

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

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

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## Acronyms and Abbreviations

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

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

## Project Summary

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

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

## Environmental Review Process

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

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

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

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

- Noise
- Visual Resources

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

## California Environmental Quality Act Process

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

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

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

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

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

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

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

## California Environmental Quality Act Requirements

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

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

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

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

22 East Weber Avenue, Room 301  
Stockton, CA 95202

## Findings of Fact

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

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

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

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

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

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

#### Facts Supporting the Finding:

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

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

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

#### Facts Supporting the Finding:

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

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

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

Facts Supporting the Findings:

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

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

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

Facts Supporting the Findings:

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

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

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

Facts Supporting the Findings:

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

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

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

**Facts Supporting the Findings:**

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

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

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

**Facts Supporting the Findings:**

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

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

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

**Facts Supporting the Findings:**

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

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

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

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

#### Facts Supporting the Findings:

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

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

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

#### Facts Supporting the Findings:

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

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

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

#### Facts Supporting the Findings:

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

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

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

#### Facts Supporting the Findings:

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

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

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

#### Facts Supporting the Findings:

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

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

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

**Facts Supporting the Findings:**

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

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

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

**Facts Supporting the Findings:**

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

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

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

**Facts Supporting the Findings:**

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

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

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

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

#### Facts Supporting the Findings:

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

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

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

#### Facts Supporting the Findings:

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

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

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

#### Facts Supporting the Findings:

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

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

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

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

#### Facts Supporting the Findings:

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

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

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

#### Facts Supporting the Findings:

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

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

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

**Facts Supporting the Findings:**

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

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

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

**Facts Supporting the Findings:**

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

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

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

**Facts Supporting the Findings:**

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

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

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

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

Facts Supporting the Findings:

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

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

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

Facts Supporting the Findings:

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

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

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

Facts Supporting the Findings:

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

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

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

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

#### Facts Supporting the Findings:

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

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

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

#### Facts Supporting the Findings:

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

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

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

#### Facts Supporting the Findings:

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

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

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

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

#### Facts Supporting the Findings:

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

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

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

#### Facts Supporting the Findings:

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

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

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

#### Facts Supporting the Findings:

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

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

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

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

Facts Supporting the Findings:

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

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

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

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

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

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

Facts Supporting the Findings:

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

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

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

Facts Supporting the Findings:

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

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

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

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

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

#### Facts Supporting the Findings:

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

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

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

#### Facts Supporting the Findings:

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

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

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

## Significant Cumulative Impacts

### Visual Resources

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

Facts Supporting the Findings:

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

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

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

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

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

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

### No-Project Alternative

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

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

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

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

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

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

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

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

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

## Chapter 3

# Statement of Overriding Considerations

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## CEQA Requirements

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

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

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

## Overriding Considerations

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

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

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

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

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

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

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

## Reduce Risk of Harm to Life and Property

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

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

## Additional Objectives

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

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

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

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