendered infeasible mitigation or alternatives that would have reduced these impacts to less than significant.

b. Findings regarding significant impacts that can be reduced to less-than significant.

The Final SEIR identifies the following significant impacts associated with the modifications to the Phase 2 Project. These impacts are reduced to a less-than-significant level by mitigation measures identified in the Final SEIR and incorporated into the project. It is hereby determined that the impacts addressed by these mitigation measures will be mitigated to a less-than-significant level or avoided by incorporation of these mitigation measures into the project.

A. Impact 3.2-a. Possible Effects on Water Quality from Stormwater Runoff from Garden Highway Drainage Outlets to the Sacramento River

Mitigation Measure 3.2-a: Implement Standard Best Management Practices and Comply With NPDES Permit Conditions.

B. Impact 3.3-a. Loss of Sensitive Habitats

Mitigation Measure 3.3-a: Minimize Effects on Sensitive Habitats; Develop and Implement a Habitat Management Plan to Ensure Compensation for Unavoidable Adverse Effects; Comply with Section 404, Section 401, and Section 1602 Permit Processes; and Implement all Permit Conditions.

C. Impact 3.3-b. Disturbance and Loss of Giant Garter Snake Habitat

Mitigation Measure 3.3-b: Minimize the Potential for Direct Loss of Giant Garter Snake Individuals, Develop a Management Plan in Consultation with USFWS and DFG, and Obtain Incidental Take

D. Impact 3.3-c. Loss of Swainson's Hawk Habitat and Potential Disturbance of Nests

Mitigation Measure 3.7-f: Minimize Potential Impacts on Swainson's Hawk, Monitor Active Nests during Construction, Develop a Management Plan in Consultation with DFG, and Obtain Incidental Take Authorization.

E. Impact 3.4-a. Changes to Elements of RD 1000, which Consists of a Rural Historic Landscape District That is Eligible for Listing on the NRHP

Mitigation Measure 3.4-a: Incorporate Mitigation Measures to Documents Regarding Any Elements Contributing to RD 1000 and Distribute the Information to the Appropriate Repositories.

Finding. The Board finds that changes or alterations have been required in, or incorporated into, the project which substantially lessen such impacts, as set forth more fully in the

SAFCA Findings, which describe the mitigation measures for each impact in detail. With such mitigation, each of the significant impacts will be reduced to less-than-significant. Such mitigation measures are within the responsibility of another agency, SAFCA, and SAFCA can and should implement the described mitigation measures.

6. As a responsible agency, the Central Valley Flood Protection Board has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve. The Board confirms that it has reviewed the MMRP, and confirmed that SAFCA has adopted and committed to implementation of the measures identified therein. The Board agrees with the analysis in the MMRP and confirms that there are no feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment. None of the mitigation measures in the MMRP require implementation by the Board directly, although continued implementation of the MMRP shall be made a condition of issuance of the Encroachment Permit. However, the measures in the MMRP may be modified to accommodate changed circumstances or new information not triggering the need for subsequent or supplemental analysis under CEQA Guidelines sections 15062 or 15063.

7. **Statement of Overriding Considerations.** Pursuant to CEQA Guidelines sections 15096(h) and 15093, the Board has balanced the economic, social, technological and other benefits of the Project described in application Nos. 18159-2 and 18159-3, against its significant and unavoidable impacts, listed in paragraph 5 (a) above, and finds that the benefits of the Project outweigh these impacts and they may, therefore, be considered "acceptable".

The Central Valley Flood Protection Board finds that there is an immediate need to protect the people and property at risk in the project area. The Natomas Basin floodplain is occupied by over 83,000 residents and $10 billion in damageable property. The area is presently vulnerable to flooding in a less than 100-year flood event along the Sacramento River or American River. The Natomas Basin is a deep floodplain and depending on the circumstances, flood depths in the Natomas Basin could reach life-threatening levels. The disruption in transportation that would result from a major flood would affect the Sacramento International Airport, interstate and state highways, and rail service.

The health and safety benefits of the project, which would significantly reduce the risk of an uncontrolled flood in the Natomas Basin that would result in a catastrophic loss of property and threat to residents of the area, outweigh the remaining unavoidable environmental impacts.

8. **Custodian of Record**. The custodian of the CEQA record for the Board is its Executive Officer, Jay Punia, at the Central Valley Flood Protection Board Offices at 3310 El Camino Avenue, Room LL40, Sacramento, California 95821.

Findings pursuant to Water Code section 8610.5

9. **Evidence Admitted into the Record.** The Board has considered all the evidence presented in this matter, including the original and updated applications, past and present Staff Reports and attachments, the original Environmental Impact Report on the Natomas Levee Improvement Program Landside Improvements Project (Draft and Final Versions), the Supplement to the NLIP EIR (SEIR) (Draft and Final versions), the original and supplemental MMRP, the SAFCA Findings, the Corps of Engineers' Investigation Results on the Natomas Levees, transcripts of evidentiary hearings on permit applications 18159-2 and 18159-3 held at the Central Valley Flood Protection Board meetings on December 21, 2007, January 18, 2008, March 21, 2008 and March 27, 2009. The Board has also considered evidence from the U.S. Army Corps of Engineers presentation at the January 2008 meeting, and all letters and other correspondence received by the Board and in the Board's files related to this matter.

The custodian of the file is Executive Officer Jay Punia at the Central Valley Flood Protection Board.

10. **Best Available Science.** In making its findings, the Board has used the best available science relating to the issues presented by all parties. On the important issue of hydraulic impacts and the computed water surface profiles, SAFCA used the UNET one-dimensional unsteady flow model developed by the USACE for the Sacramento-San Joaquin Comprehensive Study. The model is considered by many experts as one of the best available scientific tools for the purpose of modeling river hydraulics, including flood control system simulations and water surface profile computations.

11. **Effects on State Plan of Flood Control.** This project has positive effects on the State Plan of Flood Control as it includes features that will provide 200-year protection to the Natomas Basin. The Board found (through prior Resolutions 2008-2 and 2008-4) that the hydraulic impacts of the proposed Natomas Cross Canal and Sacramento River East Levee Improvements, as computed using the UNET model, on the entire State Plan of Flood Control, are not significant. Those findings included landside levee raises, adjacent setback levees, seepage berms, and drainage collection systems. The Board now also finds that no changes in project design from the 60 percent to 100 percent levels result in negative hydraulic impacts on the entire State Plan of Flood Control.

On January 21, 2009 the U.S. Army Corps of Engineers issued "Record of Decision, 408 Permission and Department of the Army 404 Permit to Sacramento Area Flood Control Agency for the Natomas Levee Improvement Project". This approval, pursuant to U.S.C. Title 33, Chapter 9, Subchapter 1, Section 408 included the Natomas Cross Canal South Levee Phase 2 project (included in encroachment permit 18159-2) and the Sacramento River East Levee Phase 1 project (included in encroachment permit 18159-3). This permission was granted based upon Corps determination that such alterations will not be injurious to the public interest and will not impair the usefulness of the Sacramento River Flood Control Project.

In California Statutes of 2007, Chapter 641 (SB276), the Legislature found and declared that "The projects authorized in Section 12670.14 of the Water Code [which includes the Natomas Cross Canal South Levee Phase II Improvements and the Sacramento River East Levee Phase I Improvement Project, Reaches 1 Through 4A work] will increase the ability of the existing flood control system in the lower Sacramento Valley to protect heavily urbanized areas within the City of Sacramento and the Counties of Sacramento and Sutter against very rare floods without altering the design flows and water surface elevations prescribed as part of the Sacramento River Flood Control Project or impairing the capacity of other segments of the Sacramento River Flood Control Project to contain these design flows and to maintain water surface elevations. Accordingly, the projects authorized in that section will not result in significant adverse hydraulic impacts to the lands protected by the Sacramento River Flood Control Project and neither the Central Valley Flood Control Board nor any other state agency shall require the authorized projects to include hydraulic mitigation for these protected lands."

12. **Effects of reasonably projected future events.** The impact of climate change on future hydrology and floodplain conditions is discussed in the original Draft EIR at pages 3.11-12 to 3.11-13. An increase in precipitation due to climate change "could lead to increased potential for floods because water that would normally be held in the Sierra Nevada until spring could flow into the Central Valley concurrently with winter storm events" thus placing more pressure on California's levee/flood control system. The impact of greenhouse gases is acknowledged and discussed in the DEIR in Section 4.2.5.6 at page 4-18. Proposed development projects in the Natomas Basin are discussed beginning on page 4-11 of the DEIR. In addition, the DEIR discusses the Master Plan for the Sacramento International Airport., beginning on page 4-9 of the DEIR. Thus, improved levees will not only benefit existing residents, they will permit additional planned development, and airport expansion.

Other Findings/Conclusions regarding Issuance of the Permit.

13. Based on the foregoing, and particularly on the evidence that the condition of the existing Natomas levees poses an unacceptable risk to life and property, the Board finds and concludes that the issuance of the Encroachment Permits Nos. 18159-2 and 18159-3 for the Natomas Cross Canal South Levee Phase II Improvements and Sacramento River East Levee Phase I Improvement Project, Reaches 1 Through 4A, as modified, is in the public interest.

14. This resolution shall constitute the written decision of the Central Valley Flood Protection Board in the matter of Permits Nos. 18159-2 and 18159-3.

Approval of Permits.

15. Based on the foregoing, the Central Valley Flood Protection Board hereby approves the modifications to the NLIP Phase II Project and approves issuance of Encroachment Permits in substantially the form provided as Attachments A and B of the Staff Report.

16. The Board directs the Executive Officer to take the necessary actions to prepare and execute the permits and related documents and to prepare and file a Notice of Determination under the California Environmental Quality Act for the Natomas Levee Improvement Program, Landside Improvements Project, Natomas Cross Canal South Levee Phase II Improvements and Sacramento River East Levee Phase I Improvement Project, Reaches 1 Through 4A.

DATED: 3-27-09

THE CENTRAL VALLEY FLOOD PROTECTION BOARD OF THE STATE OF CALIFORNIA

By _____
Benjamin F. Carter
President

By _____
Maureen R. Doherty
Secretary

STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 09-12

FINDINGS AND DECISION AUTHORIZING ISSUANCE OF
ENCROACHMENT PERMIT NO. 18159-3-1
SACRAMENTO AREA FLOOD CONTROL AGENCY
NATOMAS LEVEE IMPROVEMENT PROGRAM
SACRAMENTO RIVER EAST LEVEE PHASE II IMPROVEMENTS, REACH 4B
SACRAMENTO COUNTY

WHEREAS, the Sacramento Area Flood Control Agency ("SAFCA") has begun a multi-year Natomas Levee Improvement Program; and

WHEREAS, SAFCA as lead agency under the California Environmental Quality Act, Public Resources Code sections 21000 *et seq*. ("CEQA") prepared an Environmental Impact Report on the Natomas Levee Improvement Program Landside Improvements Project ("EIR") (incorporated herein by reference and available at the Central Valley Flood Protection Board offices or SAFCA offices); and

WHEREAS, SAFCA, as lead agency, certified the EIR, adopted mitigation measures and a Mitigation Monitoring Reporting Plan ("MMRP") (incorporated herein by reference and available at the Central Valley Flood Protection Board or at SAFCA), approved findings and a statement of overriding considerations pursuant to CEQA and the CEQA Guidelines (incorporated herein by reference); and approved the Project as identified in Alternative 1 of the EIR; and

WHEREAS, SAFCA submitted Application No. 18159-3 to the Reclamation Board on November 7, 2007, and submitted an updated application to the Central Valley Flood Protection Board on January 13, 2009. Both applications addressed construction of a combination of seepage cutoff wall, adjacent levee, seepage berm, surface draining structures, relief wells and other related structures along Reaches 1 through 4B by SAFCA designation of the existing left (east) bank levee of the Sacramento River; and

WHEREAS, the geographic description of the project area is south of Riego Road and north of Elverta Road in the vicinity of Pritchard Lake Road along the left (east) bank levee of the Sacramento River and the Garden Highway in Sacramento County; and

WHEREAS, SAFCA proposes to:

- construct approximately 2,400 linear feet of seepage cutoff wall at the landside toe of the existing levee, varying in depth from approximately 19 to 62 feet

- construct approximately 3,800 linear feet (100% of Reach 4B) of adjacent levee approximately three to six feet higher than the existing Garden Highway levee crown along the landside of the existing levee

- construct approximately 3,800 linear feet (100% of Reach 4B) of seepage berm varying from approximately 300 to 500 feet in width and approximately 3 to 7 feet in depth at the landside toe of the proposed adjacent levee

- install two 36-inch and one 30-inch welded steel discharge pipes (WSP) each approximately 487 linear feet in length servicing Pumping Plant No. 2 and buried below the proposed 300-foot seepage berm and above the proposed adjacent levee prism

- install three temporary 36-inch high density polyethylene (HDPE) pipes connected to the WSP pipes and installed through the proposed adjacent levee and Garden Highway with invert below the 200-year Water Surface Elevation to convey collected interior basin storm water to the Sacramento River prior to reconstruction of Pumping Plant No. 2. (When the Pumping Plant is reconstructed under a future permit these HDPE pipes will be replaced with WSP pipes crossing the proposed adjacent levee above the 200-year WSEL); and

- construct grassed drainage swale parallel to and between the existing Garden Highway and the proposed adjacent levee connected to two surface drainage pipelines under the Garden Highway terminating at outlet structures on the waterside berm

WHEREAS, on January 18, 2008, the Board approved a request to the U.S. Army Corps of Engineers ("Corps") for 33 U.S.C. Section 408 ("Section 408") approval to alter the federal flood control project levee along the east bank of the Sacramento River and delivered that request to the Corps in February 2008; and

WHEREAS, on February 29, 2008 the Corps Sacramento District conditionally approved application 18159-3 subject to Corps Headquarters Section 408 approval (Permit Exhibit A); and

WHEREAS, on March 21, 2008, the Board held a hearing on Application 18159-3, adopted CEQA findings and a Statement of Overriding Considerations, and conditionally approved the proposed permit subject to 408 approval by the U.S. Army Corps of Engineers; and

WHEREAS, since the events above, SAFCA proposed modifications to the Phase 2 Project; and

WHEREAS, SAFCA prepared a Supplement to the Environmental Impact Report on the Natomas Levee Improvement Program Landside Improvements Project – Phase 2 Project (State Clearinghouse No. 2007062016) ("SEIR"), which analyzes the modifications to the Phase 2 Project, which are fully described in Chapter 2 of the November 2008 Draft SEIR, as amended by the January 2009 Final Supplement to the Environmental Impact Report on the Natomas Levee Improvement Program Landside Improvements Project – Phase 2 Project (together, the "Final SEIR"). The SEIR is available at http://www.safca.org/Programs_Natomas.html and http://www.cvfpb.ca.gov/meetings/2009/03-27-2009.cfm or at SAFCA and Board offices; and

WHEREAS, the Draft SEIR was published on November 18, 2008, for a 45-day public review period that ended on January 2, 2009. In addition, members of the public were invited by formal public notice to submit comments on the Draft SEIR in testimony at a public hearing held for that purpose on December 11, 2008. Additional public comments were received at this hearing; and

WHEREAS, the Final SEIR was published in January, 2009. SAFCA also prepared a Mitigation Monitoring and Reporting Program (MMRP). On January 29, 2009, the SAFCA Board certified the Final SEIR, made CEQA findings, and adopted a Statement of Overriding Considerations and approved the modifications to the Phase 2 project (Exhibit A to SAFCA Resolution 09-022); and

WHEREAS, the Director of Civil Works for the U.S. Army Corps of Engineers, based on review of Section 408 recommendation package, the Final Environmental Impact Statement, the views of other Federal, State, and local agencies, and input from the public, found that the recommended Natomas Levee Improvement Program Phase 2 project (Reaches 1 through 4B) to be technically adequate and not an impairment to the usefulness of existing Federal project; to be in accordance with environmental statutes; to be without significant adverse hydraulic impacts; and to not be injurious to the public interest; and

WHEREAS, on January 21, 2009 by Record of Decision the Director of Civil Works for the U.S. Army Corps of Engineers approved the request under Section 408 made by the State of California Central Valley Flood Protection Board on behalf of SAFCA to alter the Sacramento River Flood Control Project by construction of the Natomas Levee Improvement Program Phase 2 Project (Permit Exhibit B). This decision applied to Reaches 1 through 4B; and

WHEREAS, on February 21, 2008, Reclamation District 1000 endorsed application 18159-3 and then provided an updated endorsement covering design changes on January 29, 2009 (Permit Exhibit D); and,

WHEREAS, on February 20, 2009 the Corps Sacramento District issued a Letter of Permission to the Board's Executive Officer granting final Section 408 permission for the SREL Improvement Project, Reaches 1 through 4A. The letter excluded Reach 4B due to incomplete review of final designs associated with changes evaluated in the SEIR; and

WHEREAS, on March 27, 2009, the Board held a second hearing on Application 18159-3, adopted CEQA findings and a Statement of Overriding Considerations, and granted final approval of Permit No. 18159-3 for Reaches 1 through 4A; and

WHEREAS, Board staff completed a technical review of the following documents for the Reach 4B project proposed under Permit Application No. 18159-3-1 and provided comments to SAFCA's design consultants:

- Draft Geotechnical Basis of Design Report (Kleinfelder 3-20-09)
- Basis of Design Report (HDR 4-29-09)

- 90% Construction Drawings
- 90% Technical Specifications
- Design Water Surface Profiles (200-year) for the NLIP; and

WHEREAS, this technical review concluded that the designs of the new cutoff wall, adjacent levee, seepage berm, and surface water drainage facilities are in accordance with current Central Valley Flood Protection Board (Board) and U.S. Army Corps of Engineers (Corps) standards; and

WHEREAS, upon receipt of final 100% plans and specifications Board staff will review and address any final issues with SAFCA prior to issuance of the permit. If major technical issues remain Board staff will determine if the issues can be resolved without further Board consideration, or if they will require the application be brought back to the Board at a future meeting; and

WHEREAS, on May 22, 2009 the Corps Sacramento District issued an updated Letter of Permission (Permit Exhibit C) to the Board's Executive Officer which superseded the February 20, 2009 Letter of Permission and granted final Section 408 permission for the SREL Improvement Project, Reaches 1 through 4B; and

WHEREAS, the Board has conducted a public hearing on Permit Application No. 18159-3-1 and has reviewed the Reports of its staff, the documents and correspondence in its file, and the environmental documents prepared by SAFCA.

NOW, THEREFORE, BE IT RESOLVED THAT,

Findings of Fact.

1. The Central Valley Flood Protection Board hereby adopts as findings the facts set forth in the Staff Report.

2. The Board has reviewed all Attachments, Exhibits, Figures, and References listed in the Staff Report.

CEQA Findings.

3. The Central Valley Flood Protection Board, as a responsible agency, has independently reviewed the analyses in the SEIR, MMRP, and the findings prepared by the lead agency, SAFCA, and has reached its own conclusions regarding them.

4. The Central Valley Flood Protection Board, after consideration of the SEIR, MMRP, and SAFCA Lead Agency findings, adopts the project description, analysis and findings in the

SEIR, MMRP and SAFCA findings which are relevant to activities authorized by issuance of a final encroachment permit consistent with Draft Permit No. 18159-3-1 for the Sacramento River East Levee Improvement Project, Reach 4B.

5. **Findings regarding Significant Impacts.** Pursuant to CEQA Guidelines sections 15096(h) and 15091, the Central Valley Flood Protection Board determines that the SAFCA findings, attached to the Staff Report, and incorporated herein by reference, summarize the SEIR's determinations regarding impacts of the modifications to the Phase 2 Project before and after mitigation. Having reviewed the SEIR and the SAFCA findings, the Central Valley Flood Protection Board makes its findings as follows:

a. Findings regarding Significant and Unavoidable Impacts.

The Central Valley Flood Protection Board finds that the modifications to the Phase 2 Project (which includes SREL Reach 4B) may have the following significant, unavoidable impacts, as more fully described in the SEIR and the SAFCA findings. Mitigation has been adopted for each of these impacts, although it does not reduce the impact to less than significant. The impacts and mitigation measures are set forth in more detail in the SEIR and SAFCA findings.

A. Impact 3.4-b. Potential Construction Impacts on Cultural Resource CA-SAC-485/H

Mitigation Measure 3.4-b: Avoid Ground Disturbance near Known Archeological Site CA-Sac-485/H to the Extent Feasible and Prepare and Implement a Historic Properties Treatment Plan. This site occurs just east of the Sacramento River east levee Reach 4B. This reach has an existing, serious risk of underseepage and levee failure. SAFCA proposes construction of a seepage berm to cover this resource.

B. Impact 3.4-c. Damage to or Destruction of Other Identified Prehistoric Cultural Resources

Mitigation Measure 3.4-c: Evaluate NLIP-7 (Reach 4B) and NLIP-22 (Reach 4A). If the Resources are Eligible, Avoid Disturbance to the Extent Feasible, and Prepare and Implement a Historic Properties Treatment Plan.

C. Impact 3.4-d. Damage to or Destruction of Previously Undiscovered Cultural Resources

Mitigation Measure 3.4-d: Conduct Additional Backhoe and Canine Forensic Investigations As Appropriate

D. Impact 3.4-e. Damage to or Destruction of Previously Undiscovered Interred Human Remains

Mitigation Measure 3.4-e: Halt Work Within 50 Feet of the Find, Notify the County Coroner and Most Likely Descendant, and Implement Appropriate Treatment of Remains

E. Impact 3.5-a. Generation of Temporary, Short-Term Construction Noise

Mitigation Measure 3.5-a: Implement Noise-Reducing Construction Practices, Prepare and Implement a Noise Control Plan, and Monitor and Record Construction Noise Near Sensitive Receptors.

Finding: The Board finds that changes or alterations have been required in, or incorporated into, the project which substantially lessen such impacts, as set forth more fully in the SAFCA findings, but that each of the above impacts remains significant after mitigation. Such mitigation measures are within the responsibility of another agency, SAFCA, and SAFCA can and should implement the described mitigation measures. Specific economic, legal, social, technological or other considerations, rendered infeasible mitigation or alternatives that would have reduced these impacts to less than significant.

b. Findings regarding Significant Impacts that can be reduced to Less Than Significant.

The Final SEIR identifies the following significant impacts associated with the modifications to the Phase 2 Project. These impacts are reduced to a less-than-significant level by mitigation measures identified in the Final SEIR and incorporated into the project. It is hereby determined that the impacts addressed by these mitigation measures will be mitigated to a less-than-significant level or avoided by incorporation of these mitigation measures into the project.

A. Impact 3.2-a. Possible Effects on Water Quality from Stormwater Runoff from Garden Highway Drainage Outlets to the Sacramento River

Mitigation Measure 3.2-a: Implement Standard Best Management Practices and Comply With NPDES Permit Conditions.

B. Impact 3.3-a. Loss of Sensitive Habitats

Mitigation Measure 3.3-a: Minimize Effects on Sensitive Habitats; Develop and Implement a Habitat Management Plan to Ensure Compensation for Unavoidable Adverse Effects; Comply with Section 404, Section 401, and Section 1602 Permit Processes; and Implement all Permit Conditions.

C. Impact 3.3-b. Disturbance and Loss of Giant Garter Snake Habitat

Mitigation Measure 3.3-b: Minimize the Potential for Direct Loss of Giant Garter Snake Individuals, Develop a Management Plan in Consultation with USFWS and DFG, and Obtain Incidental Take

D. Impact 3.3-c. Loss of Swainson's Hawk Habitat and Potential Disturbance of Nests

Mitigation Measure 3.7-f: Minimize Potential Impacts on Swainson's Hawk, Monitor Active Nests during Construction, Develop a Management Plan in Consultation with DFG, and Obtain Incidental Take Authorization.

E. Impact 3.4-a. Changes to Elements of RD 1000, which Consists of a Rural Historic Landscape District That is Eligible for Listing on the NRHP

Mitigation Measure 3.4-a: Incorporate Mitigation Measures to Documents Regarding Any Elements Contributing to RD 1000 and Distribute the Information to the Appropriate Repositories.

Finding. The Board finds that changes or alterations have been required in, or incorporated into, the project which substantially lessen such impacts, as set forth more fully in the SAFCA findings, which describe the mitigation measures for each impact in detail. With such mitigation, each of the significant impacts will be reduced to less-than-significant. Such mitigation measures are within the responsibility of another agency, SAFCA, and SAFCA can and should implement the described mitigation measures.

6. As a responsible agency, the Central Valley Flood Protection Board has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve. The Board confirms that it has reviewed the MMRP, and confirmed that SAFCA has adopted and committed to implementation of the measures identified therein. The Board agrees with the analysis in the MMRP and confirms that there are no feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment. None of the mitigation measures in the MMRP require implementation by the Board directly, although continued implementation of the MMRP shall be made a condition of issuance of the Encroachment Permit. However, the measures in the MMRP may be modified to accommodate changed circumstances or new information not triggering the need for subsequent or supplemental analysis under CEQA Guidelines sections 15062 or 15063.

7. **Statement of Overriding Considerations.** Pursuant to CEQA Guidelines sections 15096(h) and 15093, the Board has balanced the economic, social, technological and other benefits of the Project described in application No. 18159-3-1, against its significant and unavoidable impacts, listed in paragraph 5 (a) above, and finds that the benefits of the Project outweigh these impacts and they may, therefore, be considered "acceptable".

   The Central Valley Flood Protection Board finds that there is an immediate need to protect the people and property at risk in the project area. The Natomas Basin floodplain is occupied by over 83,000 residents and $10 billion in damageable property. The area is presently vulnerable to flooding in a less than 100-year flood event along the Sacramento River or American River. The Natomas Basin is a deep floodplain and depending on the circumstances, flood depths in the Natomas Basin could reach life-threatening levels. The disruption in transportation that would result from a major flood would affect the Sacramento International Airport, interstate and state highways, and rail service.

The health and safety benefits of the project, which would significantly reduce the risk of an uncontrolled flood in the Natomas Basin that would result in a catastrophic loss of property and threat to residents of the area, outweigh the remaining unavoidable environmental impacts.

8. **Custodian of Record**. The custodian of the CEQA record for the Board is its Executive Officer, Jay Punia, at the Central Valley Flood Protection Board Offices at 3310 El Camino Avenue, Room LL40, Sacramento, California 95821.

Considerations pursuant to Water Code section 8610.5

9. **Evidence Admitted into the Record**. The Board has considered all the evidence presented in this matter, including the original and updated applications for Permit Nos. 18159-3 and 18159-3-1, technical documentation provided by SAFCA on SREL Reach 4B proposed improvements, past and present Staff Reports and attachments, the original Environmental Impact Report on the Natomas Levee Improvement Program Landside Improvements Project (Draft and Final Versions), the Supplement to the NLIP EIR (Draft and Final versions), SAFCA Resolution 09-022 including findings and Statement of Overriding Considerations, the original and revised Mitigation Monitoring and Reporting Program, the Corps of Engineers' Investigation Results on the Natomas Levees, transcripts of evidentiary hearings for Permit No. 18159-3 held at the Central Valley Flood Protection Board meetings on January 18, 2008, March 21, 2008 and March 27, 2009, and testimony heard at the May 15, 2009 evidentiary hearing and its continuation on June 19, 2009 on Permit No. 18159-3-1. The Board has also considered evidence from the U.S. Army Corps of Engineers presentation at the January 2008 meeting, and all letters and other correspondence received by the Board and in the Board's files related to this matter.

   The custodian of the file is Executive Officer Jay Punia at the Central Valley Flood Protection Board, 3310 El Camino Avenue, Room LL40, Sacramento, California 95821.

10. **Best Available Science**. In making its findings, the Board has used the best available science relating to the issues presented by all parties. On the important issue of hydraulic impacts and the computed water surface profiles, SAFCA used the UNET one-dimensional unsteady flow model developed by the USACE for the Sacramento-San Joaquin Comprehensive Study. The model is considered by many experts as one of the best available scientific tools for the purpose of modeling river hydraulics, including flood control system simulations and water surface profile computations.

11. **Effects on State Plan of Flood Control**. This project has positive effects on the State Plan of Flood Control as it includes features that will provide 200-year protection to the Natomas Basin. The Board found (through prior Resolution 08-04) that the hydraulic impacts of the proposed Sacramento River East Levee Improvements, as computed using the UNET model, on the entire State Plan of Flood Control, are not significant. Those findings included landside levee raises, adjacent setback levees, seepage berms, and drainage collection systems. The Board also finds that none of the changes in project design between the 60 to

90 percent design levels result in adverse hydraulic impacts on the entire State Plan of Flood Control.

On January 21, 2009 the U.S. Army Corps of Engineers issued "Record of Decision, 408 Permission and Department of the Army 404 Permit to Sacramento Area Flood Control Agency for the Natomas Levee Improvement Project". This approval, pursuant to U.S.C. Title 33, Chapter 9, Subchapter 1, Section 408 included the Sacramento River East Levee Phase 1 project, Reaches 1 through 4B. Corps permission was granted based upon Corps determination that such alterations will not be injurious to the public interest and will not impair the usefulness of the Sacramento River Flood Control Project.

In California Statutes of 2007, Chapter 641 (SB276), the Legislature found and declared that "The projects authorized in Section 12670.14 of the Water Code [which includes the Sacramento River East Levee Phase I Improvement Project, Reaches 1 Through 4B work] will increase the ability of the existing flood control system in the lower Sacramento Valley to protect heavily urbanized areas within the City of Sacramento and the Counties of Sacramento and Sutter against very rare floods without altering the design flows and water surface elevations prescribed as part of the Sacramento River Flood Control Project or impairing the capacity of other segments of the Sacramento River Flood Control Project to contain these design flows and to maintain water surface elevations. Accordingly, the projects authorized in that section will not result in significant adverse hydraulic impacts to the lands protected by the Sacramento River Flood Control Project and neither the Central Valley Flood Control Board nor any other state agency shall require the authorized projects to include hydraulic mitigation for these protected lands."

12. **Effects of Reasonably Projected Future Events.** The impact of climate change on future hydrology and floodplain conditions is discussed in the original Draft EIR on pages 3.11-12 to 3.11-13. An increase in precipitation due to climate change "could lead to increased potential for floods because water that would normally be held in the Sierra Nevada until spring could flow into the Central Valley concurrently with winter storm events" thus placing more pressure on California's levee/flood control system. The impact of greenhouse gases is acknowledged and discussed in the DEIR in Section 4.2.5.6 on page 4-18. Proposed development projects in the Natomas Basin are discussed beginning on page 4-11 of the DEIR. In addition, the DEIR discusses the Master Plan for the Sacramento International Airport., beginning on page 4-9 of the DEIR. Thus, improved levees will not only benefit existing residents, they will permit additional planned development, and airport expansion.

Other Findings/Conclusions regarding Issuance of the Permit.

13. Based on the foregoing and particularly on the evidence that the condition of the existing Natomas levees poses an unacceptable risk to life and property, the Board finds and concludes that the issuance of Encroachment Permit No. 18159-3-1 for the Sacramento River East Levee Phase I Improvement Project, Reach 4B is in the public interest.

14. This resolution shall constitute the written decision of the Central Valley Flood Protection Board in the matter of Permit No. 18159-3-1.

Approval of Encroachment Permit No. 18159-3-1

15. Based on the foregoing, the Central Valley Flood Protection Board hereby approves the modifications to the NLIP Phase II Project relevant to the Sacramento River East Levee Reach 4B and approves issuance of Encroachment Permit No. 18159-3-1 in substantially the form provided as Staff Report Attachment B, subject to receipt, review and approval of final 100% plans, drawings and specifications.

16. The Board directs the Executive Officer to take the necessary actions to prepare and execute the Encroachment Permit No. 18159-3-1 and all related documents and to prepare and file a Notice of Determination under the California Environmental Quality Act for the Natomas Levee Improvement Program, Landside Improvements Project, Sacramento River East Levee Improvement Project, Reach 4B.

PASSED AND ADOPTED by vote of the Board on JUNE 19, 2009

Benjamin F. Carter
President

Maureen (Lady Bug) Doherty
Secretary

RESOLUTION 09-022

Adopted by the Sacramento Area Flood Control Agency

CERTIFICATION OF THE SUPPLEMENT TO THE ENVIRONMENTAL IMPACT REPORT ON THE NATOMAS LEVEE IMPROVEMENT PROGRAM LANDSIDE IMPROVEMENTS PROJECT – PHASE 2 PROJECT; ADOPTION OF FINDINGS AND A STATEMENT OF OVERRIDING CONSIDERATIONS, MITIGATION MEASURES, AND A MITIGATION MONITORING AND REPORTING PROGRAM; AND APPROVAL OF MODIFICATIONS TO THE NATOMAS LEVEE IMPROVEMENT PROGRAM LANDSIDE IMPROVEMENTS PROJECT - PHASE 2 PROJECT

WHEREAS, Section 20 (c) of the SAFCA Act {Stats.1990, c. 510 (S.B.46), §1.}, finds and declares that a purpose of SAFCA is to coordinate a regional effort to finance, provide, and maintain facilities and works necessary to ensure a reasonable and prudent level of flood protection, as determined by the Agency, in developed and urbanizing areas which are designated for residential, commercial, or industrial uses within its boundaries and to provide local assurances and participate in cost sharing for Federal flood control projects; and

WHEREAS, Section 52 of the SAFCA Act states that SAFCA shall have as its highest priority the protection of life, property, watercourses, watersheds, and public highways within its boundaries from damage from flood and storm waters; and

WHEREAS, Section 52 of the SAFCA Act further mandates that SAFCA carry out its (flood control) responsibilities in ways which provide for the optimum protection of the natural environment, especially riparian habitat and natural stream channels suitable for native plant and wildlife habitat and public recreation; and

WHEREAS, the Natomas Levees Improvement Program Landside Improvements Project ("NLIP Landside Improvements Project") consists of improvements to the levee system in the Natomas Basin and related landscape modifications and drainage and infrastructure improvements to reduce the risk of flooding in a significant portion of the Sacramento metropolitan area, thereby implementing a portion of the flood control program known as Local Funding Mechanisms for Comprehensive Flood Control Improvements for the Sacramento Area (State Clearinghouse No. 2006072098) ("Local Funding EIR"); and

WHEREAS, the NLIP Landside Improvements Project is fully described in Chapter 2 of the Environmental Impact Report on the NLIP Landside Improvements Project (State Clearinghouse No. 2007062016) ("2007 Landside EIR"), and consists of project elements originally proposed for commencement of construction in 2008 that are analyzed at a project level (formerly the "2008 Construction Projects," renamed the "Phase 2 Project"),

which consist of the "Natomas Cross Canal South Levee Phase 2 Improvement Project" and the "Sacramento River East Levee Phase 1 Improvement Project (Reaches 1 Through 4B)," and elements originally proposed for commencement of construction in 2009 through 2010 that are analyzed at a program level (formerly the “2009 Construction Project” and the “2010 Construction Project,” renamed the “Phase 3 Project” and the “Phase 4 Project,” respectively); and

WHEREAS, the 2007 Landside EIR is tiered from the Local Funding EIR; and

WHEREAS, the Phase 1 Project, originally referred to as the 2007 Construction Project, has been substantially completed; and

WHEREAS, the SAFCA Board of Directors certified the 2007 Landside EIR and approved the Phase 2 Project on November 29, 2007; and

WHEREAS, the Phase 2 Project would involve levee raising; seepage remediation; improvements to major irrigation and drainage infrastructure; habitat development and management; encroachment management and bridge crossing modifications; right-of-way acquisition within the area of the proposed features, at borrow sites, and to prevent encroachment and provide for maintenance access along the land side of the flood control facilities; and

WHEREAS, since certification of the 2007 Landside EIR in November 2007, SAFCA has proposed modifications to the Phase 2 Project, and has determined that a supplement to the 2007 Landside EIR that focuses on the significant effects on the environment that would potentially result from the proposed modifications to the Phase 2 Project is appropriate, and has prepared the Supplement to the Environmental Impact Report on the Natomas Levee Improvement Program Landside Improvements Project – Phase 2 Project (State Clearinghouse No. 2007062016) (“Phase 2 Project SEIR” or “SEIR”); and

WHEREAS, the proposed modifications to the Phase 2 Project, which are fully described in Chapter 2 of the November 2008 Draft SEIR, as amended by the January 2009 Final Supplement to the Environmental Impact Report on the Natomas Levee Improvement Program Landside Improvements Project – Phase 2 Project (together, the “Final SEIR”) consist of the following: between Reaches 1 and 4A along the Sacramento River east levee, construction of cutoff walls in place of seepage berms in several areas and construction of cutoff walls in addition to seepage berms in others; cutoff wall construction on a 24-hour-per day/seven-day-per week basis in some areas; a change in the baseline condition of the Sacramento International Airport north bufferlands from active rice cultivation to idle conditions; additional details regarding new storm drainage collection facilities to convey surface water beneath Garden Highway to the Sacramento River; and the

addition of 90 acres of high quality foraging habitat through acquisition and reclamation of land used for borrow material; and

WHEREAS, SAFCA desires the Phase 2 Project to provide at least 100-year flood protection as quickly as possible while laying the groundwork to achieve at least "200-year" flood protection over time; to use flood control projects in the vicinity of Sacramento International Airport to facilitate better management of Airport lands that reduce hazards to aviation safety; and to use flood control projects to enhance habitat values by increasing the extent and connectivity of the lands in Natomas being managed to provide habitat for giant garter snake, Swainson's hawk, and other special-status species; and

WHEREAS, the Draft SEIR describing the modifications in the Phase 2 Project has been circulated for public review, comments have been received and responses issued, and a Final SEIR has been prepared; and

WHEREAS, the Final SEIR has been presented to the Board and the Board has reviewed and considered the information contained in the Final EIR.

NOW, THEREFORE, BE IT RESOLVED BY THE SACRAMENTO AREA FLOOD CONTROL AGENCY BOARD OF DIRECTORS:

1. The Board hereby certifies that the Final SEIR for the Phase 2 Project has been completed in compliance with the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, and reflects the independent judgment of SAFCA.

2. The Board hereby adopts the Findings and Statement of Overriding Considerations for the modifications to the Phase 2 Project, attached hereto as Exhibit A, including the Statement of Overriding Considerations set forth therein.

3. The Board hereby adopts and incorporates into the Phase 2 Project all of the mitigation measures within the responsibility and jurisdiction of SAFCA that are identified in the Findings.

4. The Board hereby adopts the revised Mitigation Monitoring and Reporting Program for the NLIP Landside Improvements Project, attached hereto as Exhibit B.

5. The Board hereby approves the modifications to the Phase 2 Project.

ON A MOTION BY Director _____, seconded by Director _____, the foregoing resolution was passed and adopted by the Board of Directors of

the Sacramento Area Flood Control Agency, this 29th day of January 2009, by the following vote, to wit:

AYES: Directors:

NOES: Directors:
ABSTAIN: Directors:
ABSENT: Directors:

_____
Chair of the Board of Directors of the
Sacramento Area Flood Control Agency

(SEAL)

ATTEST:

_____
Clerk of the Board of Directors

EXHIBIT A

FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS FOR NATOMAS LEVEE IMPROVEMENT PROGRAM LANDSIDE IMPROVEMENTS PROJECT – MODIFICATIONS TO PHASE 2 PROJECT

I. ENVIRONMENTAL REVIEW PROCESS

The Final Environmental Impact Report on the Natomas Levee Improvement Program ("NLIP") Landside Improvements Project (State Clearinghouse No. 2007062016) ("2007 Landside EIR"), prepared by the Sacramento Area Flood Control Agency ("SAFCA"), analyzes the landside components of the NLIP that were originally proposed for construction during the years 2008 through 2010 ("NLIP Landside Improvements"). These components consist of improvements to the levee system in the Natomas Basin and related landscape modifications and drainage and infrastructure improvements.

The 2007 Landside EIR is a combined program-level EIR pursuant to Section 15168 of the State CEQA Guidelines (14 CCR § 15000 et seq.) and a project-level EIR pursuant to Section 15161 of the CEQA Guidelines. The project elements originally proposed for construction in 2008 (now referred to as the "Phase 2 Project") are analyzed at a project level, and consist of the "NCC South Levee Phase 2 Improvements" and the "Sacramento River East Levee Phase 1 Improvements (Reaches 1 through 4B)." The Board certified the 2007 Landside EIR and approved the Phase 2 Project on November 29, 2007.

The 2007 Landside EIR is tiered from the analysis in SAFCA's Environmental Impact Report on Local Funding Mechanisms for Comprehensive Flood Control Improvements for the Sacramento Area ("Local Funding EIR") (February 2007, State Clearinghouse No. 2006072098). Consistent with CEQA Guidelines Section 15152, the second-tier 2007 Landside EIR incorporates by reference general discussions from the Local Funding EIR as appropriate, and focuses on the significant effects on the environment that were not adequately addressed in that EIR.

As stated in the Local Funding EIR, the overall project objectives of SAFCA's flood control improvement program, including the NLIP Landside Improvements, are: to complete the projects necessary to provide 100-year flood protection for developed areas in the major floodplains of the Sacramento metropolitan area (Sacramento) as quickly as possible; to provide urban-standard ("200-year") flood protection for developed areas in Sacramento's major floodplains over time; and to ensure that new development in the undeveloped areas of Sacramento's major floodplains does not substantially increase the expected damage of an uncontrolled flood. The specific objectives of the NLIP Landside Improvements project are: to provide at least 100-year flood protection as quickly as possible while laying the groundwork to achieve at least "200-year" flood protection over time; to use flood control projects in the vicinity of Sacramento International Airport to

facilitate better management of Airport lands that reduce hazards to aviation safety; and to use flood control projects to enhance habitat values by increasing the extent and connectivity of the lands in Natomas being managed to provide habitat for giant garter snake, Swainson's hawk, and other special-status species.

Since the certification of the 2007 Landside EIR and approval of the Phase 2 Project, SAFCA proposed modifications to the Phase 2 Project consisting of following: between Reaches 1 and 4A along the Sacramento River east levee, construction of cutoff walls in place of seepage berms in several areas and construction of cutoff walls in addition to seepage berms in others; cutoff wall construction on a 24-hour-per day/seven-day-per week basis in some areas; a change in the baseline condition of the Sacramento International Airport north bufferlands from active rice cultivation to idle conditions; additional details regarding new storm drainage collection facilities to convey surface water beneath Garden Highway to the Sacramento River; and the addition of 90 acres of high quality foraging habitat through acquisition and reclamation of land used for borrow material.

The Supplement to the Environmental Impact Report on the Natomas Levee Improvement Program Landside Improvements Project – Phase 2 Project (State Clearinghouse No. 2007062016) ("SEIR"), prepared by SAFCA, analyzes the modifications to the Phase 2 Project, which are fully described in Chapter 2 of the November 2008 Draft SEIR, as amended by the January 2009 Final Supplement to the Environmental Impact Report on the Natomas Levee Improvement Program Landside Improvements Project – Phase 2 Project (together, the "Final SEIR"). A supplement to the 2007 Landside EIR is appropriate because the modifications to the Phase 2 Project will involve new or substantially more severe significant environmental effects, but only minor additions or changes are necessary to make the 2007 Landside EIR adequate to apply to the modified Project. (CEQA Guidelines §§ 15162 and 15163.)

On October 2, 2008, SAFCA issued a Notice of Preparation ("NOP") indicating that a Supplement to the 2007 Landside EIR ("SEIR") would be prepared for the modifications to the Phase 2 Project. The NOP was filed with the State Clearinghouse and circulated to governmental agencies and the public for 30 days for review and comment. Comment letters were received. The Draft EIR was published on November 18, 2008, for a 45-day public review period that ended on January 2, 2009. During that time, the Draft SEIR was reviewed by various governmental agencies, as well as by interested individuals and organizations. In addition, members of the public were invited by formal public notice to submit comments on the Draft EIR in testimony at a public hearing held for that purpose on December 11, 2008. Additional public comments were received at this hearing.

The Final SEIR includes, among other components, the Draft SEIR published in November 2008, as well as comments on the Draft EIR, responses to those comments, and revisions to the Draft EIR. The Final SEIR, published in January 2009, was presented to the Board, and the Board has reviewed the Final SEIR. The analysis and conclusions contained in the Final SEIR reflect the independent judgment of SAFCA.

Based on all of the information and evidence in the record, the Board hereby makes the following Findings with respect to the modifications to the modifications to Phase 2 of the NLIP Landside Improvements Project.

II. SIGNIFICANT AND UNAVOIDABLE ADVERSE IMPACTS AND DISPOSITION OF RELATED MITIGATION MEASURES

The Final SEIR identifies the following changes in the significant and unavoidable adverse impacts associated with the modifications to the Phase 2 Project, and it identifies related mitigation measures. It is hereby determined that these significant and unavoidable adverse impacts are acceptable for the reasons specified in Section V, below.

A. Impact 3.4-b. Potential Construction Impacts on Cultural Resource CA-SAC-485/H

This prehistoric resource consists of an extremely rich deposit that contains midden, features, debitage, faunal bone and bone tools, habitation structures, and numerous human interments. The site occurs just east of the Sacramento River east levee Reach 4B. This reach has an existing, serious risk of underseepage and levee failure. SAFCA proposes construction of a seepage berm that could abut the Sacramento River east levee and would cover this resource. The width of this berm has been expanded compared to the original design; therefore, the impact of placing the berm on CA-SAC-485/H was not analyzed in the 2007 Landside EIR. This impact would be significant. Implementation of Mitigation Measure 3.4-b, set forth below, which is hereby adopted and incorporated into the Phase 2 Project, would reduce the impact on CA-SA-485/H caused by the modifications to the Phase 2 Project. Nonetheless, construction of a seepage berm may affect the site through operation of equipment and construction of a massive feature over the site. Therefore, this impact would be significant and unavoidable.

Mitigation Measure 3.4-b: **Avoid Ground Disturbance near Known Archeological Site CA-Sac-485/H to the Extent Feasible and Prepare and Implement a Historic Properties Treatment Plan.**

SAFCA shall implement the following measures required by the PA (Appendix C) to address potential significant impacts on CA-SAC-485/H associated with Phase 2 Project construction impacts:

- *Prior to start of construction, SAFCA shall prepare an HPTP as required under the PA (Stipulation V[A]).*
- *The HPTP shall address the effect of construction of a seepage berm on CA-SAC-485/H, including the effects of operating heavy equipment on the site during construction and of the placement of a seepage berm over the resource.*

- *To the extent possible, SAFCA shall minimize or avoid direct impacts on the site by carefully selecting equipment with consideration given to the pressure the construction equipment will place on the site and the capability of the assemblage to withstand these impacts. SAFCA shall also minimize the impact of the weight of the berm on the site through engineering and design to the maximum extent possible.*

- *The HPTP shall recommend an appropriate program of research and analysis for any portion of the assemblage removed from the site during test excavations. SAFCA shall then consult with USACE, the SHPO, and appropriate Native American individuals and entities regarding the recommendations of the HPTP.*

- *Upon concurrence from USACE and the SHPO, SAFCA shall implement the HPTP. The HPTP shall account for and incorporate the concerns of all consulting parties, to the extent possible, given project goals, as required under Section 106.*

- *During construction, SAFCA shall monitor construction at this location and within an appropriate radius. This monitoring shall be governed by a plan for monitoring and response to inadvertent discoveries that has been approved by USACE, as required in the PA (Stipulation V[B]).*

The construction of a wide seepage berm and preparation and execution of an HPTP shall minimize impacts on this resource by avoiding or reducing disturbance and conducting research on the excavated portions of the assemblage. The HPTP shall minimize these impacts to the maximum extent possible and disclose the projected magnitude of these impacts.

B. Impact 3.4-c. Damage to or Destruction of Other Identified Prehistoric Cultural Resources

Two prehistoric resources, NLIP-7 and NLIP-22, were identified within the project footprint after preparation of the 2007 Landside EIR. Construction of the seepage berm in Reaches 4A and 4B has the potential to affect these resources. This potential impact would be potentially significant. Implementation of Mitigation Measure 3.4-c, set forth below, which is hereby adopted and incorporated into the Phase 2 Project, would reduce the impact on prehistoric cultural resources caused by the modifications to the Phase 2 Project. Nonetheless, it may not be possible to avoid all impacts to the deposits at these resources. Therefore, this impact would be significant and unavoidable.

Mitigation Measure 3.4-c: Evaluate NLIP-7 and NLIP-22. If the Resources are Eligible, Avoid Disturbance to the Extent Feasible, and Prepare and Implement a Historic Properties Treatment Plan.

SAFCA shall implement the following measures prior to start of construction:

- *Complete an evaluation of NLIP-7 and NLIP-22 resources, and determine the effect of Phase 2 work on all eligible or listed resources in accordance with Stipulation IV(A) of the PA.*

- *Consult with USACE, the SHPO, and other consulting parties such as Native American individuals and organizations, to develop appropriate treatment or mitigation in an HPTP, as required by Stipulation V(A) of the PA, if the project would result in adverse effects on eligible resources.*

- *If the resources are deemed to be eligible, document the sites and avoid or reduce adverse effects by minimizing disturbance from construction of the berm. Where physical impacts cannot be avoided and such physical impacts could damage the data these sites may contain, further excavation shall be conducted in order to support documentation of the resource as required under Section 110(b) of the NHPA, or, in the alternative, data recovery excavations to retrieve those values and mortuary assemblages that contain significance for archaeology and Native American culture after consultation with and the agreement of the Native American MLD tribe.*

- *Monitor all construction in the vicinity of documented and eligible resources, as required under the pending construction monitoring and inadvertent discovery plan.*

Implementation of these management steps would lead to a determination as to the eligibility of these resources, and if eligible, minimize impacts on qualities that make these resources significant. While data recovery excavation is usually performed in instances where significant resources may be affected by a project, consultation under Section 106 may require alternate treatment, such as minimal investigation other than documentation. Minimization of any disturbance is an expressed desire of the Native American individuals and organizations that were consulted. To the extent possible, SAFCA shall minimize the impact of operating equipment over the resources and the impact caused by placement of a berm on these sites, through engineering and equipment selection.

C. Impact 3.4-d. Damage to or Destruction of Previously Undiscovered Cultural Resources

Previously unknown cultural resources could be present in areas that would be subject to construction disturbance and could be damaged or destroyed by project construction. This potential impact would be potentially significant. Implementation of Mitigation Measure 3.4-d (updating previously adopted Mitigation Measure 3.8-d from the 2007 Landside EIR), set forth below, which is hereby adopted and incorporated into the Phase 2 Project, would reduce the impact on prehistoric cultural resources caused by the modifications to the Phase 2 Project. Because SAFCA does not control the final selection of inventory and treatment methods under Section 106, SAFCA can only suggest these methods to USACE and other consulting parties to the Section 106 process. Furthermore, because these methods will result in a sample data set rather than an exhaustive excavation of the entire footprint of ground disturbing work, the possibility remains that previously undiscovered cultural resources will be inadvertently damaged or destroyed during construction. Therefore, this impact would be significant and unavoidable.

Mitigation Measure 3.4-d: Conduct Additional Backhoe and Canine Forensic Investigations As Appropriate

To increase the data set for identifying buried sites under the existing levee, SAFCA shall recommend that the following additional mitigation measures be adopted by USACE during Section 106 consultation:

- *Additional inventory should be conducted at appropriate intervals along the Sacramento River east levee for the Phase 2 Project, using a backhoe excavator, to increase the sample of information at depths below six feet, which cannot be reached with conventional shovel test methods.*

- *Where this process or additional inventory efforts reveal other resources, SAFCA recommends the use of canine forensic investigations as a way of identifying interred human remains with minimal disturbance, and for further refinement of and understanding of the constituents of identified resources.*

- *If previously undiscovered resources are encountered during excavation of the inspection trench they will be treated in accordance with Mitigation Measure 3.4-c.*

D. Impact 3.4-e. Damage to or Destruction of Previously Undiscovered Interred Human Remains

Because SAFCA does not control the final selection of inventory and treatment methods under Section 106, SAFCA can only suggest these methods to USACE and other consulting parties to the Section 106 process. Furthermore, because these methods will result in a sample data set rather than an exhaustive excavation of the entire footprint of ground disturbing work, the possibility remains that previously undiscovered cultural resources will be inadvertently damaged or destroyed during construction. This impact would be significant. Implementation of previously Mitigation Measure 3.4-e (updating previously adopted Mitigation Measure 3.8-e from the 2007 Landside EIR), set forth below, which is hereby adopted and incorporated into the Phase 2 Project, would reduce impact on previously undiscovered interred human remains caused by the modifications to the Phase 2 Project. Nonetheless, even though measures would be implemented to avoid human remains or, if found, to dispose of the remains with appropriate dignity, future disturbance to additional archaeological material at the site could still occur after the initial discovery and management of human remains. Therefore, this impact would be significant and unavoidable.

Mitigation Measure 3.4-e: Halt Work Within 50 Feet of the Find, Notify the County Coroner and Most Likely Descendant, and Implement Appropriate Treatment of Remains

SAFCA and its primary construction contractors shall ensure that the following measures are implemented to address the potential discovery of human remains during construction.

- *If human remains are uncovered during ground-disturbing activities, all ground-disturbing activities shall cease within a 50-foot radius of the find, and SAFCA or its designated representative shall be notified. In accordance with the California Health and Safety Code, if human remains are uncovered during ground-disturbing activities, SAFCA and/or the contractor shall notify the county coroner of the county in which the remains are uncovered (Sutter or Sacramento) and a professional archaeologist to determine the nature of the remains. The coroner is required to examine all discoveries of human remains within 48 hours of receiving notice of a discovery on private or state lands (Health and Safety Code Section 7050.5[b]). If the coroner determines that the remains are those of a Native American, he or she must contact the NAHC by phone within 24 hours of making that determination (Health and Safety Code Section 7050[c]). The NAHC shall designate a Most Likely Descendant (MLD) to dispose of the remains with appropriate dignity.*

- *After a determination that the remains are of prehistoric Native American origin, SAFCA shall coordinate with the MLD for reburial of the remains and associated grave goods in an appropriate location. If the MLD fails to make a recommendation or reinter the remains, further treatment shall conform to PRC Section 5097 et seq. and other appropriate authorities.*

- *The discovery of prehistoric burials often reveals locations sensitive for the occurrence of additional archaeological material. Newly discovered prehistoric resources associated with human remains shall be evaluated, and if the resource is eligible for the CRHR or the NRHP and the project would result in adverse effects to those eligible resources, Mitigation Measure 3.4-c shall be implemented.*

E. Impact 3.5-a. Generation of Temporary, Short-Term Construction Noise

Construction of proposed cutoff walls on a 24-hours-per-day, 7-days-per-week ("24/7") basis could generate noise levels that exceed the local noise standards for stationary sources at nearby sensitive receptors. In addition, because this construction would occur during the noise-sensitive evening and nighttime hours, it would have the potential to cause sleep disturbance at nearby residential land uses. This impact would be significant. Since publication of the Draft SEIR, the area in which cutoff walls would be constructed, in addition to other Phase 2 Project construction that would be taking place, was expanded to include the entirety of Reach 4A. Pursuant to the modifications to the Phase 2 Project, cutoff wall construction could be conducted 24/7; however, at the request of the USACE pursuant to the Phase 2 Project's NEPA compliance, Mitigation

Measure 3.5-a was revised to state that 24/7 construction of cutoff walls would not be conducted in Reaches 1 and 4A due to the proximity of residences in those reaches. Implementation of Mitigation Measure 3.5-a (updating previously adopted Mitigation Measure 3.12-a from the 2007 Landside EIR), set forth below, which is hereby adopted and incorporated into the Phase 2 Project, would reduce the noise impact from construction of the modifications to the Phase 2 Project. These measures would reduce interior and exterior noise levels at noise-sensitive receptors located near construction sites. However, standards applicable to local exterior noises would not be reduced to a less-than-significant level at every nearby receptor. Therefore, the impact of temporary, short-term construction noise on sensitive receptors would be significant and unavoidable.

Mitigation Measure 3.5-a: Implement Noise-Reducing Construction Practices, Prepare and Implement a Noise Control Plan, and Monitor and Record Construction Noise Near Sensitive Receptors.

SAFCA and its primary contractors for engineering design and construction shall ensure that the following measures are implemented at each work site in any year of project construction to avoid and minimize construction noise effects on sensitive receptors. These measures are consistent with SAFCA's standard contract specifications for noise control.

SAFCA and its primary construction contractors shall employ noise-reducing construction practices and other measures to reduce exposure of sensitive receptors to construction noise. Measures that shall be used to reduce noise impacts shall include the following:

- *Equipment shall be used as far away as practical from noise-sensitive uses.*
- *All construction equipment shall be equipped with noise-reduction devices such as mufflers to minimize construction noise and all internal combustion engines shall be equipped with exhaust and intake silencers in accordance with manufacturers' specifications.*
- *Equipment that is quieter than standard equipment shall be used, including electrically powered equipment instead of internal combustion equipment where use of such equipment is a readily available substitute that accomplishes project tasks in the same manner as internal combustion equipment.*
- *Construction site and haul road speed limits shall be established and enforced.*
- *The use of bells, whistles, alarms, and horns shall be restricted to safety warning purposes only.*
- *Noise-reducing enclosures shall be used around stationary noise-generating equipment (e.g., compressors and generators).*

- *Fixed construction equipment (e.g., compressors and generators), construction staging and stockpiling areas, and construction vehicle routes shall be located at the most distant point feasible from noise-sensitive receptors.*

- *When noise sensitive uses are within close proximity and subject to prolonged construction noise, where feasible noise-attenuating buffers such as structures, truck trailers, or soil piles shall be located between noise generation sources and sensitive receptors.*

- *Before construction activity begins within 500 feet of one or more residences, written notification shall be provided to the potentially affected residents, identifying the type, duration, and frequency of construction activities. Notification materials shall also identify a mechanism for residents to register complaints with the appropriate jurisdiction if construction noise levels are overly intrusive. The distance of 500 feet is based on the 60-dBA) contour of the loudest anticipated construction activity other than pile driving (as listed in Table 3.12-4 of the 2007 Landside EIR).*

- *When construction of cutoff walls takes place during nighttime hours (between 10 p.m. and 6 a.m.), SAFCA shall honor requests from affected residents to provide reasonable reimbursement of local hotel or short-term rental stays for the period of time that cutoff wall construction takes place within 500 feet of the residents requesting reimbursement.*

- *If noise-generating activities are conducted within 100 feet of noise-sensitive receptors (the 70-dBA noise contour of construction noise), the primary contractor shall continuously measure and record sound generated as a result of the proposed work activities. Sound monitoring equipment shall be calibrated before taking measurements and shall have a resolution within 2 dBA. Monitoring shall take place at each activity operation adjacent to sensitive receptors. The recorded noise monitoring results shall be furnished weekly to SAFCA.*

- *The primary contractor shall prepare a detailed noise control plan based on the construction methods proposed. This plan shall identify specific measures to ensure compliance with the noise control measures specified above. The noise control plan shall be submitted to and approved by SAFCA before any noise-generating construction activity begins.*

- *Construction of cutoff walls in Reaches 1 and 4A of the Sacramento River east levee shall be limited to the hours of 6 a.m. to 8 p.m., Monday through Saturday, with only maintenance activities on Sunday.*

III. SIGNIFICANT ADVERSE IMPACTS IDENTIFIED IN THE EIR THAT ARE REDUCED TO A LESS-THAN-SIGNIFICANT LEVEL BY MITIGATION MEASURES INCORPORTED INTO THE PROPOSED PROJECT

The Final SEIR identifies the following significant impacts associated with the modifications to the Phase 2 Project. These impacts are reduced to a less-than-significant level by mitigation measures identified in the Final SEIR and incorporated into the project. It is hereby determined that the impacts addressed by these mitigation measures will be mitigated to a less-than-significant level or avoided by incorporation of these mitigation measures into the project. To the extent that these mitigation measures will not mitigate or avoid all significant effects on the environment, it is hereby determined that any remaining significant and unavoidable adverse impacts are acceptable for the reasons specified in Section VI, below.

A. Impact 3.2-a. Possible Effects on Water Quality from Stormwater Runoff from Garden Highway Drainage Outlets to the Sacramento River

Drainage outlets would convey surface water toward the Sacramento River through subsurface laterals and waterside drainage outfalls. Stormwater runoff from Garden Highway could degrade the water quality of the Sacramento River by discharging contaminants through two proposed drainage outlets. This potential impact would be significant. Implementation of Mitigation Measure 3.2-a, set forth below, which is hereby adopted and incorporated into the Phase 2 Project, would reduce the potential impact on water quality from stormwater runoff associated with drainage from Garden Highway caused by Phase 2 Project modifications to a less-than-significant level.

Mitigation Measure 3.2-a: Implement Standard Best Management Practices and Comply With NPDES Permit Conditions.

SAFCA and its engineering consultants shall implement a suite of stormwater quality best management practices (BMPs) designed to remove contaminants from water discharging through the Garden Highway outlets. These BMPs shall be based on the Stormwater Quality Design Manual for Sacramento and South Placer Regions (May 2007), meet "maximum extent practicable" and "best conventional technology/best available technology" requirements, and comply with NPDES permit conditions.

B. Impact 3.3-a. Loss of Sensitive Habitats

The proposed modifications to the Phase 2 Project include construction of new drainage outfalls in Reaches 1–4B of the Sacramento River east levee. Placement of these outfalls would result in fill of waters of the United States and potential removal of some riparian vegetation. This impact would be significant. Implementation of Mitigation Measure 3.3-a (updating previously adopted Mitigation Measure 3.7-a from the 2007 Landside EIR), set forth below, which is hereby adopted and incorporated into the Phase

2 Project, would ensure that an overall performance standard of no net loss in acreage, function, and value of sensitive habitats is met, thereby reducing the impact on sensitive habitats caused by the Phase 2 Project modifications to a less-than-significant level.

Mitigation Measure 3.3-a: **Minimize Effects on Sensitive Habitats; Develop and Implement a Habitat Management Plan to Ensure Compensation for Unavoidable Adverse Effects; Comply with Section 404, Section 401, and Section 1602 Permit Processes; and Implement all Permit Conditions.**

SAFCA and its primary contractors for engineering design and construction shall ensure that the following measures are implemented to avoid, minimize, and compensate for potential project effects on sensitive habitats.

Areas of sensitive habitat shall be identified and the primary engineering and construction contractors shall ensure, through coordination with a qualified biologist retained by SAFCA, that staging areas and access routes are designed to minimize disturbance of canals and ditches, seasonal wetlands, and woodland patches. Trees within the Sacramento County portion of the project area that qualify as Native Oaks or Heritage Trees under Sacramento County's tree preservation ordinance shall be identified. All sensitive habitats and protected trees that are located adjacent to construction areas, but can be avoided, shall be protected by temporary fencing during construction.

SAFCA shall develop and implement a Mitigation and Monitoring Plan (MMP) to address establishment and management of aquatic (i.e., GGS/Drainage Canal and marsh/seasonal wetland habitat) and woodland habitats that are created as part of the proposed project in order to ensure that the performance standard of no net loss of sensitive habitat is met. The shall identify the measures and performance criteria during the initial mitigation monitoring period (8 years) and shall be submitted to federal and state agencies for review and approval prior to project construction.

<u>GGS/Sensitive Aquatic Habitats</u>

Mitigation for impacts to aquatic habitat include the construction of a new GGS/Drainage canal, relocation of the Elkhorn Irrigation Canal, and preservation of rice fields. The GGS Canal shall create jurisdictional waters of the United States, and include banks that are designed to facilitate shoreline growth of freshwater marsh plants, plantings of native perennial grasses on the upper canal banks for better giant garter snake cover, and creation of giant garter snake hibernacula (rock piles keyed into the bank). This habitat shall be protected in perpetuity through an easement. In addition, to the extent practicable the Phase 2 Project Elkhorn Irrigation Canal shall be relocated in an alignment near the new GGS/Drainage Canal alignment to provide the potential for additional aquatic habitat (its main function would still be irrigation).

A monitoring program with performance criteria shall be developed to determine the progress of the GGS/Drainage canal towards achieving the performance standard of no net loss of aquatic habitat. The criteria for measuring performance shall be used to

determine if the habitat is trending toward sustainability (reduced human intervention) and to assess the need for adaptive management (e.g., changes in mitigation design or maintenance revisions). These criteria must be met in order for the mitigation site to be declared successful, both during a particular monitoring year and at the end of the establishment period. These performance criteria, which shall be developed in consultation with DFG and USFWS, shall include, but are not limited to:

- *percent total cover (from 85–90%),*
- *percent relative cover by wetland species (from 85–90%),*
- *percent relative cover by native species (from 50–85%), and*
- *water level controlled to within +/- 6 inches of design water level.*

Vegetation assessments of the GGS/Drainage Canal shall be conducted annually for native perennial grasses (during the appropriate peak flowering period). The presence of giant garter snakes shall be monitored and recorded along this canal, consistent with monitoring methods currently conducted for SAFCA and TNBC elsewhere in the Natomas Basin.

All monitoring shall occur for the full monitoring period or until the performance criteria are met, whichever period is longer. Waterline plug plantings (sedges and rushes) may not be mowed once established. All areas seeded with perennial grasses shall be mowed to a height of between 6–12 inches above ground.

The primary function and service of the Elkhorn Canal is to deliver irrigation water to users throughout the Natomas Basin. The water supply within the Elkhorn Canal shall vary depending on the needs of those users. Therefore, the performance standard for the Elkhorn Canal is the delivery of irrigation water.

<u>Woodlands</u>

To mitigate impacts to woodland habitats, woodland corridors and groves shall be established. In addition, existing woodlands, located outside of the flood control and canal improvement footprints but within project acquisition areas adjacent to the new groves, shall be preserved. Generally, the size of the woodland mitigation areas shall vary somewhat depending on the characteristics of their unique locations. Trees under 10 inches diameter at breast height (dbh) located within the project footprint (mostly valley oaks), that can be feasibly relocated shall be transplanted into woodland mitigation areas. Elderberry shrubs located within the project footprint that can be feasibly relocated shall be transplanted into woodland mitigation areas. The botanical species composition of individual clusters and rows shall mimic vegetation types commonly found along the Sacramento River, including:

- *Valley oak woodland*
- *Mixed riparian forest, cottonwood-dominant*

- *Shallow scrub (at moist soil sites or depressions)*
- *Sycamore and oak savanna (with native perennial grassland)*
- *Elderberry shrub/scrub*

A monitoring plan with performance criteria shall be developed to determine the progress of the woodland habitats towards providing adequate mitigation. The criteria for measuring performance shall be used to determine if the mitigation is trending toward sustainability (reduced human intervention) and to assess the need for adaptive management (e.g., changes in mitigation design or maintenance revisions). These criteria must be met in order for the mitigation site to be declared successful, both during a particular monitoring year and at the end of the establishment period. These performance criteria, which shall be developed in consultation with DFG and USFWS, shall include, but are not limited to:

- *Percent survival of planted trees (from 65–85%)*
- *Percent survival of transplanted trees (from 60–85%)*
- *Percent relative canopy cover (from 5–35%)*

Field assessments of woodland planting areas shall be conducted once per year. The timing of these assessments shall be adjusted according to annual site-specific conditions, but assessments shall generally occur in late summer. To measure percent survival of trees and shrubs, each plant shall be inspected and the species of each live plant shall be recorded. Qualitative assessments shall be recorded to track the health and vigor of each species for adaptive management of the mitigation sites.

To determine the success of the woodland plantings as a functioning ecosystem, percent canopy shall be estimated each fall by recording the extent of woodland habitat on aerial photographs, or using repeat transects or fixed radius plots at ground level. The timing of these assessments shall be adjusted according to annual site-specific conditions, but assessments shall generally occur in late summer or early fall while trees are still in full foliage. The results of these assessments shall also be used to determine where replanting should occur to maintain suitable Swainson's hawk habitat. All monitoring shall occur for the full monitoring period or until the performance criteria are met, whichever is longer.

A Long-Term Management Plan (LTMP) shall be implemented by SAFCA in connection with the NLIP Landside MMP. The LTMP shall establish the long-term management practices (post establishment period success criteria) and land protection mechanisms that shall be implemented as each phase of the NLIP is approved and permitted. Land ownership and management responsibilities shall be held by SAFCA, RD 1000, NCMWC, TNBC, and the SCAS.

Applicable permits, including a Section 404 permit from the USACE, Section 401 certification from the Central Valley Regional Water Quality Control Board (RWQCB),

and a Section 1602 streambed alteration agreement from DFG, shall be obtained before any impact on the relevant resources occurs. All permit terms and conditions adopted through these permitting processes shall be implemented.

C. Impact 3.3-b. Disturbance and Loss of Giant Garter Snake Habitat

Implementation of the Phase 2 Project with proposed modifications would result in disturbance and loss of aquatic and upland habitat for giant garter snake. The project would also result in creation of habitat for the snake, but specific requirements have not been established to ensure that appropriate habitat conditions are provided to adequately replace the habitat values that would be lost. Project construction also has the potential to result in direct take of giant garter snake individuals. This impact would be significant. Implementation of Mitigation Measure 3.3-b (previously adopted Mitigation Measure 3.7-d from the 2007 Landside EIR), set forth below, which is hereby adopted and incorporated into the Phase 2 Project, would ensure that an overall performance standard of no net loss in function and value of giant garter snake habitat is met, thereby reducing the impact on giant garter snake habitat caused by the Phase 2 Project modifications to a less-than-significant level.

Mitigation Measure 3.3-b: **Minimize the Potential for Direct Loss of Giant Garter Snake Individuals, Develop a Management Plan in Consultation with USFWS and DFG, and Obtain Incidental Take Authorization.**

SAFCA and its primary contractors for engineering design and construction shall ensure that the following measures are implemented to avoid, minimize, and compensate for potential project effects on giant garter snakes.

The primary engineering and construction contractors shall ensure, through coordination with a qualified biologist retained by SAFCA, that staging areas and access routes are designed to minimize disturbance of giant garter snake habitat. All aquatic and adjacent upland habitat that is located adjacent to construction areas, but can be avoided, shall be protected by temporary fencing during construction.

Additional measures consistent with the goals and objectives of the NBHCP shall be implemented to minimize the potential for direct injury or mortality of individual giant garter snakes during project construction. Such measures shall be finalized in consultation with DFG and USFWS, and are likely to include conducting worker awareness training, timing initial ground disturbance to correspond with the snake's active season (as feasible in combination with minimizing disturbance of nesting Swainson's hawks), dewatering aquatic habitat before fill operations are commenced, conducting preconstruction surveys, and conducting biological monitoring during construction.

SAFCA shall develop and implement an MMP to address management of aquatic (i.e., GGS/Drainage Canal and marsh/seasonal wetland habitat) and adjacent upland habitats that are created and rice fields that are preserved as part of the project in order to ensure that the performance standard of no net loss in function and value of giant

garter snake habitat is met. This plan shall be completed and submitted to state and federal agencies for review prior to project construction.

The management plan for the giant garter snake habitat creation and preservation components of the project shall be reviewed and approved by USFWS and DFG before project implementation. Authorization for take of giant garter snake under the ESA and CESA shall be obtained. Any additional avoidance, minimization, or compensation measures subsequently adopted through the permitting process shall be implemented prior to or during project construction, as appropriate. A Long-Term Management Plan (LTMP) shall be implemented by SAFCA in connection with the NLIP's MMP. The LTMP shall describe the management practices and land protection mechanisms that shall be implemented as each phase of the NLIP is approved and permitted. Land ownership, management responsibilities, and protection obligations shall be held by SAFCA, RD 1000, NCMWC, TNBC, and the SCAS.

D. Impact 3.3-c. Loss of Swainson's Hawk Habitat and Potential Disturbance of Nests

Implementation of the Phase 2 Project would result in loss of suitable foraging and potential nesting habitat. Creation of suitable foraging and nesting habitat would also occur, but specific requirements have not been established to ensure that appropriate habitat conditions are provided to adequately replace the habitat values that would be lost. Project construction could also result in disturbance and potential failure of active nests for Swainson's hawk. This impact would be significant. Implementation of Mitigation Measure 3.3-c (updating previously adopted Mitigation Measure 3.7-f from the 2007 Landside EIR), set forth below, which is hereby adopted and incorporated into the Phase 2 Project, would ensure that an overall performance criterion of no net loss in acreage, function, and value of Swainson's hawk foraging habitat is met, thereby reducing the impact on Swainson's hawk habitat and nests caused by the Phase 2 Project modifications to a less-than-significant level.

Mitigation Measure 3.7-f: **Minimize Potential Impacts on Swainson's Hawk, Monitor Active Nests during Construction, Develop a Management Plan in Consultation with DFG, and Obtain Incidental Take Authorization.**

SAFCA and its primary contractors for engineering design and construction shall ensure that the following measures are implemented to avoid, minimize, and compensate for potential project effects on Swainson's hawks.

The primary engineering and construction contractors shall ensure, through coordination with a qualified biologist retained by SAFCA, that staging areas and access routes are designed to minimize disturbance of known Swainson's hawk nesting territories. The biologist shall conduct preconstruction surveys to identify active nests within 0.25 mile of construction areas, in accordance with DFG guidelines. Surveys shall be conducted in accordance with NBHCP requirements and Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (Swainson's Hawk Technical Advisory Committee 2000). If an active nest is found, an

appropriate buffer that minimizes the potential for disturbance of the nest shall be determined by the biologist, in coordination with DFG. No project activities shall commence within the buffer area until a qualified biologist confirms that the nest is no longer active or the birds are not dependent on it. Monitoring shall be conducted by a qualified biologist to determine whether project activity results in detectable adverse effects on the nesting pair or their young. The size of the buffer may vary, depending on the nest location, nest stage, construction activity, and monitoring results. If implementation of the buffer becomes infeasible or construction activities result in an unanticipated nest disturbance, DFG shall be consulted to determine the appropriate course of action.

SAFCA shall develop and implement an MMP to address management of grassland habitats that are created as part of the proposed project in order to ensure that the performance standard of no net loss of sensitive habitat is met. To mitigate impacts on cropland and grassland suitable for Swainson's hawk foraging habitat, SAFCA shall create managed native perennial grassland habitats on the new levee slopes, seepage berms, access right-of-ways, and canal embankments. This grassland shall provide moderate-quality Swainson's hawk foraging habitat. In addition, grasslands on and adjacent to canal banks shall provide basking and aestivation habitat for giant garter snake.

The MMP shall include methods to create the grasslands, including native grass mixes which shall be seeded along new levee slopes and seepage berms, staging areas, and adjacent maintenance and utility rights-of-way. Seed material shall be purchased from a reputable nursery and must be from local genetic stock within 200 miles of the project site unless otherwise approved by a qualified ecologist. The native grass mix shall include the following:

- *Purple needlegrass (Nassella pulchra)*
- *Creeping wildrye (Leymus triticoides)*
- *Six weeks grass (Vulpia microstachys)*
- *Slender wheatgrass (Elymus trachycaulus)*
- *Meadow barley (Hordeum brachyantherum)*

An initial baseline assessment of grassland mitigation sites shall be conducted following the initial drill seeding program, and then a monitoring program with performance criteria shall be developed to determine the progress of the grassland habitats towards providing adequate mitigation. The criteria for measuring performance shall be used to determine how well the mitigation is being established and to assess the need for adaptive management (e.g., changes in mitigation design or maintenance revisions). These criteria must be met in order for the mitigation site to be declared successful, both during a particular monitoring year and at the end of the establishment period. These performance criteria, which shall be developed in consultation with USACE, DFG and USFWS, shall include, but are not limited to:

- *Percent cover of invasive species (<1%)*
- *Percent cover of non-native herbaceous plants (<10–25%)*
- *Percent absolute cover of native species (>50–80%)*

The management plan for the grassland habitat creation components of the project shall be provided to the USFWS and DFG for review before project implementation. Authorization for take of Swainson's hawk under CESA shall be obtained. Any additional avoidance, minimization or compensation measures subsequently adopted through the permitting process shall be implemented.

E. Impact 3.4-a. Changes to Elements of RD 1000, which Consists of a Rural Historic Landscape District That is Eligible for Listing on the NRHP

This district consists of the levees, drainage features, roads, and large-scale patterns of land use that form a distinct rural landscape surrounding and including the physical features of RD 1000 flood control infrastructure. Activities associated with several of the Phase 2 Project modifications, including construction of drainage infrastructure under Garden Highway and expansion of a seepage berm in Reach 4B of the Sacrament River east levee, could disturb contributing elements of RD 1000. These impacts would be significant. Implementation of Mitigation Measure 3.4-a (updating previously adopted Mitigation Measure 3.8-a from the 2007 Landside EIR), set forth below, which is hereby adopted and incorporated into the Phase 2 Project, would reduce this impact to a less-than-significant level.

Mitigation Measure 3.4-a: **Incorporate Mitigation Measures to Documents Regarding Any Elements Contributing to RD 1000 and Distribute the Information to the Appropriate Repositories.**

The management of the cultural resources that constitute the contributing elements of RD 1000 is governed by the PA (Appendix C). Because the elements of the RD 1000 historic landscape district have already been recorded, a new inventory of these resources is not required under Stipulation IV(A) of the PA. After an APE has been determined per Stipulation III(C), a qualified architectural historian shall determine if contributing elements of the district are present in the APE. If contributing elements are present, the architectural historian shall update records for these resources and evaluate those elements to determine if they still retain integrity. Because much of the Natomas Basin has been developed, it is possible that changes to the setting have diminished the integrity and thus eligibility of contributing elements in the APE. If the elements in the APE retain eligibility, the architectural historian shall make a finding of effect.

If there is an adverse effect to a contributing element (under Section 106) or a significant impact on the resource's integrity as an historical resource (under CEQA) the architectural historian shall review existing HAER documentation and determine whether any augmentation of this documentation is needed. The original documentation for the American River Watershed Project, completed in 1997, contemplated changes to

the setting of the district and thus provided comprehensive documentation to record the district before urbanization (Peak & Associates 1997). It is possible that this original documentation adequately recorded and preserved records of the elements that may be affected. If this documentation is not sufficient for adversely affected and contributing elements, SAFCA will prepare an HPTP stipulating additional HAER documentation, or other similar treatment as required under Stipulation V(A). After consultation with USACE and the SHPO, SAFCA shall implement the required documentation. Any additional documentation that is needed shall be prepared and distributed to appropriate public repositories.

IV. LESS-THAN-SIGNIFICANT IMPACTS

The Final SEIR identifies the following less-than-significant impacts. Mitigation to further reduce less-than-significant impacts is not required by CEQA.

A. Impact 3.2-b. Possible Effects on Groundwater

Installation of the proposed cutoff walls along the Sacramento River east levee would potentially increase or decrease localized near-surface groundwater levels in areas immediately east and west of the cutoff wall. A study of the potential for a significant drop or increase in groundwater levels found that no measurable change in groundwater levels or well yields would be expected from cutoff walls proposed for the Phase 2 Project. This impact would be less than significant.

B. Impact 3.2-c. Cumulative Effects on Groundwater

Implementation of all phases of the NLIP in combination with existing and projected land and water use changes in the Natomas Basin could adversely affect the groundwater budget for the Natomas Basin. Modeling found a negligible cumulative effect on both the groundwater budget for the Natomas Basin and on outflow to adjacent areas. The project modifications would not contribute considerably to a significant cumulative effect. This impact would be less than significant.

V. STATEMENT OF OVERRIDING CONSIDERATIONS

The Board has balanced the benefits of the NLIP Landside Improvements Phase 2 Project against its unavoidable environmental risks in determining whether to approve the project, and has determined that the benefits of the project outweigh the unavoidable adverse environmental effects. The reasons set forth below are based on the Final SEIR, the 2007 Landside EIR, and other information in the record.

A. Because of unique topographical and meteorological features, the Sacramento River basin, including its major tributaries, the Feather and American Rivers, is capable of producing significantly higher peak flood discharge per square mile of drainage area than any other major river basin in the United States.

B. The 1986 flood, the largest flood ever recorded for the Sacramento and American Rivers, triggered a major reevaluation of Sacramento's flood control system by the United States Army Corps of Engineers, which identified deficiencies in the flood control system protecting Sacramento. Although substantial flood protection effort has been undertaken since 1986, large portions of the Sacramento metropolitan area remain at high risk (having less than 100-year flood protection) or at moderate risk (having greater than 100-year but less than 200-year flood protection) of flooding.

C. There is an immediate need to protect the people and property at risk in the project area. The Natomas Basin floodplain is occupied by over 83,000 residents and $10 billion in damageable property. This area is presently vulnerable to flooding in a less than 100-year flood event along the Sacramento River or American River. Uncontrolled flooding in the Natomas Basin floodplain in a flood exceeding a 100-year event could result in $7 billion in damage. Depending on the circumstances, flood depths in the Natomas basin could reach life-threatening levels. Flooding would also result in releases of toxic and hazardous materials, groundwater contamination, and possible damage to the metropolitan power grid. The disruption in transportation that would result from a major flood would affect the Sacramento International Airport, and interstate and state highways. The day-to-day functioning of the state capital also would be significantly affected.

D. In recognition of the significant flood risk still remaining in the Sacramento area, Congress authorized the most significant package of improvements to Sacramento flood control system since the construction of Folsom Dam in 1956 as part of the Water Resource Development Act of 1996 and 1999, including the improvements to the NCC south levee, the Sacramento River east levee, and the American River north levee in the Natomas basin.

E. The project will help maximize public safety along the lower American and Sacramento Rivers and their tributaries in the Sacramento region. Specifically, the project will improve the levee system in the Natomas Basin and make related landscape modifications and drainage and infrastructure improvements.

F. The project would significantly reduce the risk of an uncontrolled flood in the Natomas Basin that would result in a catastrophic loss of property (estimated at $7 billion) and a prolonged interruption of commercial activity, including the operation of Sacramento International Airport and closure of Interstate 5, State Route 99/70, and portions of Interstate 80.

G. By contributing to protection of existing housing stock from destruction due to flood damage, the project will contribute to the maintenance of affordable housing in the region.

H. Several of the significant and unavoidable impacts identified in the Final SEIR and the 2007 Landside EIR (including construction-related noise, traffic on local

roadways, emissions) are temporary in duration and will be limited to the construction period.

VI. INCORPORATION BY REFERENCE

The Final SEIR is hereby incorporated into these Findings in its entirety. Without limitation, this incorporation is intended to elaborate on the scope and nature of the mitigation measures, the basis for determining the significance of impacts, the comparative analysis of alternatives, and the reasons for approving the NLIP Landside Improvements Phase 2 Project in spite of the potential for associated significant and unavoidable adverse impacts.

VII. RECIRCULATION NOT REQUIRED

No significant new information was added to the Draft SEIR as a result of the public comment process. The Final SEIR responds to comments, and clarifies, amplifies and makes insignificant modifications to the Draft SEIR. The Final SEIR does not identify any new significant effects on the environment or a substantial increase in the severity of an environmental impact requiring major revisions to the SEIR. Therefore, recirculation of the SEIR is not required.

VIII. RECORD OF PROCEEDINGS

Various documents and other materials constitute the record of proceedings upon which the Board bases its findings contained herein. The record of proceedings is located in the offices of the Clerk of the Sacramento Area Flood Control Agency, 1007 Seventh Street, 7th Floor, Sacramento, California 95814.

IX. SUMMARY

A. Based on the foregoing Findings and the information contained in the record, the Board has made one or more of the following Findings with respect to each of the significant environmental effects of the NLIP Landside Improvements Phase 2 Project:

1. Changes or alterations have been required in, or incorporated into, the NLIP Landside Improvements Phase 2 Project that avoid or substantially lessen the significant environmental effects identified in the Final SEIR.

2. To the extent that such changes or alterations are within the responsibility and jurisdiction of another public agency and not SAFCA, those changes or alterations have been, or can and should be, adopted by that other agency.

3. Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities

for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

B. Based on the foregoing Findings and the information contained in the record, it is determined that:

1. All significant effects on the environment due to the approval of the NLIP Landside Improvements Phase 2 Project have been eliminated or substantially lessened where feasible.

2. Any remaining significant effects on the environment found to be unavoidable are acceptable due to the factors described in the Statement of Overriding Considerations in Section V, above.