LETTER I5

River Oaks Ranch in Natomas, LLC.

LaTisha Burnaugh

July 20, 2008

I5

July 20, 2008

U.S. Army Corps of Engineers, Sacramento District
Elizabeth Holland, Planning Division
1325 J Street, 10th Floor
Sacramento, Ca 95814-2922

Dear Ms. Holland,

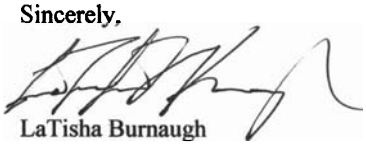
I would like to again express concern over the proposed Natomas Levee Improvement Program Landside Improvements Project. My business partner and I own and manage a business, River Oaks Ranch in Natomas, LLC., at 5190 Garden Highway. This proposed project will likely cause detrimental impacts to the operation of our business. We do not own the land on which we operate our business, however we operate a horse boarding facility and rent out residences on the property. The land that we lease is an essential element of our business and I do not believe that we would be able to relocate with success due to the unique elements of the property. From the drawings exhibited in the draft Environmental Impact Statement (DEIS) the proposed project will impact or remove four houses that we lease out to families, and severely affect our boarding facility. Even if the entire boarding facility and the residences are not directly impacted, horses and their owners generally don't appreciate construction activities and families don't seek out houses with noisy construction equipment directly in their backyards. We will likely have difficulties keeping clients and renters and finding new business. I5-1

The DEIS mentions that construction activities, such as pile driving may exceed acceptable limits. Noise such as this has the very real possibility of sending horses into a panic and causing severe injury to horses and handlers. The proposed project may jeopardize the safety and well being of our horses and clients. I5-2

The DEIS also only mentions that before construction activities begin residences within 500 feet of such activities shall be notified. Businesses and livestock facilities within this distance should also be notified. I5-3

According to drawings in the DEIS, levee work that would affect our business is proposed to occur in 2009. News of this potential project has already begun to negatively affect clients and potential clients. I would like to request that I be contacted to discuss how the project can proceed with minimal affects to our business and how you are willing to compensate us for these negative affects. Thank you for your time and attention in this matter. I5-4

Sincerely,



LaTisha Burnaugh
River Oaks Ranch in Natomas, LLC.
5190 Garden Highway
Sacramento, Ca 95837
(916) 641-1241

Letter I5 Response	River Oaks Ranch in Natomas, LLC. LaTisha Burnaugh July 20, 2008

I5-1 This is not a comment on the EIS. The land acquisition process provides the appropriate forum to address economic concerns, including the potential economic impact of the proposed project on Garden Highway property owners. Because this project is part of a larger multi-agency program of improvements to the Natomas Basin levee system, SAFCA must comply with the applicable state land acquisition procedures. The affected property owners would be compensated as required by law during the land acquisition process.

I5-2 Construction-related vibration effects are described in Impact 4.14-b and mitigation is identified to minimize these effects (pages 4-108 through 4-110 of the EIS). The impact analysis notes that pile driving is only anticipated to occur at Pumping Plant No. 2, which is located along the Sacramento River east levee in Reach 4B. This would be sufficiently distant from River Oaks Ranch such that vibration effects would be rendered less than significant.

I5-3 Mitigation Measure 4.14-a has been modified to include the notification of businesses within 500 feet of construction activity.

I5-4 This is not a comment on the EIS. USACE and SAFCA are committed to maintaining good communications with affected residents and business owners.

LETTER I6

Roland L. Candee

July 24, 2008

I6

July 24, 2008

U.S. Army Corps of Engineers, Sacramento District
ATTN: Ms. Liz Holland, Environmental Resources Branch
1325 J Street, 10th Floor
Sacramento, California 95814-2922

Subject: Comments on Draft EIS for the Natomas Levee Improvement Program (NLIP) Landside Improvements Project

Dear Ms. Holland,

My name is Roland L. Candee and I live on the Garden Highway in Sutter County. I object to the U.S. Army Corps of Engineers giving permission to SAFCA for the NLIP.

There appear to be deficiencies in the draft EIS along the same lines as pointed out in the comments from FEMA dated December 21, 2006, addressed to John Bassett at SAFCA, Comments to SAFCA's draft EIR on Local Funding Mechanisms for the project. Under the cited authorities in the FEMA comments, any development must not increase base flood elevation levels and must document that any development would not cause *any* rise in base flood elevation levels. My understanding is that the Corps of Engineers now propose to go along with SAFCA's determination that the level of rise in base flood elevation is not a real rise because the amount is de minimis. The data included in tables 4-3, 4-4, 4-5, 4-7, and 4-8 document measurable increases in flood elevations of up to plus 0.26 feet. And these figures don't appear to include any consideration of the approximately 15 afy that will be additional water kept in the river in Reaches 2 and 3 of the project (page 4-23, second full paragraph) through underseepage that will not get through the new levee or the amount of water that will be added to the river by 23 new drainage outfalls in the berm along the east bank of the Sacramento that would discharge water that previously flowed as surface water away from the river. These additional amounts of water would alter the existing risk of damage associated with living along the Sacramento River. It also is just obvious that raising the levee height shifts the flood risk away from the Natomas basin at the direct expense of those living along the Sacramento River.

I6-1

It is also improper to conclude that all views of the interior of the basin from the Sacramento river channel are blocked by the levee, waterside structures, and waterside trees. (Page 3-62, third full paragraph). Those of us who live on the river often have very nice views of the sunrises over the Sierra Nevada mountain range to the east of our homes. I6-2

It appears that the construction work may effectively make my home unlivable for long periods of time. While there are indications that SAFCA will try to minimize construction interference and continue to allow me and my neighbors to live in our homes, the sheer magnitude of the construction being undertaken raises significant concerns on the adequacy of the proposed mitigation efforts. I6-3

Under the circumstances, as a minimum, any permission or permits granted by the U.S. Army Corps of Engineers for the NLIP to proceed should require SAFCA to admit that the property of myself and my neighbors who live on the waterside of the current Garden Highway in areas where the levee is being raised is being inversely condemned and proceed as required by law. I6-4

Roland L. Candee
10411 Garden Highway
Sacramento, CA 95837

I6-1 See Responses to Comments L2-3 and L2-7. The referenced tables show that the proposed project would have no effect on water surface elevations greater than 0.02 foot (less than 0.25 inch) under any of the conditions evaluated. The 0.26 foot-increase identified in the comment would result from restoring the levee height on existing agricultural levees near the Natomas Basin where subsidence has occurred since the design profiles for the Sacramento River Flood Control Project were adopted in 1957. Even this increase is improbable because it would occur only if, under the most extreme flood conditions (500-year flood), no upstream levees failed despite being significantly overtopped by the resulting flood stages. The additional flows in the Sacramento River channel generated by installation of a cutoff wall in Reaches 2 and 3 and by diversion of runoff from Garden Highway into the river are so small relative to the flows in the river at flood stage that they cannot be measured with current modeling technology.

The EIS concludes, based on hydraulic modeling, that the proposed levee improvements would not measurably increase the water surface elevation in the Sacramento River channel (EIS, pages 4-9 through 4-19). The modeling shows that implementation of the proposed project would not cause the Sacramento River Flood Control Project operations to be altered; therefore, the principal risks of flood damage to existing Garden Highway residences would continue to be either inundation by the water surface elevations that are unchanged by the project or damage by the wind and wave run-up generated during these water surface elevations. In either event, the risk of damage is the same under the "with" and "without" project conditions. Moreover, if under the "without" project conditions, these wind and wave conditions were to fail the Garden Highway levee, some waterside residences could be engulfed by the resulting levee breach, while the rest of these residences would become uninhabitable after the Natomas Basin became fully inundated. Given the severity of the storm that would be required to create these conditions, this inundation would likely last for several weeks, if not months. Interior roadways would be unusable and the landside of the Garden Highway would likely be destabilized by ponded water and wind and wave action. Portions of the roadway would slough away and the entire road would become impassable, leaving Garden Highway residents with no land-based access to their homes. These conditions would be alleviated by the project because the levee height added to the Sacramento River east levee would prevent a potential wind- and wave-induced levee failure. Thus, the alternatives analyzed in the EIS would not expose the commenter or the commenter's property to a significant risk of flooding.

I6-2 Comment noted. The EIS has been revised to state that views of the interior basin from the Sacramento River are "dominated" rather than "blocked" by the levee, waterside structures, and waterside trees (EIS, page 3-62).

I6-3 SAFCA has committed to provide temporary relocation of Garden Highway residents for whom construction-related effects are so severe that their residences are rendered unlivable during construction. See Appendix G for the settlement agreement reached between SAFCA and the Garden Highway Community Association. This agreement covers all Sacramento River phases of the project and applies to all affected Garden Highway residents.

The commenter does not raise any specific comments related to the "concerns on the adequacy of the proposed mitigation efforts." Mitigation measures are described throughout the EIS and will be implemented by USACE and SAFCA, as appropriate, to minimize potential construction-related impacts to the extent feasible.

I6-4 The EIS analyzes the construction-related impacts of Alternatives 1, 2 and 3 (see EIS, pages 4-101 through 4-113 [construction noise and vibration], 4-76 through 4-85 [construction traffic], and 4-85 through 4-101 [construction air emissions]). The EIS identifies mitigation measures to reduce these impacts. The proposed project's construction impacts cannot be reduced to a less-than-significant level, but these impacts will be temporary in any one location, and would not give rise to a claim for inverse condemnation. (See e.g., *Orpheum Building Company v. San Francisco Bay Area Rapid Transit District* (1978) 80 Cal.App.3d 863, 871.)

LETTER I7

Barbara Walker

July 26, 2008

17

From: Barbarawalkeresq@aol.com [mailto:Barbarawalkeresq@aol.com]
Sent: Saturday, July 26, 2008 2:24 PM
To: Holland, Elizabeth G SPK
Subject: Natomas Levee Improvement Program

Ms. Holland,

Please find attached my comments.

Thank you,

Barbara Walker
10215 Garden Highway
Sacramento, CA 95837

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COMMENTS TO CORPS OF ENGINEERS

I have some concerns regarding the construction of the adjacent levee and the effect it will have on my home located at 10215 Garden Highway, Sacramento, CA. I am in the first phase of construction so essentially the first to feel any adverse effects of the construction phase and later effects of a higher levee.

I have a particular, unique concern regarding subsequent flooding to my home after this new levees is constructed which will be 3 feet higher than the existing levee. Most homes along the Garden Highway are constructed so that the living area is below the existing levee. That is not the case with my home. It is constructed so that the living area is approximately 1 foot above the existing levee. Therefore, currently if a flood reaches the top of the levee my home would not be flooded. However, with the height of the new levee my home potentially would be flooded because of the higher water that could pass through the river. Thus, I have been uniquely, potentially damaged because of this higher levee and may need to be appropriately compensated in the future. I7-1

I have other concerns that affect my home and my neighbors. I am concerned about the noise level, the dirt level and the vibration for the following reasons:

Noise level. The noise level will have caused me to have lost my peace and quiet that I have enjoyed in this rural setting. It could become so noisy that I would have to relocate during the construction. Since the construction is during the summer months this will cause me to have higher air conditioning bills because I will not be able to open my windows. I should be compensated for any increase in utility bills. I7-2

Dirt level. The dirt level in and around my house will cause me to not open my windows; therefore, higher electric bills. Currently I do not use my air conditioning unless the temperature gets over 100 degrees. The delta Breezes that flow through my home will be lost. Further, I will most likely experience additional dirt inside requiring more cleaning As a result I believe my house should be professionally cleaned inside and out after completion of construction. I7-3

Vibration. I am concerned about what the vibration will do to the structure of my house as well as the septic tank and the well. I7-4

I know that this levee needs to be fixed but I hope that the comments I have made will be considered. Thank you.

I7-1 As noted in Responses to Comments L2-3, L2-7 and I6-1, the proposed project would not measurably alter water surface elevations in the Sacramento River channel. The increased levee height is needed to contain high wind and wave effects in the most severe flood events. These effects would the same with and without the project. The increased height of the levee would serve to reduce the risk that the Sacramento River east levee might fail under these conditions. Waterside residents would have the same exposure to battering by high winds and waves with and without the project; however, these residents would have a greater risk of additional collateral damages should these conditions lead to a failure of the Sacramento River east levee. The resulting pond of water formed by inundation of the Natomas Basin would destabilize the levee from the land side, making the Garden Highway impassable for several weeks or months pending evacuation of the flood water and reconstruction of the roadway. During this period, homes on the waterside would be inaccessible except by boat. Therefore, increasing the height of the levee to avoid failure caused by high wind and wave conditions would be a benefit to waterside residents.

I7-2 As discussed in Impact 4.14-a, construction noise could exceed local guidelines under some construction scenarios. Whether such exceedences would result in compensable damage to property owners under applicable legal principles would depend on numerous factors beyond the scope of the EIS. SAFCA has committed to performing pre- and postproject inspections of homes near the construction zone to determine whether the project has caused any measurable physical damage to these homes (see Mitigation Measure 4.14-b). Also, see Response to Comment I6-3.

I7-3 As discussed in Impact 4.13-a, construction-related emissions, though temporary, could expose sensitive receptors to substantial pollutant concentrations and could contribute to a violation of an air quality standard. This would be a significant impact, despite mitigation. Whether such concentrations would result in compensable damage to property owners under applicable legal principles would depend on numerous factors beyond the scope of the EIS. Also, see Response to Comment I6-3.

I7-4 Construction-related vibration effects are described in Impact 4.14-b and mitigation is identified to minimize these effects (pages 4-108 through 4-110 of the EIS).

LETTER I8

Brian Fahey and Lauren Kondo

July 27, 2008

I8

Brian Fahey D.D,.S. and Lauren Kondo D.D.S
10461 Garden Hwy
Sacramento CA. 95837

To: Army Core of Engineers and Safca

We are writing this letter in order for the Army Core of Engineers and Safca to consider our input while contemplating the final (EIS) for the NLIP Landside Improvement Project.

We purchased our house about ten years ago, after looking for a piece of property on Garden Highway for more than eight years. A major consideration in our purchase of our house was a structure that had a low chance of flooding. Our house that we settled on is approximately one foot above the top of the Sacramento side levee. Our house could not flood, the water would go over the top of the levee in front of our house. We paid a premium for our house because of this.

After reviewing the draft EIS I believe you will be raising the levee approximately two and a half to three feet in front of our house If the EIS is carried out in its present form our house will have the ability to flood. It has been brought to our attention the Yolo County levee is supposedly at least a foot or two lower than the Sacramento side levee. Theoretically, during rising water levels the water will simply spill over the Yolo County levee, rendering the Sacramento side safe. This may be true today, however I do not think it is far-fetched to assume someday that the citizens on the other side of the levee will want to better protect their side and will raise and fortify their levees. Since we plan to live in our house for at least the next thirty years, Yolo County may well decide to raise their levees while we occupy our house.

What if anything will the Arny Core of Engineers and Safca do in order to minimize the risk of my house flooding? I plan to raise the foundation of my house so that once again it will be above the new proposed levee. Will the Army Core of Engineers and Safca assist us?

If the Army Core of Engineers and Safca does not assist me in raising the foundation of my house will I be compensated for the loss in value to my property? We percieved the value in a house that could not flood because it was above the levee, I am sure plenty of other people recognize that value also. When it becomes time to sell our house and people drive by to look at it, they can easily recognize the height of the Sacramento side levee in relation to the height of our house. From the Sacramento side levee to our house is approximately ninety feet. It is much harder for these people to recognize that the levee on the Yolo County side is a foot or two lower than the Sacramento side levee . The Yolo County levee is probably more than one thousand feet away. I8-1

Like many other people in the Sacramento area we pay flood insurance. Since flood insurance is based upon risk, I assume that a house that is below the crown of the levee is more at risk than one that is above. In the future we most likely will be paying higher flood insuance rates.

These are two large apparent costs we will assume. There are other costs or inconveniences that will be forced upon us, such as dirt and noise from the construction and a diminished view from a higher levee. Many other cost will not be realized by us until after the levee is raised.

We recognize the need for more flood protection in the Sacramento area. We applaud your endevours to meet these needs. However, we do feel that this should not come at a cost to ourselves and our property. Our house was built beyond the code for the height requirements at the time it was constructed. We simply want to maintain this level of safety for our house. We hope that our concerns will be considered during your review of the EIS for the NLIP Landside Improvements Program. We await your consideration of our concerns.

Sincerely,

Brian Fahey D.D.S.
Lauren Kondo D.D.S.

I8-1 See Responses to Comments L2-3, L2-7, I6-1, and I7-1.

LETTER I9

Melvin Borgman

July 28, 2008

MELVIN BORGMAN
3559 Howsley Road
Pleasant Grove, CA 95668

I9

July 28, 2008

U.S Army Corps of Engineers, Sacramento District
Attention: Ms. Liz Holland, Environmental Resource Branch
1325 J Street, 10th Floor
Sacramento, CA 95814-2922
(Elizabeth.g.holland@usace.army.mil)

Ladies and Gentlemen:

I am a resident of the Pleasant Grove area of South Sutter County, upstream of the Natomas Cross Canal and Pleasant Grove Creek cutoff canal. During periods of heavy runoff and high water, the drainage in this area is impeded by the high water elevation in the Sacrament River at Verona. Little or nothing has been done over the years to mitigate the effects of "improvements" made to the river system, which have caused a dramatic increase in water elevation in the system. This increase in water elevation in the river has contributed to significant flooding in upland areas such as Pleasant Grove, which historically did not suffer significant flooding prior to reclamation projects.

No project that might increase river elevation even "insignificantly" should be approved. Only projects that increase flow capacity and significantly reduce river elevations should be approved.

- Move levees back from channel to increase width of river and increase in river retention capacity.
- Remove debris from channel areas.
- Remove levees from "islands" in the Delta area and cleanout/open East Bay estuaries.
- Curtail discharge of water into the river system by reclamation and drainage districts and municipal entities during periods of high water.

I9-1

A significant amount of funds for the proposed project are from general funds and general obligation bond funds. Therefore, no project should be approved that does not provide significant benefit throughout the entire region.

Respectfully submitted,

Melvin Borgman
3559 Howsley Road
Pleasant Grove, CA 95668

I9-1 See Responses to Comments L2-3, L2-7, I6-1, and I7-1.

LETTER I10

Brookfield California Land Holdings

John W. Norman

July 28, 2008

I10

Brookfield California Land Holdings

July 28, 2008

Elizabeth Holland
USACE Sacramento District
Planning Division
1325 J Street, Sacramento, CA 95814
Elizabeth.g.holland@usace.army.mil

RE: Comments on:

Draft Environmental Impact Statement
408 Permission and 404 Permit to SAFCA for the Natomas Levee Improvement Project (NLIP)
Sacramento, CA
June 2008

Dear Elizabeth;

As an affected stakeholder that represents ownerships who control over 2,600 acres within the Natomas basin we offer the following discussion as relates to the NLIP project proposed by the Sacramento Area Flood Control Agency (SAFCA).

We have reviewed the document and are in agreement with the objectives, and need for the proposed project improvements as described. However, in the alternatives analysis, there are several statements which conflict with privately funded studies and research which has been performed subsequent to the referenced analysis.

We concur that the perimeter levees should be the preferred alternative, but certain assumptions, and/or statements regarding interior levee systems should be modified to allow the possibility of future additional flood protection measures. These interior levees could represent a departure from the "all or nothing" protection currently employed in the case of possible breach of the main levees. We feel it is imperative to fortify the main levees while looking for ways to reduce residual risk to life, property, and habitat areas.

Page ES-6 under the paragraph highlighted *"The **Reduced Natomas Urban Levee Perimeter**"*

"The study concluded that a levee constructed across the Natomas Basin would cause floodwaters to be considerably deeper than they would be without the cross levee, and that either flowage easements would need to be acquired on all lands in the basin north of the cross levee or a weir and pumping facilities would need to be constructed to facilitate evacuation of floodwaters from this area".

I10-1

2271 Lava Ridge Court, Suite 220, Roseville, CA 95661
916-783-1177 Fax: 916-783-1161

Research and analysis of conceptual Natomas basin interior compartmentalization levees, including the cross levee mentioned here, was performed from 2003 to 2007, using private funding. The analysis demonstrated that increases in ultimate equilibrium flooding depths were not likely from a single breach source anywhere in the perimeter levees, but rather that the time to fill to a specific depth may be reduced resulting from the reduction in the flooding compartment size. It was further demonstrated that all properties would benefit from a residual risk reduction, including properties north of the levee (from a southern breach scenario). The residual risk analysis demonstrated these results for both the current flood protection level of the basin, and the proposed post NLIP conditions.

I10-1 Cont'd

"Cost is a major factor in the rejection of this alternative"

As part of the analysis of the interior compartmentalization levees, a financing plan was developed which demonstrated that private financing of the system might be feasible if right of way dedications were made as part of future planning/land use entitlement efforts.

I10-2

Page 2-2:

"The new levee would make it unnecessary to proceed with approximately 15 miles of ..."

The interior compartmentalization levee analysis indicates that it could potentially be more successful at mitigating residual flood risk when incorporated into a larger plan that also repairs the full perimeter levees to some minimal level of protection such as the 100-year storm event.

I10-3

Paragraphs starting *" USACE previously analyzed..."*

See previous comments.

I10-4

"It would divide RD 1000 and disrupt several portions of the Natomas Basin irrigation and drainage system (and the associated wildlife dispersal corridors) and require reconfiguration of these systems."

Analysis of these systems was performed, and it was determined these impacts can be adequately mitigated with additional improvements (ie gate structures constructed where RD1000 facilities intersect the interior levee). In fact, the portions of RD 1000, and Natomas Central Mutual Water Co facilities (pumps, ditches, and canals) that would be protected by an interior levee could be an essential component in recovery for the side affected by a breach.

I10-5

2271 Lava Ridge Court, Suite 220, Roseville, CA 95661
916-783-1177 Fax: 916-783-1161

"It would present significant barriers to achievement of the goals of the Natomas Basin Habitat Conservation Plan (NBHCP) and, therefore, compliance with the Federal Endangered Species Act (ESA) and the California Endangered Species Act (CESA) by bifurcating lands subject to the NBHCP and creating a substantial hindrance to the movement of giant garter snakes within the basin by severing a major dispersion corridor east of the Airport."

I10-6

As pointed out above the existing water transport canals could remain in place thus providing the hydrologic connectivity for GGS. Also, there may be benefits to locating the cross levee adjacent to the conservation lands, to protect the conservation lands from human and predator intrusion. Lastly, if a breach of the main levees occurs, then a secondary (compartmentalized) levee system would provide safe harbor for the unaffected side of the interior levee system thus saving significant portions of the habitat areas.

We understand how the previous analysis came to the conclusions it did about a Natomas Cross levee, in that if it were done without northern basin perimeter levee repairs, there would be a potential for impacts that would be difficult and expensive to mitigate. We are concerned that some of the data used to make those determinations may be outdated, and additional levels of protection may be achieved with further analysis. We ask that the final EIS distinguish between the cross levee alternative studied by USACE in 1991, and a potential future cross levee which could be constructed after the perimeter levees are improved.

I10-7

We appreciate your consideration of these comments, and reiterate our support of the efforts made by SAFCA, USACE, and the local jurisdictions to address the very serious concerns of flood protection in the Natomas basin. Futhermore, we support the conclusions of the study, but ask for modification of certain statements which could dissuade examination of new methods which could increase protection, and reduce risk.

Sincerely,

John W. Norman
COO, Northern Calif.

C: Gonzalo Rodriguez
Karen Diepenbrock
Tom Plummer
Alan Vail

2271 Lava Ridge Court, Suite 220, Roseville, CA 95661
916-783-1177 Fax: 916-783-1161

I10-1 The EIS references a prior analysis performed by USACE as part of the ARWI Feasibility Study (1991). The analysis concluded that the cross levee would be significantly more costly to construct and would result in greater environmental impacts than the perimeter levee protection alternative.

I10-2 The estimated cost of the cross levee presented in the EIS assumes land acquisition and construction by the government. Whether land could be acquired and the cross levee constructed more cheaply by private interests under various hypothetical land development scenarios is beyond the scope of the analysis in the EIS.

I10-3 See Responses to Comments I10-1 and I10-2.

I10-4 See Responses to Comments I10-1 and I10-2.

I10-5 The EIS merely identifies the potential impacts of the cross levee alternative on the operation and maintenance of the Natomas Basin's existing interior irrigation and drainage systems and on the emerging Natomas Basin Conservancy lands that depend on this irrigation and drainage system. Because this alternative was not carried forward for detailed analysis, the EIS makes no determination as to the cost or feasibility of mitigating these potential impacts.

I10-6 The comment is unclear. See Responses to Comments I10-1, I10-2, and I10-5. Also, see Section 2.1.1.2, "Reduced Natomas Urban Levee Perimeter," in the EIS. A cross levee cannot be constructed in the Natomas Basin without disrupting the existing local drainage and irrigation facilities (shown in Plate 10 in the EIS). Such a disruption would potentially result in adverse effects to aquatic species movement due to the barrier that a cross levee would create across the basin.

I10-7 The EIS to indicates that it does not make sense to carry the cross levee alternative forward for further detailed analysis in this EIS; whether or not this alternative is considered to replace improvements included in the proposed project or to augment these improvements in the future. Consideration of a potential future cross levee is beyond the scope of the analysis in this EIS.

LETTER I11

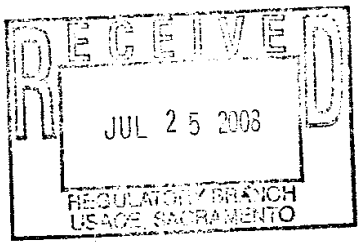
Garden Highway Community Association

Doug Cummings, President

July 24, 2008

I11

Garden Highway Community Association
1500 W. El Camino Ave., #640
Sacramento, CA 95833



July 24, 2008

Kathleen A. Dadey, Project Manager
Elizabeth Holland, Planning Division
U.S. Army Corps of Engineers (Corps)
1325 J Street Room 1480
Sacramento, CA

RE: Comments on Environmental Impact Study
Natomas Levee Improvement Program – Landside Improvement Project
SAFCA's Request for 408 Permission and 404 Permit

Dear Corps of Engineers:

Garden Highway Community Association is a community association whose membership includes all waterside and landside property owners along the Garden Highway in the area addressed in SAFCA's Natomas Levee Improvement Program. We list below our comments and concerns regarding the Draft Environmental Impact Study (DEIS) issued by the Corps pertaining to SAFCA's NLIP. Unless stated otherwise, these comments apply to all three alternative proposals discussed in the DEIS

I. LETTER TO SAFCA DATED NOVEMBER 27, 2007 FROM KENYON/YEATES ATTORNEYS REPRESENTING GARDEN HIGHWAY COMMUNITY ASSOCIATION

Attached is a letter dated November 27, 2007, addressed to Heather Fargo, as Chair of the Board of Directors of the Sacramento Area Flood Control Agency (SAFCA). We adopt the comments in this letter in full as comments to the Corps DEIS. The exhibits to this letter are not included since this letter with exhibits was submitted to the Corps during the initial scoping phase of this process. We have reviewed the Draft EIS prepared by the Corps and have found that the Corps has not adequately addressed the issues (comments) contained in this letter. Accordingly, we renew our comments contained in this letter as to the Draft EIS. I11-1

II. LETTER TO THE STATE RECLAMATION BOARD DATED DECEMBER 19, 2007 FROM KENYON/YEATES ATTORNEYS REPRESENTING GARDEN HIGHWAY COMMUNITY ASSOCIATION I11-2

Attached is a letter dated December 19, 2007, addressed to Benjamin Carter, as President of the

Reclamation Board. We adopt the comments in this letter in full as comments to the Corps DEIS. The exhibits to this letter are not included since this letter with exhibits was submitted to the Corps during the initial scoping phase of this process. We have reviewed the Draft EIS prepared by the Corps and have found that the Corps has not adequately addressed the issues (comments) contained in this letter. Accordingly, we renew our comments contained in this letter as to the Draft EIS. I11-2 Cont'd

III. LETTER FROM THE U.S. FISH & WILDLIFE SERVICE AND THE CALIFORNIA DEPARTMENT OF FISH AND GAME TO JOHN BASSETT OF SAFCA REGARDING COMMENTS ON SAFCA'S DEIR ON THE NLIP- LIP

Attached is a letter from the U.S. Fish & Wildlife Service and the California Department of Fish and Game to SAFCA containing comments on SAFCA's DEIR. We have read this letter and fully adopt the comments in this letter as our comments to the Corps Draft EIS. We have read the Corps Draft EIS and maintain that the Draft EIS does not adequately address the concerns stated in this letter. I11-3

IV. LETTER FROM KRONICK MOSKOVITZ TIEDEMANN & GIRARD (KRONICK) REPRESENTING RECLAMATION DISTRICT 2035 ADDRESSED TO JOHN BASSETT OF SAFCA DATED OCTOBER 29, 2007.

Attached is a letter from the Kronick law firm representing Reclamation District 2035. We have read this letter and fully adopt the comments in this letter as our comments to the Corps Draft EIS. We have read the Corps Draft EIS and maintain that the Draft EIS does not adequately address the concerns stated in this letter. I11-4

V. ALTERNATIVE TO SAFCA'S PROPOSED PLAN – A REGIONAL SOLUTION RATHER THAN A PIECEMEAL SOLUTION

Although presented through thousands of pages of justification, SAFCA's plan for NLIP condenses down to the placement of additional dirt on a very small section (26 miles out of 1200 miles of levees) of the Sacramento River levee. SAFCA's plan does not genuinely consider the effects of this piecemeal design on the other 1175 miles of Sacramento levees, does not consider the future effects of global warming, and does not address a catastrophic flood scenario. Simply put, more dirt added randomly to a levee system has never stopped a raging river from escaping its channel. Moreover, there is no assurance that the present NLIP plan will fit into the American River Common Features Project – once that project, hopefully a true regional proposal, becomes reality. I11-5

Instead of SAFCA's proposed plan, a regional plan must be implemented that allows a catastrophic water volume to dissipate over a wide area. The better thinking as to the regional plan for the Sacramento River focuses on the use of bypass areas to dissipate a "Katrina" type "avalanche"of water. Specifically, the intelligent solution for the Natomas Basin and greater

Sacramento flooding problem is the reworking and implementation of the Fremont Weir and the Sacramento Weir and their corresponding bypass areas. This solution has been studied by SAFCA in a 2003 study but was dismissed as being too time consuming to implement. This solution has been briefly mentioned and also dismissed in the Draft EIS as being too expensive. We challenge those conclusions. We think it unreasonable to approve an inadequate solution to the potential flooding – just because it is attainable more quickly than a viable solution. The Draft EIS is woefully inadequate in that it did not take a serious look at the Fremont and Sacramento Weir solutions to Natomas Basin flooding concerns.

I11-5 Cont'd

The DEIS is also woefully inadequate because it did not adequately address a regional solution to the Sacramento flooding concerns. Specifically, the Draft EIS did not adequately address the impacts of SAFCA's proposed project on the peoples, properties, wildlife, etc. protected by the remaining approximately 1175 miles of Sacramento levees that will not be dealt with by SAFCA's approximately 26 mile project.

VI. NEGATIVE EFFECTS ON FISH, WILDLIFE, AND VEGETATION

The attached letter from the U.S. Fish & Wildlife/California Department of Fish & Game addressed some of the animals and vegetation that will be negatively affected by the project. We are concerned about the effects on **all** fish, wildlife, and vegetation found in the areas of the project. Accordingly, we list these fish, wildlife, and vegetation species that need to be considered in a thorough EIS..

1. Valley Elderberry Longhorn Beetle
2. Giant Garter Snake
3. Northwestern Pond Turtle
4. Swainsons' Hawk
5. Burrowing Owl
6. Cooper's Hawk
7. White-tailed Kite
8. Northern Harriers
9. Loggerhead Shrikes
10. White-faced Ibis
11. Blue Heron
12. Great Egret
13. California Linderiella
14. Vernal Pool Tadpole Shrimp
15. Midvalley Fairy Shrimp
16. Vernal Pool Fair Shrimp
17. Great Horned Owl
18. Barn Owl
19. Wood Duck
20. California Tiger Salamander

I11-6

21. Western Spadefoot
22. Oak Trees (all species found in area); special note Heritage Oak Protection Ordinances
23. Rose Mallow
24. Delta Tule Pea
25.Sanford's Arrowhead
26. Central Valley Chinook Salmon
27. Central Valley Steelhead
28. Green Sturgeon
29. Sacramento Splittail
30. Hardhead

For all of the above species we object to the relatively minimal analysis as to the presence of the species in the proposed project area – as well as the lack of information as to the locations of these species within the project areas. We object to the failure to properly analyze the direct effect on these species resulting from the construction of the project. We also object to the failure to properly analyze the effect of the finished project on these species. This latter effect includes destruction of nesting sites (birds), destruction of foraging sites (all animals), destruction of food supplies (all animals) and destruction of protective habitat (plants and animals). We object to the relocation proposals (e.g., Northwestern Pond Turtles) and to the creation of artificial corridors for certain species (e.g., giant garter snake.) These practices, while appearing satisfactory on paper, have been shown to be ineffective at best. I11-6 Cont'd

The Draft EIR concludes that the project's proposed destruction of a great number of large/old oak trees (Heritage Oaks, in many cases) along the land side of the existing levee is a significant impact without any meaningful mitigation measure. We ask that the Corps require that these trees be saved – as a condition to any permit or permission given to SAFCA. As well, the proposed mitigation measures for the loss of shaded riverine aquatic (SRA) habitat are inadequate. The lost SRA habitat cannot be instantly created as implied in the Draft EIR. Restoration, if it ever occurs, will take decades – causing decades of SRA habitat loss.

VII. EFFECTS OF PROJECT ON GARDEN HIGHWAY RESIDENTS AND LANDOWNERS

The Draft EIS provides minimal analysis of the effects of the proposed projects on the homeowners and landowners on each side of the Garden Highway. The EIS does recognize that certain impacts to Garden Highway residents are significant, but labels them unavoidable – to "be minimized to the extent feasible." (ES - 11.) These impacts include significant increases in traffic on local roadways in Sutter County, significant air quality impacts, significant noise impacts – resulting from the construction. I11-7

The Draft EIS also concludes that "the expansive footprint of the project would result in the conversion of a significant amount of important farmland to non-agricultural use." (ES-11.)

The Draft EIS concludes that the "removal of a large number of mature trees (many are protected

oak trees) from the land side of the Sacramento River east levee would result in an unavoidable significant impact on visual resources." (ES-11.)

Rather than concluding that these impacts are unavoidable, the correct conclusion – for these reasons and for many other reasons – is that permission and permits should be denied in favor of a different alternative that avoids these significant impacts. The Fremont Weir and Sacramento Weir modifications and bypass modifications alternative would avoid these impacts altogether.

The Draft EIS concludes that the hydraulic effects and exposure to flood risk to peoples and properties for the three alternatives is minimal. This conclusion was made without considering the effects of global warming and without considering the effects of inevitable additional construction and changes along the Sacramento River (including other levee modifications)

The Draft EIS lists a number of areas of comment/concern received during the scoping phase which were not discussed in the Draft EIS. These include the effects of the cutoff wall construction on Garden Highway groundwater supplies, relocation of Garden Highway power poles, and adequate compensation for landowners. (ES-12.) We object to the failure of the Draft EIS to consider these concerns. The proposed cutoff wall is designed to prevent underseepage of water from the waterside of the levee to the landside. Obviously, this wall will stop ground water movement as well. In many cases, the depth of domestic water wells serving the Garden Highway residents is less than the depth of the proposed cutoff wall. Water quantity as well as water quality will be affected. The relocation of the power poles can create a negative visual effect. This, along with the removal of the mature oak trees on the land side, will have a cumulative negative impact on the Garden Highway. This negative impact will not only affect the residents along the Garden Highway, it will also impact the thousands of visitors that travel along the Sacramento River, i.e., the Garden Highway – a natural scenic asset of Sacramento. (The Garden Highway has been declared a "Designated Scenic Route".)

I11-7
Cont'd

The subjection of landowners in the project area to the negative impacts associated with the proposed project is an inverse condemnation of the properties. This taking of landowner assets by SAFCA for the benefit of the residents of the Natomas Basin requires appropriate compensation for the landowners.

Therefore, based upon all of the above, we do hereby object to the approval of the projects entitled Natomas Levee Improvement Program as sponsored by the Sacramento Area Flood Control Association (SAFCA). We specifically object to the issuance of 408 permission and 404 permit issuance to SAFCA for phase I work.

Sincerely

GARDEN HIGHWAY COMMUNITY ASSOCIATION

By: _____ Doug Cummings, President

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November 27, 2007

Heather Fargo, Chair
Members of the Board of Directors
Sacramento Area Flood Control Agency
1007 7th Street, 7th Floor
Sacramento, CA 95814-3407

ATTN: John A. Bassett **(HAND DELIVERED (11-27-07)**

Re: *Natomas Levee Improvement Program – Landside Improvements Project*

Dear Chair Fargo and Members of the Board of Directors of SAFCA:

I am writing on behalf of our client the Garden Highway Community Association, which is made up of landowners who reside or own property on either side of the proposed east side levee improvements along the Sacramento River. The environmental consequences of the proposed east side levee improvements were the subject of an environmental impact report ("EIR") prepared for the Natomas Levee Improvement Program – Landside Improvements Project (SCH #2007062016). On behalf of our client Association and its members, we have the following comments on SAFCA's environmental review of the Landside Improvements Project ("NLIP").

Determining the Significance of Hydraulic Impacts

The residents who live on the riverside of the east side levee uniformly are concerned about the effect the levee raising will have on their residences. As pointed out by SAFCA in the certified EIR entitled Local Funding Mechanisms for Comprehensive Flood Control Improvements for the Sacramento Area, "These improvements would reduce the risk of overtopping and failure of these levees, thereby causing more water to be retained in the channels under extreme flood conditions."[1] Therefore, these residents ask if the increased height of and improvements to the levees will retain more floodwaters within the flooded river channel defined by the levees to the east and west, how can increasing the height of and improvements to the east levee not increase the opportunity for their homes to be flooded during a major flood event? I11-8

Not surprisingly these residents have pointed out in their comments on SAFCA's project, based on their personal experience living along the Sacramento River, that more flow coming down the

[1] Local Funding Mechanisms Program EIR Vol. 1, SAFCA (EDAW, Nov. 2006), § 4.4, p. 4.4-8. (Attached as Exhibit A)

Sacramento River and contained within the higher levees will expose their residences to a substantial risk of being flooded, increase the height of the water when their residences are flooded, and increase the time their residences are flooded. This substantial risk or change in the existing situation is a significant adverse change in the existing environment that should have been addressed in SAFCA's EIR. I11-8 Cont'd

UNET Hydraulic Computer Model Simulation

In order to determine whether the proposed project would expose people or structures to a significant risk of loss, injury, or death caused by flooding, SAFCA's engineering consultant, MBK Engineers, used a UNET hydraulic computer model to compare the existing conditions in the waterways surrounding the Natomas Basin and in the larger Sacramento River Flood Control Project ("SRFCP").

Based on this computer simulation, despite the fact that the stated purpose for the raising the levee is to cause more water to be retained on the riverside of the levee system, SAFCA's consultant's computer model has determined that "the risk of damage is the same under the 'with' and 'without' project conditions."[2] Based on this conclusion, at least one local Garden Highway resident questioned the need for the increased height in the levee if there was absolutely no change in the river "with" or "without" the project.[3] This commenter also questioned the variables that were put into SAFCA's computer model.[4] I11-9

Understandably, longtime residents along the Garden Highway are a bit skeptical of this computer simulation. One resident pointed out to me that when the gate blew out at Folsom Dam in July 1995, releasing a substantial amount of American River water into the lower American River channel, this increased flow from the American River backed up the Sacramento River. During this brief period, there was a recognizable 3.5 feet of rise –Sacramento River level went from 16.3 ft to 19.8 ft at Verona in a matter of hours with the 40,000 cfs flow increase on the American River resulting from the failed gate.

Lack of Information in the EIR about the Assumptions Used in the Computer Simulation

The hydraulic analysis in SAFCA's computer simulation is a bit of a black box. Based on the terse description of the model in the EIR, the public has very little information about the assumptions or variables that went into the computer model. The explanations provided at page 3.4-6 and Appendix B of the DEIR provide very limited information about the scope of the hydraulic simulation program and the assumptions that were built into the program. In order to understand the Sacramento UNET hydraulic simulation model, it appears the lay reader would have to review the U.S. Army Corps of Engineers (Corps) Sacramento-San Joaquin River Basins Comprehensive Study referenced in the EIR.[5] In a recent decision, the California Supreme Court I11-10

[2] NLIP Landside Improvements Project FEIR, SAFCA (EDAW Nov. 2007) p. 2-7.
[3] NLIP Landside Improvements Project FEIR, p. 3-135.
[4] *id.* at pp. 134-135.
[5] NLIP Landside Improvements DEIR, § 3.4.1.3, p. 3.4-2.

was very critical of a lead agency that simply referenced prior studies but failed to provide the information in the EIR:

> The data in an EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project. Information scattered here and there in an EIR appendices' or a report buried in an appendix is not a substitute for a good faith reasoned analysis.[6]

I11-10
Cont'd

SAFCA's EIR fails to adequately inform the public about the assumptions that went into the hydraulic simulation. The interested and affected public has no option but to accept SAFCA's conclusion.

Certain Assumptions Used In The UNET Modeling Differ Between Two Analyses

The DEIR points out that 90% of the flood flows approaching Sacramento from the north and the east come from the Feather and American Rivers.[7] The brief summary of the Hydraulic Impacts Analysis at Appendix B of the DEIR does describe the peak flows in the Sacramento River downstream of the Natomas Cross Canal in the 100-year and 200-year simulations, but that is all.[8] There is no discussion about what flows are coming out of the American River in the 100-year and 200-year simulations. As pointed out above, these residents know that the American River can influence the height of the Sacramento River above the confluence of these two great rivers.

The Draft Floodway Management Plan, which can be found on SAFCA's website at the following link (http://www.safca.org/collaboration/DraftFMP.htm), does a slightly better job of explaining Sacramento UNET hydraulic simulation model:

I11-11

> The base computer model used for the urban design standard analysis is a UNET model, initially developed by the Corps for the Sacramento and San Joaquin Rivers Comprehensive Study and subsequently updated and recalibrated by MBK Engineers using information from the January 1997 flood event (MBK Engineers 2003). The model includes the Sacramento River from Collinsville (River Mile [RM] 0) to Woodson Bridge (RM 218), the lower reaches of major tributaries, and the Sutter and Yolo Bypasses. The water surface elevations produced by the model are the basis for determining appropriate levee heights capable of meeting the urban design standard.
>
> The urban standard flood elevations for the Sacramento region were produced based on the following key assumptions:

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[6] *Vineyard Area Citizen, etc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442.
[7] NLIP Landside Improvements DEIR, SAFCA (EDAW Sept. 2007), § 3.4.2, p. 3.4-4.
[8] NLIP Landside Improvements DEIR, Appendix B, p. 2.

- 200-year flood event with Folsom Dam Modifications in place, and limiting reservoir releases to the lower American River to 160,000 cfs flow (the 1986 flood peaked at approximately 138,000 cfs);
- Upstream levees that do not meet the 1957 design profile are assumed to be improved to meet that standard, thereby containing and passing peak flows downstream; and
- Upstream levees that may overtop during future high flows predicted by the model **do not breach** (overtopped levees often cause levee breaches which quickly erode and widen the opening by several hundred feet. Compared to overtopping flow, a levee breach greatly increases the amount of river flow leaving the channel and entering the adjacent floodplain. Therefore, breached levees inadvertently lessen flood risk downstream of the breach.).

These conservative modeling assumptions have been agreed to in principle by the staff of SAFCA, the City of Sacramento, and the City of West Sacramento. While the same base model is also used to analyze cumulative effects of floodway encroachments, described below under "Guidelines for Hydraulic Analysis and Monitoring," certain assumptions used in the modeling differ between the two analyses. In particular, the modeling for the urban design standard assumes that modifications to Folsom Dam that are currently underway or planned are in place. The modeling for the cumulative encroachments in the Forum's river corridor and SRMP reach conservatively assumes that the modifications to Folsom Dam are not in place. The reason for this difference is that the urban design standard requires a reasonable numeric result that will guide the design of future, long-term levee improvement projects, while the cumulative encroachments analysis was intended to conservatively estimate the sensitivity of flow in the floodway to hypothetical future encroachments (e.g., more marinas, bridges, private docks, shoreline vegetation, and river access structures, etc.).

I11-11
Cont'd

Since a system wide standard for a higher level of flood protection (e.g., urban design standard) does not yet exist, an analysis of system wide impacts is necessary for local projects. Ultimately, the FMP's urban design standard should be based on a peer-reviewed, 200-year flood surface profile as determined by the Corps, and subsequently used as a system wide regulatory standard for levees and floodways. The Corps has not completed a new, updated system-wide model, and there is currently no schedule for model completion and release for use by the Reclamation Board. In the interim and short term, riverside urban projects will use the SAFCA/MBK model results as a basis for design of projects underway in the FMP planning area.[9]

In other words, the UNET computer model uses different assumptions depending upon whether SAFCA wants a "reasonable numeric result that will guide the design of future, long-term levee

[9] Sacramento River Corridor Floodway Management Plan, Sacramento River Corridor Planning Forum (Jones & Stokes May 2006) p. 3-25 - 3-27. (Excerpt attached as Exhibit B.)

improvement projects" or to "estimate the sensitivity of flow in the floodway to hypothetical future encroachments." I11-11 Cont'd

Evaluating the Consequences of Encroachments Within the Flooded Channel

The Draft Floodway Management Plan simulated high river flows in the Sacramento and American Rivers to determine the consequences of future encroachments:

> The potential future hydraulic effects of floating docks, in-channel marinas, bank protection projects, and changes in vegetation were estimated using a hypothetical set of changes in the floodway and conservative assumptions regarding their hydraulic effects.
>
> The results of the hydraulic analysis estimate a maximum impact on stage downstream of the American River of 0.07 foot in the 1997 Flood event and 0.05 foot in the Maximum Flow event. Upstream of the American River, the maximum impact on stage occurs near I-5 and is estimated at 0.2 foot for the 1997 Flood event and 0.15 foot for the Maximum Flow event. The effects on river stage are minimized by slight increases in diversions to the Yolo Bypass at the Sacramento and Fremont Weirs. For example, in the 1997 Flood simulation, approximately 1,400 cubic feet per second (cfs) less flows downstream in the Sacramento River at the latitude of Sacramento, and approximately 1,400 more flows in the Yolo Bypass. Because the increase in flow in the Yolo Bypass is small compared to the total flow (0.3%), the computed increase in water surface in the Yolo Bypass is very small (0.03 foot). Similar effects occur in the Maximum Flow scenario.[10] I11-12

The 0.2 foot increase in elevation near the I-80 bridge, which corresponds with the sharp bend in the Sacramento River at Reaches 18B and 19A,[11] exceeds SAFCA's 0.1 threshold of significance in the Landside Improvements Project EIR.

NLIP EIR Fails to Inform Reader About Assumptions Used in UNET Model

We do not know what assumptions SAFCA's consultant used in running the UNET simulation for the Landside Improvement Project EIR. Therefore, we do not know whether the simulation considered the consequences of existing or future encroachments into the river channel. I11-13

For example, as the river flows past the improved eastside of the levee system, increased flood waters encounter lots of vegetation, houses, accessory buildings, and private boat docks.[12] When river flows reach the sharp bend at Reach 18B, the river encounters the I-80 bridge supports, the West Sacramento Water Plant intake towers, more vegetation, substantial marina docks, the flood flow from Main Drainage Canal being pumped into the river by the RD 1000 and City of

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[10] *id.* at p. 3-28 - 3-29 (Exhibit B.).
[11] See NLIP Landside Improvements DEIR, Exhibit 2-10c.
[12] See NLIP Landside Improvements DEIR, Exhibits 2-9 & 2-10a – 10c, pp. 2-77 – 2-81.

Sacramento Pumping Plants, vegetation on both sides of the river, another substantial marina, and then the American River at flood stage. Did SAFCA's simulation consider all of these matters? We cannot tell from reading the DEIR, Appendix B to the DEIR, or the seven- page explanation provided in the FEIR. I11-13 Cont'd

Lack of Information Fuels Skepticism About the Conclusion Reached

Is it not surprising that residents who have lived along the river side of Garden Highway for decades, who witness first hand the vagaries of the impinged but powerful Sacramento River, and who have lived through the 1986 and 1997 floods are skeptical of a "black box" computer-based determination that tells them their homes are not in jeopardy. This skepticism increases when one sees that the model appears to be tweaked to obtain different results for different needs.

In addition to Garden Highway residents' skepticism, landowners on the north side of the Natomas Cross Canal levee improvements, Reclamation District (RD) 1001, and RD 2035 are equally skeptical that one-sided levee improvements will not have significant adverse effects upstream and downstream of these improvements. In a Friday November 23, 2007 article in the Sacramento Bee about the Sacramento Riverfront shared by Cities of West Sacramento and Sacramento, the State Reclamation Board's chief engineer, Steve Bradley, acknowledged a problem if West Sacramento unilaterally raises its levees to provide for its River Walk project. Mr. Bradley was quoted in the Sacramento Bee article pointing out that West Sacramento's action would create a "levee parity" problem, "If levees are higher in one area than another, it means other spots might be more vulnerable to flooding."[13] West Sacramento is proposing to raise a one mile stretch of its levee a couple of feet.[14] SAFCA is proposing the raise the levees on the south side of the 5.3 mile long Natomas Cross Canal and on the east side of the 18-mile long Sacramento River levee.[15] Has SAFCA anticipated a similar "levee parity" concern from the Chief Engineer when it submits this project to the Reclamation Board for approval? I11-14

Failure to Provide Information in EIR Frustrates CEQA's Purpose

The EIR fails to provide any meaningful information about the assumptions that went into the hydraulic modeling that led the lead agency to determine that its proposed levee improvement project will not have a significant adverse impact (i.e., flooding) on the riverside residents along the Garden Highway, the landowners along the north side of the Natomas Cross Canal, and the landowners on the west side within RD 2035 in Yolo County. I11-15

Repeatedly the California courts have acknowledged "the 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible

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[13] "Riverfront: Plans to extend walkways face large hurdles," Sacramento Bee, November 23, 2007. (Attached as Exhibit C.)
[14] Exhibit C.
[15] NLIP Landside Improvements DEIR, p. 2-6.

protection to the environment within the reasonable scope of the statutory language."[16] As the California Supreme Court has stated,

> The EIR is the primary means of achieving the Legislature's considered declaration that it is the policy of this state to "take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state. . . . The EIR is also intended "to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its actions."[17]

Since the public was not provided with the assumptions that were used to run the hydraulic computer model, the very interested public in this matter have been denied a meaningful opportunity to participate in CEQA's mandatory environmental review proceeding.[18] California's high court has emphasized "public participation is an essential part of the CEQA process."[19] I11-15 Cont'd

> To facilitate CEQA's information role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions. This requirement enables the decision-makers and the public to make an "independent, reasoned judgment" about a proposed project.[20]

The California Supreme Court has acknowledged that interested citizens hold a "privileged position" within the CEQA process "based on a belief that citizens can make important contributions to environmental protection and on notions of democratic decision-making."[21] SAFCA's evaluation of the proposed project's effects on river hydraulics and hydrology fails to satisfy CEQA's informational requirements.

The Approach Used in NLIP Has Been adopted by the State Legislature

In Master Response 1 SAFCA claims the Legislature has "approved the project features necessary to provide a 200-year level of flood protection along the American and Sacramento Rivers and within the Natomas Basin as described in the final engineer's report dated April 19, 2007."[22] I11-16

Based upon the certified EIR for the Local Funding Mechanisms for Comprehensive Flood Control Improvements for the Sacramento Area, the California Legislature passed and Governor Schwarzenegger signed into law Senator Steinberg's Senate Bill 276 (Stats. 2007, ch. 641), which amends section 12670.14 of the Water Code authorizing the appropriation of "an

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[16] *Communities for a Better Environment v. CA Resources Agency* (2002) 103 Cal.App.4th 98, 110.
[17] *Laurel Heights Improvement Ass'n v. Regents of the Univ. of California* (1988) 47 Cal.3d 376, 392 ("*Laurel Heights I*").
[18] See *Mountain Lion Coalition v. CA Fish and Game Comm'n* (1989) 214 Cal.App.3d 1043, 1050-1051.
[19] *Concerned Citizens of Costa Mesav. 32nd District Agricultural Assoc.* (1987) 42 Cal.3d 929, 935.
[20] *ibid.*
[21] *id.* at p. 936.
[22] NLIP Landside Improvements Project EIR, p. 2-6; see also, e.g., Response to Comments 21-3 & 55-1 at p. 3-279.

estimated cost to the state of the sum that may be appropriated by the Legislature for state participation upon the recommendation and advice of the [Department of Water Resources] or the Reclamation Board" for "the project features necessary to provide a 200-year level of flood protection along the American and Sacramento Rivers and within the Natomas Basin as described in the final engineer's report dated April 19, 2007, adopted by the Sacramento Area Flood Control Agency."[23]

Despite SAFCA's broad claim in Master Response 1, the California Legislature did not approve the Natomas Levee Improvement Program – Landside Improvement Projects. The specific activities described in the Natomas Levee Improvement Program – Landside Improvements Project EIR has not been previously adopted by SAFCA. Furthermore, as the certified Local Funding Mechanisms EIR acknowledged, "The NLIP activities have not been analyzed previously under CEQA."[24] If the state legislature had, in fact, approved the project features described in the final engineer's report, then the Board of Directors of SAFCA and the State Reclamation Board (soon to be the Central Valley Flood Protection Board) would not need to approve the Natomas Levee Improvement Program – Landside Improvements Project. Further, the project would not be subject to CEQA, since actions by the state legislature are not subject to CEQA.[25] I11-16 Cont'd

For the State of California, the final paragraph of the SB 276 is probably the most important part of the bill:

> Prior to any reimbursement pursuant to subdivision (a), the agency shall execute an agreement with the department under which it agrees to indemnify and hold the state harmless from damages due to the construction, operation, or maintenance of those projects and agrees to operate, maintain, repair, replace, and rehabilitate those projects, or provide the agreement of its appropriate member agency to do so.[26]

SAFCA's levee improvements are not exempt from CEQA. Therefore, SAFCA's environmental review of the NLIP, including the legal adequacy of SAFCA's determination of the proposed project's significant effect on the existing environment, is governed by CEQA's environmental review requirements.

The NLIP EIR Determination of Significant Effect of the Project on Adjacent Properties Fails to Provide a Baseline Comparison

The determination that SAFCA's project will not have a significant effect on the Garden Highway residents, Yolo County landowners on the west side of Sacramento River, and Sutter County landowners on the north side of the Natomas Cross Canal has played a critical role in truncating the lead agency's environmental review of the proposed project. Throughout the EIR I11-17

[23] Stats 207, ch. 641, § 2; Wat. Code, § 12670.14.
[24] Local Funding Mechanisms Program EIR Vol. 1, § 3.4.4, p. 3-35.
[25] CEQA Guidelines, § 15378, subd. (b)(1); see also CEQA Guidelines, § 15379.
[26] Stats 2007, ch. 641, §3. (A copy of the chaptered version of SB 276 is attached as Exhibit D.)

and especially in the responses to public comments, SAFCA merely relies on the conclusions derived from the hydraulic model simulation. Yet, this computer simulation does not satisfy CEQA's requirements in evaluating the project's significant effect on the existing environment.

In determining whether a project's impacts may significantly affect the existing environment, there must be a "baseline" set of environmental conditions to use as a comparison to the anticipated project impacts. As the Court of Appeal has explained, "it is only against this baseline than any significant environmental effects can be determined."[27]

The NLIP DEIR fails to evaluate the environmental consequences of its east side levee improvements against the existing environmental conditions. Instead, "[f]or purposes of evaluating the hydraulic effects of the NLIP, SAFCA employed levee failure scenario (a), because it is reasonable, practical, is easily understood, and because a sensitivity analysis indicated that the estimated hydraulic characteristics would be the same for each of the level (sic) failure scenarios analyzed."[28] Scenario (a) assumes a levee fails when water level exceeds the top of the levee by 0.5 feet. This is not the baseline environmental conditions, this is a hypothetical scenario for purposes of running the UNET computer model. The existing levee along the Garden Highway has never been topped by six inches of floodwaters.

The NLIP EIR and SAFCA's hydraulic impact analysis assumes that portions of the west side of the Sacramento River opposite the Natomas I11-16 ill be raised. There is no evidence to support this assumption. Cont'd

I11-17
Cont'd

Based on the information in the NLIP EIR, we do not know what the actual physical baseline environmental conditions are within the project area. For example, what was the elevation of the river in 1997 (or 1986)? What was the maximum water level below the top of the existing levee? On the east side of the Sacramento River? On the west side of the Sacramento River? On the south side of the Natomas Cross Canal? On the north side of the Natomas Cross Canal?

What CEQA requires is the establishment of the existing physical environmental conditions. Several court decisions have determined that the impacts of a proposed project must be measured against the "real conditions on the ground."[29] "An EIR must focus on impacts to the existing environment, not hypothetical situations."[30] The proposed project's impacts must be compared against real, physical, environmental conditions. This would include the existing condition of the west side levees along the Sacramento River and the north side levee along the Natomas Cross Canal. This comparison would answer the question of "levee parity" and whether any spots along the river side of the east levee improvements or west side of the Sacramento River in Yolo County, or north side of the Natomas Cross Canal in Sutter County would be more vulnerable to flooding. In other words, if the east side has sufficient freeboard to ensure safe containment of the "200-year" design, how does this effect the existing lower levees along the west side of the river and the existing elevation of the homes along Garden Highway on the river

[27] *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 99, 952.
[28] NLIP Landside Improvements Project FEIR, p. 2-5.
[29] *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 121.
[30] *ibid.*

side of the improved levees. This analysis would also apply to the north side of the Natomas Cross Canal.

I11-17
Cont'd

The NLIP DEIR failed to compare the effects of the proposed levee improvements against the existing physical environmental conditions. The failure to provide this analysis frustrates "the central function of the EIR, to inform decisionmakers about the impacts of the proposed project on the existing environment."[31]

NLIP EIR Illegally Segments the Whole of the Action

The NLIP EIR separates the levee improvements for the south levee of the Natomas Cross Canal and the east levee of the Sacramento River into two separate projects. The project description must include all parts of a proposed project, including all reasonably foreseeable future expansion,[32] to ensure that all of the potentially significant effects of the proposed project are evaluated in the DEIR.[33]

The NLIP EIR separates the landside levee improvements into two separate projects based on the lead agency's anticipated construction periods. The south levee work along the Natomas Cross Canal and the east levee work along the Sacramento River to Reach 4B is evaluated at a project level in the EIR. The remaining east levee work to Reach 20 along the Sacramento River is evaluated at a program level. The distinction between the two alleged projects is depicted on Table 2-1 of the DEIR entitled "Summary of the Major Elements of the Proposed Project."

I11-18

Several residents along the Garden Highway commented about the environmental consequences of the proposed levee improvement project. This led to differing responses depending upon the comments made by the local residents. For example, SAFCA made the following response to one resident who was concerned about the "unmitigated impacts of the proposed levee improvements on the residents along the Garden Highway [including] the proposed relocation of the telephone lines, traffic and impacts of the levee raising."[34]

> The environmental impacts of the proposed project have been thoroughly analyzed in Chapter 3, "Environmental Setting, Impacts, and Mitigation," of the DEIR. In addition to adopting the mitigation measures identified in the DEIR and FEIR, SAFCA is interested in working with the affected property owners to determine the best options for minimizing these impacts.[35]

With regard to a comment about proposed project plans to drain roadway wastewater to the "waterside" of the slope along Garden Highway,[36] the response states,

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[31] *id.* at p. 127.
[32] *Laurel Heights I, supra*, 47 Cal.3d at p. 396;
[33] *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1450.
[34] NLIP Landside Improvements Project FEIR, p. 243.
[35] *id.* at p. 246.
[36] *id.* at p. 3-248.

> As the DEIR noted in Section 2.3.2.3, "Installation of Surface Drainage Outlets Across Garden Highway," . . . would be constructed between the adjacent setback levee and the Garden Highway pavement. . . . These discharge pipes would require minor landscape improvements to prevent erosion and ensure applicable water quality standards are met.[37]

With regard to the project's impacts and components, the responses to these comments do not attempt to differentiate between the whole of the action regarding the levee improvement work along the Garden Highway.

In contrast to the responses above, the following response was made to Garden Highway residents who commented about the lack of available information in the DEIR "to even understand where their property is in relation to proposed work."[38]

> Potential impacts on specific properties located within the 2009-2010 project footprint will be analyzed at a project-specific level in a subsequent environmental document, and mitigation for significant effects on the environment will be identified. SAFCA anticipates that this subsequent environmental document will be issued in 2008.[39]

I11-18
Cont'd

At the October 18, 2007 public hearing a Garden Highway resident commented about "whether the slurry walls were actually looked into as opposed to widening the levees."[40] SAFCA's response states,

> Cutoff walls are being considered for inclusion in the overall program as a potential seepage remediation measure and would be implemented in 2009 or 2010 if SAFCA determines that they would not significantly affect groundwater recharge. . . . Project-level analysis of the effects of the cutoff walls will be disclosed as more technical details of 2009-2010 construction become available.[41]

This remarkable chopping up of the whole of the project into separate projects and activities based upon SAFCA's construction timeline is not allowed under CEQA. Based on the confusing responses to Garden Highway residents' comments, it is not particularly clear that the lead agency understands what piece of the whole project is the "project" and what piece is the "program." This parsing of the whole NLIP has been consistently rejected by the California courts.

> State CEQA Guidelines section 15378, subdivision (a) defines the term "Project" as "the whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately," and which is undertaken, supported or

[37] *id.* at p. 3-250.
[38] *id.* at p. 3-231.
[39] *id.* at p. 3-234.
[40] *id.* at p. 287.
[41] *id.* at p. 288.

> approved by a public agency. Subdivision (c) of this section states, "[t]he term 'project' refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term 'project' does not mean each separate governmental approval." " 'Project' is given a broad interpretation in order to maximize protection of the environment." (citation omitted) This ensures "that environmental considerations do not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences."[42]

I11-18 Cont'd

It is relatively apparent from reading the NLIP EIR that future development and the general types of future activities involving the levee improvements along the Garden Highway from Reach 1 to Reach 19B are reasonably foreseeable, and, therefore, must be evaluated in one NLIP EIR for the whole of the action.[43] As stated by one of the Garden Highway residents, "As we all know, once a precedent is set upstream, it will be very difficult for us to depart from that established precedent when the plans for our own respective areas come up for consideration."[44]

Effect of Climate Change on the Proposed Project

The NLIP EIR barely acknowledges the impact climate change may have on the operation and maintenance of the Central Valley's levee system. In a response to a public comment about whether the DEIR took into account the effect of climate change on river flows,[45] SAFCA states, "this potential climate change effect is too speculative to reasonably draw a conclusion on regarding the significance of foreseeable direct effects on physical conditions at the project site."

We disagree that the potential climate change effect is too speculative. Climate change is real. The California Department of Water Resources ("DWR") recently published a technical memorandum report entitled "Progress on Incorporating Climate Change into Management of California's Water Resources." This document is readily available on the web at http://baydeltaoffice.water.ca.gov/climate change/DWRClimateChangeJuly06.pdf. Chapter 6 of DWR's technical report in entitled "Climate Change Impacts on Flood Management" offers some helpful information about the effect of climate change on flood management.[46] While acknowledging the uncertainty associated with evaluating changes in weather events due to climate change, DWR's technical report provides a description of climate change scenario data that would be suitable for analyzing climate change impacts on flood frequency.[47]

I11-19

Considering what is at stake and the long-term nature of the levee improvements that SAFCA is undertaking, it does not seem at all unreasonable or too speculative to evaluate how changing climate conditions may affect the project area and the proposed levee improvements. An EIR's

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[42] *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730.
[43] *Laurel Heights I, supra,* 47 Cal.3d at pp. 397-398.
[44] NLIP Landside Improvements Project FEIR, p. 3-197.
[45] *id.* at p. 3-219.
[46] A copy of Chapter 6 is attached as Exhibit F to the letter that has been hand-delivered to SAFCA's office.
[47] Exhibit F: p. 6-1.

I11-19
Cont'd

"purpose is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."[48]

NLIP Landside Improvement EIR Fails to Consider a Reasonable Range of Alternatives

The project's objectives are so narrowly defined that SAFCA lists the NLIP project as the first alternative. Then it goes on to select this alternative (the project) as the environmentally superior alternative. The CEQA Guidelines require the selection of the environmentally superior alternative to be made among the various alternatives to the project.[49] If it is determined that the "no project" alternative is the environmentally superior alternative, the EIR must also identify an environmentally superior alternative from among the other alternatives.[50] Here, because SAFCA has listed the project as an alternative to the project, the project is selected as the environmentally superior alternative to the project. Clearly, SAFCA has failed to follow the procedure described in the CEQA Guidelines.

It is also interesting that in describing the "no project" alternative, SAFCA claims that this would prevent the Natomas Basin from absorbing "up to 60,000 dwelling units and associated commercial and industrial developments."[51] Therefore, it appears SAFCA's NLIP is the catalyst for future growth in the Natomas Basin. However, in the Growth Inducing Effects section of the DEIR, SAFCA claims growth in the Natomas Basin will proceed with or without implementation of the proposed project, claiming the private development would build ring levees around the private development.[52] Yet, when rejecting Alternative 5 – Private Levees in Natomas, the NLIP EIR points out that these levees would need to be 25 feet high with 3:1 side slopes and would significantly adversely affect wildlife connectivity.[53] Therefore, it would appear that a private ring of levees around development within the Natomas Basin would not be consistent with the Natomas Basin Habitat Conservation Plan. We wonder what comfort future and present homeowners in the Natomas Basin would have living within a 25-foot high ringed berm.

I11-20

It would appear that the anticipated growth in the Natomas Basin drives SAFCA's objective to move as quickly as possible. Therefore, it makes the consideration of a regional approach that may involve coordination with other public agencies less practical from SAFCA's perspective. This makes the alternatives analysis in the NLIP a bit of a paper exercise, as it appears, based on SAFCA's comments about the purpose of SB 276 and the Final Engineer's report dated April 19, 2007, that the agency has pre-determined the project leaving the public and its decisionmakers without a reasonable range of alternatives to consider and compare to the proposed project.[54]

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[48] *Laurel Heights I, supra*, 47 Cal.3d at p. 392.
[49] CEQA Guidelines, § 15126.6. subd. (e)(2).
[50] *ibid.*
[51] NLIP Landside Improvements DEIR, p. 6-14.
[52] *id.* at p. 5-2.
[53] *id.* at p. 6-15.
[54] See *Laurel Heights I, supra*, 47 Cal.3d at p. 425, ("We will not accept *post hoc* rationalizations for actions already taken . . . .").

NLIP EIR Fails to Adequately Mitigate for the Loss of Habitat and Take of Endangered Species I11-21

We concur with the comments of the United States Fish and Wildlife Service and the California Department of Fish and Game on the inadequacies of the NLIP EIR.

Urge SAFCA Board to Direct Staff to Revise and Recirculate the EIR

On behalf of the Garden Highway Community Association, we urge the Directors of SAFCA not to certify the NLIP EIR. Instead, the staff and its consultants should be directed to prepare a legally adequate environmental review of the proposed Natomas Levee Improvement Program that begins with a meaningful analysis of the real conditions along the Natomas Cross Canal and Sacramento River focusing on the proposed project's impacts to the existing environment, not a hypothetical situation based upon a computer simulation. We also encourage SAFCA to work with the new Central Valley Flood Control Board and other public agencies on a regional approach that would look to set back the levees and improve the existing weirs and bypasses in order to provide long-term protection to the region in anticipation of changing climatic conditions. Unless, or until, SAFCA complies with CEQA's informational requirements and revises and recirculates the NLIP EIR, the Garden Highway Community Association opposes the NLIP project. Attached as Exhibit E to this letter is a list of Association members who reside along the Garden Highway, and who oppose the NLIP Landside Improvements Project. I11-22

Sincerely,

//s//

Bill Yeates

Attachments: Exhibits A through F

cc: Client

Originals with Exhibits A through E hand delivered to:

Honorable Heather Fargo
Honorable Ray Tretheway
Honorable Steve Cohn
City of Sacramento
915 I Street, 5th Floor
Sacramento, CA

Honorable Roger Dickinson
Honorable Jimmie Yee
Honorable Susan Peters
Honorable Roberta MacGlashan
Honorable Don Nottoli
County of Sacramento
700 H Street, Room 2450
Sacramento, CA 958

Original with Exhibits A through E via Overnight Delivery:

Honorable Dan Silva
County of Sutter
1160 Civic Center Blvd.
Yuba City, CA 95991

Copies with Exhibits A through E via Email:

Brian Holloway
Virginia Moose
c/o Office Manager,
American River Flood Control District

David Christophel
John Shiels
c/o Terie Figueroa
District/Board Secretary
Reclamation District 1000

Exhibit A

Draft Environmental Impact Report on

Local Funding Mechanisms for Comprehensive Flood Control Improvements for the Sacramento Area

Volume I: Programmatic Evaluation of the Proposed Funding Mechanisms

November 2006

EDAW | AECOM

061 10058.01
11/14/06

- place housing within a 100-year flood hazard area or place within a 100-year flood hazard area structures that would impede or redirect flood flows;
- expose people or structures to a significant risk of loss, injury, or death involving flooding; or
- substantially alter the existing drainage pattern of a site or an area, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on-site or off-site.

None of the components of the proposed program would result in effects on groundwater; substantially increase amounts of runoff; or place housing or other structures, with the exception of flood control facilities, in a 100-year flood hazard area. Therefore, the first three significance criteria do not apply to this analysis.

In determining whether a proposed project would expose people or structures to a significant risk due to flooding, SAFCA uses the following thresholds:

- whether the proposed project would cause encroachment on SRFCP design levee freeboard outside the project area; or
- whether the proposed project would cause a significant increase in flooding, defined as an increase of 0.1 foot or more, in an area that is outside the protection of the SRFCP.

4.4.3.2 Impact Analysis

IMPACT 4.4-a **Hydraulic Effects of the Proposed Improvement Program.** *The proposed program includes raising and strengthening several reaches of levees and modifying flood operations of Folsom Dam through physical and operational improvements. The effects of these modifications on design SRFCP water surface elevations, including the water surface elevations associated with 100-, and 200-year conditions, show that hydraulic impacts upstream of, downstream of, and within the program study area would be* ***less than significant.***

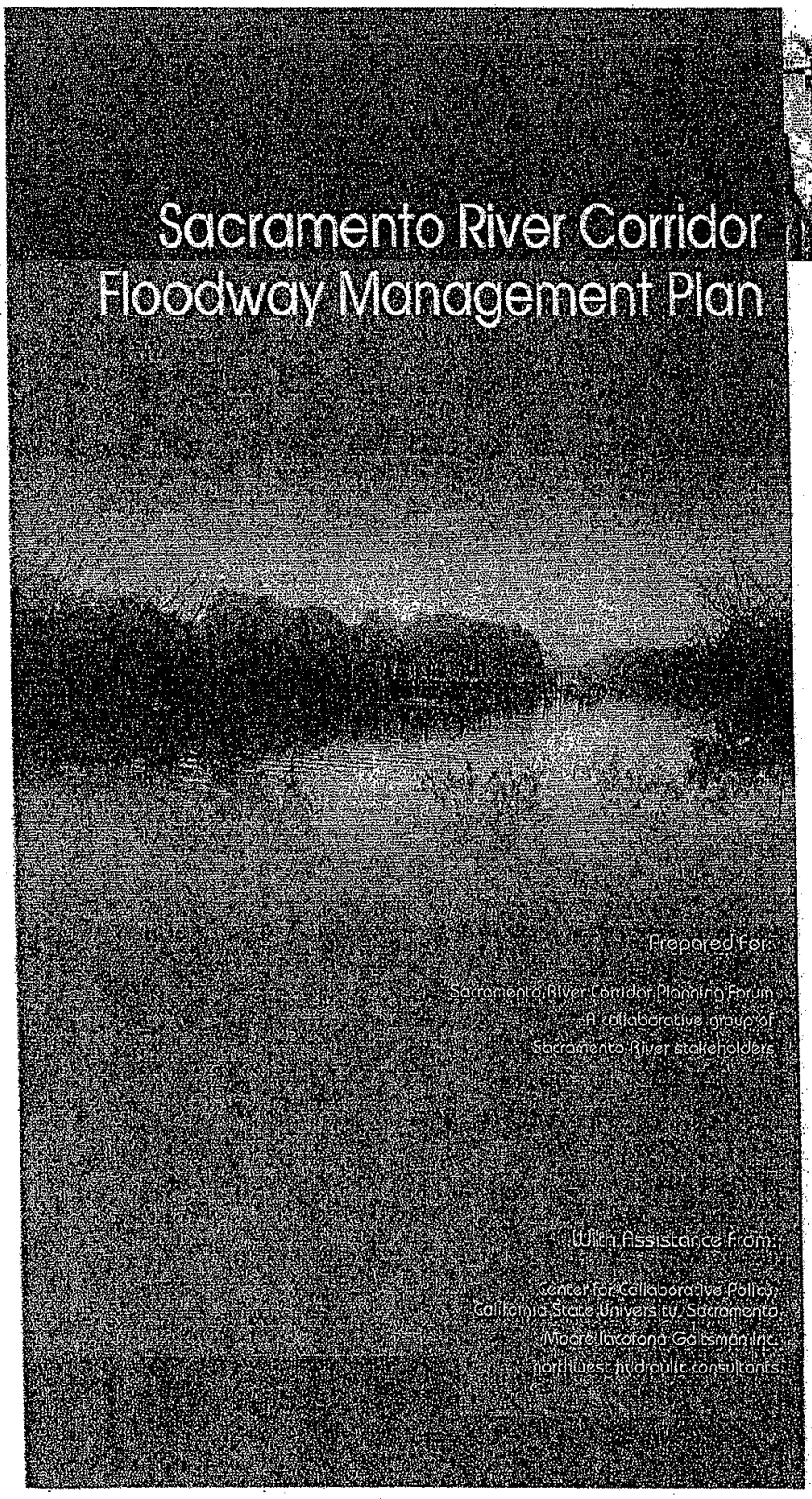
The proposed program includes raising and strengthening levees in several reaches of the lower American and Sacramento Rivers and on the NCC. These improvements would reduce the risk of overtopping and failure of these levees, thereby causing more water to be retained in the channels under extreme flood conditions. This, in turn, could increase the potential for overtopping and failure elsewhere in the SRFCP system, either within the Sacramento metropolitan area or upstream or downstream of this area. These potential adverse effects would be offset, however, by the increased efficiency in Folsom Dam storage and release operations that are included in the proposed program.

MBK Engineers performed a hydraulic impact analysis for SAFCA to analyze the effects of the proposed program on flood risk within the program study area, both upstream and downstream of the study area. The analysis was performed using MBK Engineers' version of the Sacramento River UNET hydraulic simulation model that was developed by the USACE for the Comprehensive Study. The impacts of the following set of components were evaluated:

- increased surcharge storage at Folsom Reservoir,
- operations with the proposed low-level release capability provided by the proposed new spillway,
- levee raising and strengthening along the lower American and Sacramento Rivers that would allow these levees to safely contain sustained releases of up to 160,000 cfs from Folsom Dam,
- raising of portions of the east levee of the Sacramento River to provide adequate freeboard above the "200-year" urban design water surface, and

Exhibit B

Sacramento River Corridor Floodway Management Plan



Prepared For:

Sacramento River Corridor Planning Forum
A collaborative group of
Sacramento River stakeholders

With Assistance From:

Center for Collaborative Policy
California State University, Sacramento
Moore Iacofano Goltsman Inc.
northwest hydraulic consultants

Prepared By:

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apply. Both of these standards are considered to be minimum standards. An urban design standard for the Sacramento metropolitan area presented below will increase the level of flood protection for urban areas beyond that provided by the 1957 design water surface profile and current FEMA standards,.

Floodway hydraulic capacity and function are addressed from a system-wide perspective in two categories within this section. First, they focus on design parameters providing a level of flood protection adequate for the City of Sacramento and the City of West Sacramento. The outcome is a set of guidelines that recommend appropriate levee heights and amounts of freeboard within the study area. Second, floodway hydraulic capacity and function focus on the effects that floodway encroachments have on water surface elevations and river channel velocities. The hydraulic guidelines recommend measures to limit cumulative impacts from floodway encroachments and improve levee and bank stability, debris passage, and structural integrity.

Guidelines for Hydraulic Capacity Design Parameters

While there are several design parameters that are essential to maintain a high level of flood protection and adequate hydraulic capacity, a key parameter is levee height. The current standard for levee height within the Sacramento River Flood Control Project is based on a water surface profile standard developed by the Corps in 1957, corresponding to the Corps design capacity of the levees and floodway channel at that time. Typical design levee height in 1957 provides 3 feet of freeboard above the design water surface profile on levees flanking the Sacramento River and 6 feet of freeboard on bypass system levees. The 1957 design profile was originally based on records of two historical floods and does not represent a specific return interval (e.g. 100-year flood). The level of protection provided by the 1957 design profile varies throughout the Sacramento and San Joaquin levee system. The amount of freeboard, or the vertical distance between the maximum water surface and the top of the levee, is an important factor in maintaining hydraulic capacity. Freeboard is relied on to provide adequate protection from wind and wave run-up during flood events, saturation of a road on top of a levee (system-wide, these are mostly dirt or gravel), and to accommodate for uncertainty associated with estimated water surface elevations or long-term hydrologic changes.

The Reclamation Board generally relies on the 1957 design profile to regulate projects as they relate to levee height.

There is an emerging state-wide strategy to increase the level of flood protection throughout the Sacramento and San Joaquin Valleys, including the establishment of a water surface profile for an urban standard of protection from a 200-year flood. Appropriate levee height and width, freeboard, stability, and under-seepage and erosion protection standards would be developed based on this urban standard flood profile.

Through its numerous efforts to increase the level of flood protection for the Sacramento region, SAFCA has conducted several evaluations of various

elements of the Sacramento River Flood Control Project. As an integral part of these efforts, MBK Engineers has prepared several hydraulic modeling studies to predict water surface elevations under various scenarios of flood simulations. These hydraulic modeling studies provide the information necessary to develop an urban design standard.

The base computer model used for the urban design standard analysis is a UNET model, initially developed by the Corps for the Sacramento and San Joaquin Rivers Comprehensive Study and subsequently updated and recalibrated by MBK Engineers using information from the January 1997 flood event (MBK Engineers 2003). The model includes the Sacramento River from Collinsville (River Mile [RM] 0) to Woodson Bridge (RM 218), the lower reaches of major tributaries, and the Sutter and Yolo Bypasses. The water surface elevations produced by the model are the basis for determining appropriate levee heights capable of meeting the urban design standard.

The urban standard flood elevations for the Sacramento region were produced based on the following key assumptions:

- 200-year flood event with Folsom Dam Modifications in place, and limiting reservoir releases to the lower American River to 160,000 cfs flow (the 1986 flood peaked at approximately 138,000 cfs);
- Upstream levees that do not meet the 1957 design profile are assumed to be improved to meet that standard, thereby containing and passing peak flows downstream; and
- Upstream levees that may overtop during future high flows predicted by the model **do not breach** (overtopped levees often cause levee breaches which quickly erode and widen the opening by several hundred feet. Compared to overtopping flow, a levee breach greatly increases the amount of river flow leaving the channel and entering the adjacent floodplain. Therefore, breached levees inadvertently lessen flood risk downstream of the breach.).

These conservative modeling assumptions have been agreed to in principle by the staff of SAFCA, the City of Sacramento, and the City of West Sacramento.

While the same base model is also used to analyze cumulative effects of floodway encroachments, described below under "Guidelines for Hydraulic Analysis and Monitoring", certain assumptions used in the modeling differ between the two analyses. In particular, the modeling for the urban design standard assumes that modifications to Folsom Dam that are currently underway or planned are in place. The modeling for the cumulative encroachments in the Forum's river corridor and SRMP reach conservatively assumes that the modifications to Folsom Dam are not in place. The reason for this difference is that the urban design standard requires a reasonable numeric result that will guide the design of future, long-term levee improvement projects, while the cumulative encroachments analysis was intended to conservatively estimate the sensitivity of flow in the floodway to hypothetical future encroachments (e.g., more marinas, bridges, private docks, shoreline vegetation, and river access structures, etc.).

Since a system wide standard for a higher level of flood protection (e.g., urban design standard) does not yet exist, an analysis of system wide impacts is necessary for local projects. Ultimately, the FMP's urban design standard should be based on a peer-reviewed, 200-year flood surface profile as determined by the Corps, and subsequently used as a system wide regulatory standard for levees and floodways. The Corps has not completed a new, updated system-wide model, and there is currently no schedule for model completion and release for use by the Reclamation Board. In the interim and short term, riverside urban projects will use the SAFCA/MBK model results as a basis for design of projects underway in the FMP planning area.

The guidelines listed below for hydraulic design (HD) focus on implementing an urban design standard that provides an adequate level of flood protection to areas protecting urbanized land use in the Forum's FMP planning area.

Location	Guideline		Responsibility
Urban areas	**HD1**	Adopt an urban design standard, which is generally representative of an estimated 200-year level of protection, as a basis for determining appropriate levee heights and freeboard in urban areas.	Flood control agencies and local land use authorities
Urban areas	**HD2**	Freeboard shall be maintained at 3 feet above the urban design standard water surface elevation for levees with typical dimensions to avoid levee failure due to overtopping. Freeboard may be reduced to no less than 1 foot above the urban design standard water surface elevation for high ground if the width of the high ground beyond the waterside top of bank exceeds 300 feet and the landside slope does not exceed 10% within an additional 700 feet (see Figure 11). Freeboard may be reduced to no less than 1 foot above the urban design standard water surface elevation for oversized levees if the oversized levee is designed to provide: 1) adequate protection for wave run-up and wind setup; 2) adequate protection of landside slopes that prevent failure due to overtopping; 3) no less than 3 feet of freeboard above the Corps' 1957 design profile; 4) adequate protection from potential seepage effects to buried utilities or underground structures; 5) paved surfaces over all or most of the width of the 35 foot setback area and road on top of the levees; and 6) the width of the crown of the oversized levee is 50 feet or greater.	Flood control agencies and local land use authorities

Guidelines for Hydraulic Analysis and Monitoring of Floodway Encroachments

Facilities such as bridges, docks, in-channel marinas, bank protection, and revegetation projects constructed within the floodway may have incremental effects on hydraulic capacity. These physical changes primarily affect the margin of the channel, and when the facilities are properly designed the effects are generally small and may occur only in the local area of the facility. However, the potential for construction of a significant number of facilities leads to concern over cumulative hydraulic impacts. An evaluation of potential cumulative impacts was conducted at the request of SAFCA (MBK Engineers 2005) using a one-dimensional (1-D) hydraulic model. MBK's hydraulic impact analysis report can be found in Appendix E of this document.

As previously described, the base model used for the cumulative analysis is a UNET model, initially developed by the Corps for the Sacramento and San Joaquin Rivers Comprehensive Study and subsequently updated and recalibrated by MBK Engineers using information from the January 1997 flood event (MBK Engineers 2003). The model includes the Sacramento River from Collinsville (River Mile [RM] 0) to Woodson Bridge (RM 218), the lower reaches of major tributaries, and the Sutter and Yolo Bypasses. The potential future hydraulic effects of floating docks, in-channel marinas, bank protection projects, and changes in vegetation were estimated using a hypothetical set of changes in the floodway and conservative assumptions regarding their hydraulic effects.

The evaluation included the following changes in the floodway:

- Five new bridges (43rd Avenue, Broadway Extension, R Street pedestrian, Richards Boulevard pedestrian, and San Juan Road). *NOTE: Two proposed off-channel marinas located in the SRMP area (Stone Locks and Lighthouse Marina) would have no affect on floodway hydraulics because they would be placed in a slack water location outside the functional floodway. Therefore they are not included in the hydraulic modeling analysis.*
- New, densely developed boat docks and fishing piers in three areas (east bank of Pocket area; west bank in West Sacramento; and east bank of Natomas area). Continuous dock lengths of approximately 6 miles, 2.5 miles, and 5 miles were used in these three areas, respectively. The exaggerated assumption made in the model about continuous docks (an unlikely condition) is intended to determine hydraulic sensitivity of this reach under worst-case conditions.
- Five new in-channel marinas (near Clarksburg, Freeport, RM 56, San Juan Road, and where Interstate 5 (I-5) crosses the Sacramento River.
- Riparian vegetation enhancement on both banks of the river in the reach between Stone Locks and the American River, consistent with preliminary information for the SRMP.
- Rock bench bank protection with designs similar to the Corps-state-SAFCA sponsored project constructed in 2004 at RM 56.7 of the Pocket Area.

The hypothetical set of new bridges, docks, and fishing piers was modeled by blocking out the conveyance area of the channel associated with the entire hydraulic area potentially affected by these facilities. For the boat docks and fishing piers, a continuous blockage along the riverbank was assumed for the lengths listed above and typical widths derived from inspection of aerial photographs of existing facilities. The blockage associated with rock bench armoring was assumed to be included in these effects because the design template for RM 56.7 has a smaller projection into the river channel than that assumed for docks and fishing piers.

The marinas and riparian vegetation enhancement were modeled using estimated increases in hydraulic roughness ('n' value) associated with these changes. The marinas were assumed to have a length along the bank of approximately 1,200 feet and to extend into the channel about one-third of the channel's width.

The complete set of modeling assumptions is considered a conservative and relatively simple way of modeling potential cumulative impacts on a large scale. Details of the modeling assumptions are included in the appended report on modeling results by MBK Engineers (February 2005), prepared for SAFCA and to inform Forum discussions of hydraulic issues.

Potential cumulative impacts were assessed using two major floodflows:

- January 1997 Flood, an actual major flood event with good documentation of river stage and measured flows over time.
- "Maximum Flow" event (hypothetical worst-case flood event), defined as the 100-year event on the Sacramento River and 200-year event on the American River, assuming that levees upstream of the project area would not fail if overtopped.

The results of the hydraulic analysis estimate a maximum impact on stage downstream of the American River of 0.07 foot in the 1997 Flood event and 0.05 foot in the Maximum Flow event. Upstream of the America River, the maximum impact on stage occurs near I-5 and is estimated at 0.2 foot for the 1997 Flood event and 0.15 foot for the Maximum Flow event. The effects on river stage are minimized by slight increases in diversions to the Yolo Bypass at the Sacramento and Fremont Weirs. For example, in the 1997 Flood simulation, approximately 1,400 cubic feet per second (cfs) less flows downstream in the Sacramento River at the latitude of Sacramento, and approximately 1,400 more flows in the Yolo Bypass. Because the increase in flow in the Yolo Bypass is small compared to the total flow (0.3%), the computed increase in water surface in the Yolo Bypass is very small (0.03 foot). Similar effects occur in the Maximum Flow scenario.

Downstream of the Sacramento Weir, the cumulative impacts on flood stages are not considered significant. Upstream of the Sacramento Weir, the cumulative effects are slightly greater, and the capacity of the channel relative to the two flood scenarios is less. In the 1997 Flood simulation, the computed water surface profile encroaches into the minimum freeboard in the area between RM 73 and RM 79. In the Maximum Flow scenario, the computed profile is at or slightly

Exhibit C

The Web Site of The Sacramento Bee

This story is taken from Sacbee / News.

Riverfront: Plans to extend walkways face large hurdles

By Deb Kollars - dkollars@sacbee.com.
Published 12:00 am PST Friday, November 23, 2007

For any city with waterfront dreams, having plenty of public gathering space along the river's edge is a crucial measure of success, often counted by the mile.

Along the downtown stretch of the Sacramento River, such waterfront pathways are so brief they are hardly visible on a map. And, as West Sacramento has discovered over the past two years, trying to add more involves a bureaucratic bog as deep as the river.

During the next several months, both West Sacramento and the city of Sacramento will push ahead with simultaneous plans to extend their riverfront parkways. Each side could use a good long jolt. Sacramento's Riverfront Promenade runs for just two blocks, while West Sacramento's River Walk covers only four blocks.

"Public access is so critical," said Michael Zilis, a principal with Walker Macy, a landscape design firm working with both cities to extend their riverfront spaces. The Portland firm has been instrumental in riverfront development in its hometown, which has three miles of continuous waterfront parkway along each side of the Willamette River.

"In Sacramento, there are very few places where you can get close to the water," Zilis said. "Your levees and industrial uses have really separated people from the river."

The two cities have ambitious plans for overcoming those barriers and creating more connections. But they face an upstream effort. The bureaucratic hurdles are enormous. Waterfront construction is always tricky. Costs will run in the millions.

West Sacramento has a decent start with its existing River Walk, a gem of a gathering place that runs north from the Tower Bridge in front of the chunky ziggurat building.

The linear parkway offers a blend of natural and urban amenities against the backdrop of the river and the Sacramento skyline. It features winding walkways and bicycle paths, rolling lawns and shade trees, a plaza large enough for entertainment and events, historical displays and a small veterans memorial.

Evenings and weekends, River Walk can be an empty place, with no restaurants, shops or activities to draw people. But over the noon hour on weekdays, the area comes alive with workers from the state Department of General Services, which occupies the ziggurat.

To Pam Dyer, a leasing agent for the department, River Walk is one of the nicest perks of her

job.

"I love it. It's gorgeous," she said on a recent sunny afternoon. "I have a very technical job, very stressful. I come out here and find it so peaceful."

Two years ago, West Sacramento decided it was time to extend River Walk. The hope was to start construction last summer. But the city soon found itself in a bureaucratic black hole from which it has yet to escape.

To build along a flood-prone river in California requires numerous reviews and permits. State and federal wildlife agencies, the U.S. Army Corps of Engineers, the Central Valley Regional Water Quality Control Board – all must be consulted.

But the top gatekeeper is the state Board of Reclamation, which regulates most everything that happens on or near river levees in the interest of public safety.

West Sacramento's next big River Walk milestone will be an extension almost a mile long through the Triangle area, between the Tower and Pioneer bridges. Home to Raley Field, the Triangle is slated to become a densely built center of office towers, commercial uses and modern housing.

The city is committed to preserving public access along the entire shore of the Sacramento within the Triangle. That could cost as much as $50 million. The Walker Macy designs are splashy: Bikeways, walking paths, landscaping, piers, a large public plaza flanked by restaurants, a seasonal beach, maybe even a floating walkway over the river.

The Triangle is unusual in that it no longer has a tall levee defining the waterway. Years ago, the land was used as a deposit site for dredged soils. Today it is a broad, sturdy shelf of high ground overlooking the river.

Yet, the city is being forced to design the project as though a levee still exists, creating a Catch-22.

To get a permit from the Board of Reclamation, the city has to complete environmental reviews. But it can't do the environmental reviews until the project is further along in the design process. The city can't move further into the design work until it knows how high and wide it can build the River Walk. It can't know that until the board's staff determines where the "theoretical" levee is for calculating height and setback limits. The Board of Reclamation's staff doesn't know how to determine that, since nobody knows where the levee would be.

"We need their direction to drive the design," said Les Bowman, West Sacramento's redevelopment manager. "They have just never responded."

The board's chief engineer, Steve Bradley, called it a conundrum with no easy fix.

"The problem is it's really uncertain what to do in there," Bradley said.

That's not the only uncertainty.

When it builds the River Walk extension, West Sacramento wants simultaneously – for the sake of efficiency – to improve its flood protection from a 100-year level to a 200-year level in the Triangle. Essentially, that would mean raising the height of the River Walk in the Triangle by a couple of feet in places.

However, the Board of Reclamation's staff can't endorse such an improvement because it would create a "levee parity" problem. If levees are higher in one area than another, it means other spots might be more vulnerable to flooding, Bradley explained.

Calling himself a fan of public parkways along the river, Bradley said he is working on modifying regulations that might help break the logjam. But he added that his staff is too small and overworked and there is no guarantee the problem will be resolved.

"Nobody has a clear picture of this," he said.

In the meantime, West Sacramento has decided to take a new approach, said Shanna Zuspan, the redevelopment agency's senior program manager. The Walker Macy team, she said, will do its best to determine proper heights and setbacks, and design enough of a project so that environmental reviews can proceed.

That puts public money at some risk; the next phase of design work could approach $500,000. But the city's hope is that the calculations will hold and the project will receive the Board of Reclamation's blessing.

"We're going to sit down and recalibrate," Zuspan said. "I'm confident we'll get through this."

The city of Sacramento, which has been watching the drama with concern from the other side of the river, also will be submitting an application for a promenade extension to the Board of Reclamation by January. The city's levee situation is more straightforward, and planners hope to avoid snags by designing a simple promenade without significant flood control improvements, said Beth Tincher, senior project manager for the downtown development group.

The two cities are using the same designers and trading notes as they go.

"We're hoping we can help push both sides forward," Tincher said.

Currently, the Sacramento side has two primary public access points. One is in the historic Old Sacramento district, where – if people are willing to cross over uneven ground, a railroad track and a rustic boardwalk – it is possible to climb down onto floating walkways and get close to the river.

The other is the formal two-block Riverfront Promenade south of the Tower Bridge. Built in 1998, it is a pleasant place to stroll and view the river. It has benches and plantings and historic lamp posts. And then it ends abruptly at O Street, turning into a zone of litter and weeds.

The city's eventual dream is to create a continuous riverfront parkway all the way south to Broadway that connects with Miller Park.

For now, the city is focusing on a two-block extension of the promenade to R Street. Last month, the Sacramento City Council reviewed plans and established a $6.25 million budget for that project.

Zilis of Walker Macy said extending the promenade on the Sacramento side is difficult because the land is constrained by Interstate 5 and a railroad line, as well as other structures. Plans for the extension to R Street involve moving Front Street and the tracks to make more room.

The promenade design calls for a broad walkway with railings, seating, lighting, shade structures and possibly a cantilevered section extending out over the water. Longer term, a riverfront park is planned at R Street, plus a pedestrian and bicycling bridge across the river to link the two sides, Zills said.

The goal is to start construction on the extension to R Street a year from now, and finish the following year, Tincher said. Another $3 million extension to T Street is being planned next, she added.

If that happens, the city of Sacramento's public stretch of riverfront access, if you count Old Sacramento, would approach the mile mark – a triumph as waterfront measures go. On the other side, if the Triangle plans go through, West Sacramento would offer close to a mile and a half of direct public access to the Sacramento River.

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Exhibit D

Senate Bill No. 276

CHAPTER 641

An act to amend Sections 12670.14 and 12670.16 of the Water Code, relating to water.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

SB 276, Steinberg. Flood control projects.

Existing law adopts and authorizes, at an estimated cost to the state of the sum that may be appropriated by the Legislature for state participation upon the recommendation and advice of the Department of Water Resources or the Reclamation Board, the federally authorized project for flood control along the American and Sacramento Rivers, as modified, and the Folsom Dam modification project, as modified by a prescribed report prepared by the Sacramento Area Flood Control Agency.

This bill would, for the purposes of those authorizations, describe the project for flood control along the American and Sacramento Rivers as further modified to include a specified 200-year level of flood protection. The bill would describe the Folsom Dam modification project as further modified by a specified report adopted by Congress. The bill would specify the extent of state and local participation in specified flood control projects administered by the Sacramento Area Flood Control Agency.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) Sacramento was founded over 150 years ago in a flood plain at the confluence of the Sacramento and American Rivers. Commercially dependent on river transport, the city suffered from flood disasters because of inadequate flood protection. Construction of the present day levee system and Folsom Dam have spared modern Sacramento from catastrophic flooding. However, the record floods of 1986 and 1997 exposed significant deficiencies in this flood control system, making the state capital region the most at-risk urban area in the country.

(b) Since 1986, the State of California has participated in a cost-sharing partnership with the federal government and the Sacramento Area Flood Control Agency that has produced substantial investments in improved flood protection for the people and property occupying the historic flood plain,

including the State Capitol and more than 1,300 other government-owned buildings and infrastructure.

(c) Although the state capital region is now better protected than at any time in its history, intensive development of the flood plain has significantly increased the potential consequences of an uncontrolled flood and heightened the state's interest in continuing to invest in a defined cost-shared program to provide the region with an adequate level of flood protection. Without state funding, federal and local flood control investments will not be secured, the risk of flooding will remain unacceptably high, and the region's economic development and environmental health will be imperiled.

(d) The Congress and the President of the United States have recognized the national importance of improving the state capital's flood protection system by authorizing projects in the Defense Appropriations Act of 1993, the Water Resources Development Act of 1996, the Water Resources Development Act of 1999, and the Energy and Water Development Appropriations Act of 2004.

(e) In 2000, in response to the Legislature's expressed desire to develop a long-term policy to guide the state's participation in future flood management projects, Assembly Bill 1147 was passed by the Legislature, signed by Governor Gray Davis, and enacted as Chapter 1071 of the Statutes of 2000.

(f) The legislation added Section 12670.14 to the Water Code. This section authorized flood control projects for the protection of specific areas within the Sacramento region against a catastrophic flood event, including the project for flood control along the American and Sacramento Rivers, the project for flood control in the Natomas and North Sacramento area, and the project to modify Folsom Dam.

(g) The legislation also added Section 12585.7 to the Water Code. Section 12585.7 changed the formula for the sharing of the nonfederal capital costs of all projects authorized by the Legislature on or after January 1, 2002, two years after the effective date of the legislation.

(h) The project for flood control along the American and Sacramento Rivers, including improvements to the Natomas levees, and the project to modify Folsom Dam were authorized by both the state and federal governments prior to January 1, 2002. Subsequently, in order to address changing engineering standards and conditions, the United States Army Corps of Engineers recommended, and Congress approved, postauthorization changes to these projects.

(i) In April 2007, the Sacramento Area Flood Control Agency secured the support of property owners in the Sacramento region for the imposition of a special benefit assessment to fund the local share of the cost of the levee improvement projects along the American and Sacramento Rivers, including the Natomas area, and the project to modify Folsom Dam to provide the Sacramento region with at least a 200-year level of flood protection based on current estimates of the runoff likely to be produced by such a flood event.

(j) This act modifies existing state authorizations for these projects to ensure that the historic federal-state-local cost-sharing partnership which has sustained these projects is continued and project construction moves forward as quickly as possible. The constructed projects will increase the ability of the existing flood control system to protect heavily urbanized areas within the City of Sacramento and the Counties of Sacramento and Sutter against very rare floods.

(k) As evidenced by the environmental impact reports certified in connection with these projects, including the hydrology and hydraulics impact analysis set forth in the environmental impact report prepared by the Sacramento Area Flood Control Agency with regard to local funding mechanisms for comprehensive flood control improvements for the Sacramento area dated February 2007, the increase in flood protection associated with improving the American and Sacramento River levees and modifying Folsom Dam will be accomplished without altering or otherwise impairing the design flows and water surface elevations prescribed as part of the Sacramento River Flood Control Project. Accordingly, these improvements will not result in significant adverse hydraulic impacts to the lands protected by the Sacramento River Flood Control Project. Thus, it is not necessary or appropriate to require these projects to include hydraulic mitigation.

(*l*) The projects authorized in Section 12670.14 of the Water Code 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 Reclamation Board nor any other state agency shall require the authorized projects to include hydraulic mitigation for these protected lands.

SEC. 2. Section 12670.14 of the Water Code is amended to read:

12670.14. The following projects in areas within the City of Sacramento and the Counties of Sacramento and Sutter are adopted and authorized at an estimated cost to the state of the sum that may be appropriated by the Legislature for state participation upon the recommendation and advice of the department or the Reclamation Board:

(a) The project for flood control in the Natomas and North Sacramento areas adopted and authorized by Congress in Section 9159 of the Department of Defense Appropriations Act of 1993 (Public Law 102-396) substantially in accordance with the recommendations of the Chief of Engineers in the report entitled "American River Watershed Investigation" dated July 1, 1992.

(b) The project for flood control along the American and Sacramento Rivers adopted and authorized by Congress in Section 101(a)(1) of the Water Resources Development Act of 1996 substantially in accordance with the recommendations of the Chief of Engineers in the report entitled "American River Watershed Project, California" dated June 27, 1996, as modified by Congress in Section 366 of the Water Resources Development Act of 1999, and as further modified to include the project features necessary to provide a 200-year level of flood protection along the American and Sacramento Rivers and within the Natomas Basin as described in the final engineer's report dated April 19, 2007, adopted by the Sacramento Area Flood Control Agency.

(c) The project to modify Folsom Dam adopted and authorized by Congress in Section 101(a)(6) of the Water Resources Development Act of 1999, as described in the United States Army Corps of Engineers Supplemental Information Report for the American River Watershed Project, California, dated March 1996, as modified by the report entitled "Folsom Dam Modification Report, New Outlets Plan," dated March 1998, prepared by the Sacramento Area Flood Control Agency, and as further modified by the Post-Authorization Change Report, American River Watershed Project (Folsom Dam Modification and Folsom Dam Raise Projects), dated March 2007, adopted by Congress in Section 3023 of the Water Resources Development Act of 2007.

(d) (1) The project for flood control, environmental restoration, and recreation along south Sacramento County streams adopted and authorized by Congress in Section 101(a)(7) of the Water Resources Development Act of 1999 as described in the report of the Chief of Engineers entitled "South Sacramento County Streams, California" dated October 6, 1998.

(2) Notwithstanding Section 12657, at the discretion of the Reclamation Board, the Sacramento Area Flood Control Agency may provide, for the project described in paragraph (1), the assurances of local cooperation satisfactory to the Secretary of the Army, in accordance with Section 12657, in lieu of assurances by the Reclamation Board.

SEC. 3. Section 12670.16 of the Water Code is amended to read:

12670.16. (a) Notwithstanding any other provision of law, the Sacramento Area Flood Control Agency's share of the nonfederal capital costs of the projects for flood control authorized in Section 12670.14 shall be calculated in accordance with Section 12585.5, and the agency shall be reimbursed pursuant to Section 12585.5 for any costs of project features that the agency advances on behalf of the department or Reclamation Board if either of the following requirements is met:

(1) The advances are made in response to a federal request for payment of the nonfederal share of the cost of the project.

(2) If the advances are made for project features that have not yet been authorized by Congress, the Reclamation Board has received a written determination by the federal government that the project features will likely be authorized by Congress and, if so authorized, the advances will be eligible for credit toward the nonfederal share of the cost of these features.

(b) Prior to any reimbursement pursuant to subdivision (a), the agency shall execute an agreement with the department under which it agrees to indemnify and hold the state harmless from damages due to the construction, operation, or maintenance of those projects and agrees to operate, maintain, repair, replace, and rehabilitate those projects, or provide the agreement of its appropriate member agency to do so.

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Exhibit E

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

Subject: Comments on the Sacramento Area Flood Control Agency's September 2007, Draft Environmental Impact Report on the Natomas Levee Improvement Program Landside Improvements Project

Dear Mr. Bassett:

The U.S. Fish and Wildlife Service (Service) and California Department of Fish and Game (DFG) (hereafter collectively referred to as the Wildlife Agencies) have reviewed the Sacramento Area Flood Control Agency's (SAFCA) September 2007, Draft Environmental Impact Report on the Natomas Levee Improvement Program Landside Improvements Project (DEIR). As described in the DEIR, the project objectives include: 1) 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, 2) provide urban-standard ("200-year") flood protection for developed areas in Sacramento's major floodplains over time, and 3) ensure that new development in the undeveloped areas of Sacramento's major floodplains does not substantially increase the expected damage of an uncontrolled flood.

As trustee for the State's fish and wildlife resources, the DFG has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of such species. In that capacity, the DFG administers the California Endangered Species Act (CESA), the Native Plant Protection Act (NPPA), and other provisions of the California Fish and Game Code that affords protection to the State's fish and wildlife trust resources. The DFG also considers issues as related to the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703-712) (MBTA). The Service is providing comments in accordance with the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA), and the MBTA.

As our discussion below further explains, the DEIR does not adequately address the impacts of the proposed project on fisheries and aquatic and terrestrial biological resources, or the Natomas Basin Habitat Conservation Plan's (NBHCP) Operating Conservation Program. In particular, the

DEIR in some instances does not include mitigation measures that are enforceable, in some cases does not provide details and assurances for achieving successful mitigation, and defers mitigation details to some future time.

The effects analysis and proposed conservation strategy in the DEIR have not been evaluated by the Service to determine their consistency with Federal Endangered Species Act requirements. Such evaluation would occur during informal and formal consultation pursuant to section 7 of the ESA. At that time, the Service would use information provided by SAFCA and information otherwise available to the Service to determine the extent of effects to federally-listed species.

Background Information

The Wildlife Agencies met with representatives of SAFCA and its project consultant, EDAW, on September 25, 2006, May 10, 2007, and May 17, 2007, to discuss proposed levee improvement projects in the Natomas Basin and to discuss our concerns. In these meetings, the Wildlife Agencies emphasized the importance of minimizing the effects of SAFCA's proposed projects on federally and State listed species, as well as on existing and pending habitat conservation plans. The Wildlife Agencies also wrote a letter expressing the above concerns for the November 2006, Local Funding Mechanisms for Comprehensive Flood Control Improvements in the Sacramento Area Draft Environmental Impact Report. The DFG wrote a letter for the Notice of Preparation for the draft Environmental Impact Report for the Natomas Levee Improvement Program Landside Improvements Project expressing various concerns regarding potential impacts to biological resources. The Wildlife Agencies reiterate and expand upon their comments and concerns below.

Enforceable Mitigation Measures

CEQA Guidelines §§15126.4 (a)(1)(B) states that formulation of mitigation measures should not be deferred until some future time. Table ES-1 lists a number of mitigation measures for fisheries and aquatic resources (i.e. mitigation measures 3.6a and 3.6b), and terrestrial biological resources (i.e. mitigation measures 3.7a, 3.7b, 3.7c, 3.7d, 3.7f, 3.7h, and 3.7i), that rely on future approvals or agreements with the Wildlife Agencies, entities entrusted with carrying out the NBHCP's permit conditions (Natomas Basin Conservancy (TNBC)), and agencies entrusted with providing public safety (Federal Aviation Administration (FAA) approval over mitigation on proposed borrow site / Sacramento Airport buffer lands), as a means to bring identified significant environmental effects to below a level that is significant. In some cases (i.e. impact 3.7a on page 3.7-14), the DEIR states "specific requirements have not been established to ensure that appropriate habitat conditions have been provided to adequately replace the values that would be lost." Because there is no guarantee that these approvals or cooperation with all of the above entities will ultimately occur, the Wildlife Agencies believe that the above mitigation measures are unenforceable and do not bring the impacts to fisheries and aquatic resources to below a level that is significant.

Mitigation measures should establish performance standards to evaluate the success of the proposed mitigation, provide a range of options to achieve the performance standards, and must commit the lead agency to successful completion of the mitigation. Mitigation measures should

also describe when the mitigation measure will be implemented, and explain why the measure is feasible. Therefore, the Wildlife Agencies recommend that the mitigation measures described in sections 3.6 and 3.7, and summarized in Table ES-1, include measures that are enforceable and do not defer mitigation details to some future time. The DEIR should identify the following items: how each measure will be carried out; who will perform the measures; when the measures will be performed; and the performance standards and mechanisms for achieving success, and an assured source of funding to acquire and manage identified mitigation lands. The DEIR could describe a range of enforceable mitigation measures that will be implemented in instances where approval and cooperation with the entities identified above either does or does not occur.

Potential Impacts on Federally- and State-Listed Species

The proposed activities described in the DEIR may result in adverse affects to several federally- and State-listed species, including the giant garter snake *(Thamnophis gigas;* GGS), and the Swainson's hawk *(Buteo swainsoni;* SWH).

GGS

The proposed activities described in the DEIR would result in impacts to upland and aquatic habitats for the GGS. Direct and indirect impacts could include the loss and displacement of individuals, the temporary disturbance of habitat, and road mortality. SAFCA states in the DEIR that "measures...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 worker awareness training, timing of initial ground disturbance to correspond with the snake's active season...dewatering aquatic habitat before fill, conducting preconstruction surveys, and conducting biological monitoring during construction." The effects analysis and proposed conservation strategy in the DEIR have not been evaluated by the Service to determine their consistency with Federal Endangered Species Act requirements. Such evaluation would occur during section 7 consultation.

According the Service's conservation measures for GGS, construction activities occurring within GGS habitat should be completed between May 1 and October 1. This is the active period for GGS, and the potential for direct mortality is lessened during this time because it is expected that the snake will actively move and avoid danger. Construction activities that extend beyond October 1 may adversely affect the GGS by limiting its ability to find and utilize suitable upland habitat for winter hibernation, by hindering its dispersal behavior, and by exposing it to increased risks of injury and mortality from predation, exposure, entombment, vehicular traffic, and construction equipment as the snake may be forced to disperse through and/or around the construction site in response to habitat changes and seasonal indicators. If it appears that construction may not be completed by October 1, additional conservation measures, including compensation, may be necessary to minimize these effects. The project proponent should contact the Service through a lead Federal agency no later than July 15 of the year in question to allow for adequate time to consider and process a request to extend the GGS work period construction window. The Service may consider this request, particularly if construction is at least 80 percent complete by October 1.

The DEIR also states "although the [GGS] habitat loss would be compensated for by habitat creation and preservation, a plan has not yet been prepared specifying how canals and marsh that are designed to provide giant garter snake habitat would be managed to ensure that the appropriate habitat conditions are provided", and "SAFCA shall develop and implement a plan 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...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 ESA and CESA shall be obtained. All measures subsequently adopted through the permitting process shall be implemented." These commitments require more specificity and explanation in the DEIR in order to evaluate their adequacy and feasibility to protect the GGS and its habitat in the basin.

SWH

The proposed activities described in the DEIR would result in impacts to nesting and foraging habitats for the SWH. Direct and indirect impacts could include the loss and displacement of individuals, the disturbance of habitat, and mortality. SAFCA states in the DEIR that "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."

The DFG believes that impacts to and take of SWH could occur by project related activities within ½ mile of an occupied SWH nest. In order to reduce impacts to a level below significance for nesting SWH, the DFG recommends that the DEIR commit SAFCA to undertake the minimization measures described in the DEIR and quoted in the preceding paragraph, and if construction activities are expected to occur within 0.5 miles of an occupied nest, SAFCA will consult with DFG and, if necessary, obtain an incidental take permit issued pursuant to Fish and Game Code section 2081.

For the SWH, SAFCA states in the DEIR that "SAFCA shall develop and implement a plan 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. The management plan shall, at a minimum, establish specific success criteria for habitat creation, specify remedial measures to be undertaken if success criteria are not met (e.g., supplementary plantings and additional monitoring), and describe short- and long-term maintenance and management of the features. Long-term protection of the created features and funding for their management shall be provided through appropriate mechanisms to be determined by SAFCA, DFG, and other entities cooperating in implementation of the proposed project." These commitments require more specificity and explanation in the DEIR in order to evaluate their adequacy and feasibility to protect the SWH and its habitat in the basin.

As described in "Enforceable Mitigation Measures" above, because there is no guarantee that approvals or agreements with TNBC, FAA, USFWS, and DFG (which are necessary to carrying out the mitigation measures described in the DEIR) will ultimately occur, the Wildlife Agencies believe that the above mitigation measures are unenforceable and do not bring the impacts to the GGS and SWH to below a level that is significant. Therefore, the Wildlife Agencies recommend that the mitigation measures described in sections 3.7d and 3.7f, and summarized in Table ES-1, include measures that are enforceable and do not defer mitigation details to some future time. The DEIR should identify: how the mitigation measures will be carried out; who will perform the measures; and when the measures will be performed. The DEIR should also identify measureable performance standards and mechanisms for achieving success, and describe an assured source of funding to establish and manage identified mitigation lands. The DEIR could describe a range of enforceable mitigation measures that will be implemented in instances where approval and cooperation with the above agencies and entities either does or does not occur. A mitigation plan for establishing habitat lands to offset the significant impacts to SWH foraging and nesting habitats and GGS aquatic and upland habitats should be developed in coordination with and subject to approval by the Wildlife Agencies. The plan should include a plan for establishing habitat and vegetation components, a monitoring plan (a minimum of 5 years), appropriate success criteria, and a remediation plan in the event that success criteria are not met. The mitigation plan should identify who will hold ownership of the parcel(s), who will manage the parcel(s), and what funding will be used to manage such lands in perpetuity.

CESA

A California Endangered Species Act (CESA) Permit must be obtained if the project has the potential to result in take of species of plants or animals listed under CESA, either during construction, or over the life of the project. The proposed project may result in take of GGS and SWH. Issuance of a CESA permit is subject to CEQA documentation; therefore the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the project will impact CESA listed species, early consultation is encouraged, as significant modification to the project and mitigation measures may be required in order to obtain a CESA permit. A CESA permit may only be obtained if the impacts of the authorized take of the species is minimized and fully mitigated and adequate funding has been ensured to implement the mitigation measures. The DFG may only issue a CESA permit if DFG determines that issuance of the permit does not jeopardize the continued existence of the species. The DFG

will make this determination based on the best scientific information available, and shall include consideration of the species' capability to survive and reproduce, including the species known population trends and known threats to the species. Issuance of a CESA permit may take up to 180 days from receipt of an application from the applicant. Therefore, the DFG recommends that the DEIR also include a discussion of known threats to, and population trends of, GGS and SWH, and includes a mitigation monitoring and reporting program which at a minimum includes a range of enforceable mitigation measures, including identifying: how the measure will be carried out; who will perform these tasks; when the tasks will be performed; and provide details for achieving success, including funding to establish and manage identified mitigation lands.

Potential Impacts on Burrowing Owl and other Special-Status Birds
According to the California Natural Diversity Database (CNDDB) and as described in the DEIR, burrowing owls (*Athene cunicularia; BUOW*) are known to occur within the project vicinity. Fish and Game Code section 3503.5 protects raptors, and their nests and eggs. The DEIR states that "the biologist shall conduct preconstruction surveys to identify active special-status bird nests and occupied BUOW burrows within 500 feet of construction areas. Surveys for nesting birds shall be conducted before project activities are initiated during the nesting season (March 1–July 31), and surveys for BUOW shall be conducted before project activities are initiated at any time of year. Surveys shall be conducted in accordance with NBHCP requirements. If an active nest or occupied nest burrow is found, an appropriate buffer that minimizes 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 ensure that project activity does not result 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 an occupied BUOW burrow that does not support an active nest is found, SAFCA shall develop and implement a relocation plan, in coordination with and subject to approval of DFG and USFWS and consistent with requirements of the NBHCP. Because the project would generally result in temporary disturbance of BUOW habitat or conversion from one suitable habitat type to another, relocation is likely to include passive exclusion (via one-way doors at the burrow entrances) of owls from the project site. The owls would then be able to reoccupy the area after construction is complete. Implementation of the above measure would ensure that destruction of occupied BUOW burrows and loss of active nests of this and additional special-status bird species are avoided."

The mitigation measures described in the DEIR for the BUOW are not adequate to minimize impacts to a level below significance, because no permanently protected available suitable nesting habitat, no foraging habitat, and no long-term management and monitoring of the mitigation measures are provided. We recommend that the following mitigation measures should also be included in the DEIR (which are described in the Department of Fish and Game's (DFG) 1994 "Staff Report on Burrowing Owl Mitigation,"):

1. Occupied burrows should not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by the Department verifies through non-

invasive methods that either: (1) the birds have not begun egg-laying and incubation; or (2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

2. To offset the loss of foraging and burrow habitat on the project site, a minimum of 6.5acres of foraging habitat (calculated on a 100 m {approx. 300 ft.} foraging radius around the burrow) per pair or unpaired resident bird, should be acquired and permanently protected. The protected lands should be adjacent to occupied BUOW habitat and at a location acceptable to the Department. Protection of additional habitat acreage per pair or unpaired resident bird may be applicable in some instances.

3. When destruction of occupied burrows is unavoidable, existing unsuitable burrows should be enhanced (enlarged or cleared of debris) or new burrows created (by installing artificial burrows) at a ratio of 2:1 on the protected lands site

4. If owls must be moved away from the disturbance area, passive relocation techniques (as described below) should be used rather than trapping. At least one or more weeks will be necessary to accomplish this and allow the owls to acclimate to alternate burrows.

5. The project sponsor should provide funding for long-term management and monitoring of the protected lands. The monitoring plan should include success criteria, remedial measures, and an annual report to the Department.

Passive Relocation - With One-Way Doors: Owls should be excluded from burrows in the immediate impact zone and within a 50 meter (approx. 160 ft.) buffer zone by installing one-way doors in burrow entrances. One-way doors (e.g., modified dryer vents) should be left in place 48 hours to insure owls have left the burrow before excavation. Two natural or artificial burrows should be provided for each burrow in the project area that will be rendered biologically unsuitable. The project area should be monitored daily for one week to confirm owl use of burrows before excavating burrows in the immediate impact zone. Whenever possible, burrows should be excavated using hand tools and refilled to prevent reoccupation. Sections of flexible plastic pipe should be inserted into the tunnels during excavation to maintain an escape route for any animals inside the burrow.

Passive Relocation - Without One-Way Doors: Two natural or artificial burrows should be provided for each burrow in the project area that will be rendered biologically unsuitable. The project area should be monitored daily until the owls have relocated to the new burrows. The formerly occupied burrows may then be excavated. Whenever possible, burrows should be excavated using hand tools and refilled to prevent reoccupation. Sections of flexible plastic pipe should be inserted into burrows during excavation to maintain an escape route for any animals inside the burrow.

Potential Impacts on Sensitive Plants

The DEIR describes that three special status plants species have potential to occur in aquatic

habitats within the project area, including rose mallow (*Hibiscus lasiocarpus*), Delta tule pea (*Lathyrus jepsonii* var. *jepsonii*), and Sanford's arrowhead (*Sagittaria sanfordii*). The DEIR states that "the proposed project would result in permanent and temporary direct effects on irrigation/drainage ditches, canals, and reservoir that provide potentially suitable habitat for these species", and "fill and disturbance of these habitats could result in adverse effects on special-status plants, if present." As mitigation for these potential impacts, the DEIR states that "before any ground-disturbing project activities begin, a qualified biologist retained by SAFCA shall conduct surveys for special-status plants in appropriate habitat within the project footprint, in accordance with USFWS and/or DFG guidelines and at the appropriate time of year when the target species would be clearly identifiable. If no special-status plants are found during focused surveys, no further action shall be required", and "if special-status plants are found, areas of occupied habitat shall be identified and the primary engineering and construction contractors shall ensure, through coordination with the biologist, that staging areas and access routes are designed to minimize disturbance of these areas. All occupied habitat that is located adjacent to construction areas, but can be avoided, shall be protected by temporary fencing during construction. If special-status plants are present in areas that cannot be avoided, plants that would be affected shall be transplanted to the GGS/Drainage Canal, if feasible. If this is infeasible (i.e., because the created habitat is not suitable at the time transplantation is required), an alternative transplantation location (e.g., TNBC preserves), approved by USFWS and DFG, shall be utilized. A plan to address management of the transplanted populations and their habitat shall be developed."

The DFG has found that transplanting many herbaceous plants is typically unsuccessful, and should be considered experimental. In order to bring the impacts identified above to below a level that is significant, the Wildlife Agencies recommend that the mitigation measures described in sections 3.7b, and summarized in Table ES-1, include a requirement that seasonally appropriate floristic surveys be conducted in areas of suitable habitat for sensitive plants in a manner consistent with the *Guidelines for Assessing the Effects of Proposed Projects on Rare, Threatened, and Endangered Plants and Natural Communities* (DFG 2000), provide a detailed justification for transplanting the above three plant species, and include additional measures to increase the chance of success, such as collecting and propagating seed in an approved nursery to provide additional plantings in an appropriate mitigation site, and performing transplantation actions when the plant is dormant. A mitigation plan approved by the DFG should be developed, which includes a planting plan, monitoring plan, success criteria, and a remediation plan in the event that success criteria are not met. Mitigation lands should be protected and managed in perpetuity.

Potential Impacts on the Natomas Basin Habitat Conservation Plan

While the Wildlife Agencies acknowledge that the proposed projects described in the DEIR are not urban developments, the proposed projects are likely to result in significant effects to listed species in the Natomas Basin as a result of habitat modification and disturbance, and are likely to adversely affect the implementation of the Natomas Basin Habitat Conservation Plan (NBHCP; City of Sacramento *et al.* 2003). The NBHCP's ITPs cover the take of 22 plant and animal species, many of which are listed as endangered or threatened under the California Endangered

Species Act and/or the Federal Endangered Species Act.

The effectiveness of the NBHCP's Operating Conservation Program is explicitly premised upon the City of Sacramento's commitment to limit total development to 8,050 acres within the City's Permit Area, Sutter County's commitment to limit total development to 7,467 acres within Sutter County's Permit Area, and the expectation that total development within the basin would not exceed 17,500 acres. The proposed levee improvement project would result in disturbance or destruction of GGS and SWH habitat in the Natomas Basin above the level analyzed under the NBHCP and in particular, sensitive habitat areas for the species. Thus, the proposed action has the potential to impact the effectiveness of the NBHCP's conservation strategy designed to protect the GGS and SWH. On September 7, 2005, Judge Levi issued a decision in the Federal NBHCP litigation, which cautioned in footnote 13 of that decision that "the Service and those seeking an ITP in the future will face an uphill battle if they attempt to argue that additional development in the Basin beyond the 17,500 acres will not result in "jeopardy" to GGS and SWH. The ITPs issued to the Conservancy authorized the take of covered species associated with the restoration, enhancement, operation, and management of 7,758.5 acres of upland, managed marsh and rice preserves set aside as mitigation for the City's and Sutter County's development activities under the NBHCP. Approval of additional development in the Natomas Basin would likely make it more difficult for the Conservancy to fulfill its obligations under the NBHCP. Such development could result in isolation of the Conservancy's preserve lands, thus threatening the Conservancy's ability to implement the NBHCP's operating conservation program.

SAFCA states in the DEIR that "SAFCA shall coordinate with TNBC to determine the most effective means of ensuring that the small encroachment onto reserves that would result from project implementation does not adversely affect the ability to meet the minimum-size and mitigation-ratio requirements of the NBHCP, require revision of existing management plans, and/or affect revenue-generation requirements. SAFCA shall, in coordination with TNBC, identify and implement necessary actions to ensure that encroachment does not jeopardize successful implementation of the NBHCP. Such actions may include direct supplementation of TNBC funding to offset losses in revenue generation, management of portions of the reserve that are encroached upon by project facilities in a manner that is consistent with current habitat requirements, and/or acquisition of additional land to replace portions of reserves that are encroached upon. Actions shall be approved by TNBC, USFWS, and DFG and shall be implemented by SAFCA before encroachment occurs." As described in the "Enforceable Mitigation Measures" section of this letter above, because there is no guarantee that approvals or agreements with TNBC, USFWS, and DFG will ultimately occur or even whether the proposed measures to minimize impacts to TNBC reserve lands are feasible, the Wildlife Agencies believe that the above mitigation measures are unenforceable and do not bring the impacts to the NBHCP's Operating Conservation Program to below a level that is significant. Therefore, the Wildlife Agencies recommend that the mitigation measures described in sections 3.7a-g and 3.7i, and summarized in Table ES-1, include measures which are enforceable and do not defer mitigation details to some future time. The DEIR could describe a range of enforceable, feasible mitigation measures that will be implemented in instances where approval and cooperation with

these other entities either does or does not occur.

Conclusion

Thank you for the opportunity to review this project. As the Wildlife Agencies have previously stated in person, we are concerned about the effects of the proposed project on federally- and state-listed species, and on the efficacy of the NBHCP and the existing ITPs. The DEIR does not adequately address the effects of the proposed project on the GGS, SWH, BUOW, and various sensitive plants in particular, and more generally, on the NBHCP's operating conservation program. We remain committed to working with SAFCA to ensure that the implementation of the proposed project avoids and minimizes effects on listed species and remains consistent with the conservation strategies and operating conservation programs of pending and existing habitat conservation plans.

Pursuant to Public Resources Code Sections 21092 and 21092.2, the DFG requests written notification of proposed actions and pending decisions regarding this project. Written notifications should be directed to the DFG Sacramento Valley/Central Sierra Region, 1701 Nimbus Road, Suite A, Rancho Cordova, California 95670. The Service also requests notification of any actions on the proposed project. Written notification can be submitted to the Service at the letterhead address.

Please contact Jana Milliken, the Acting Sacramento Valley Branch Chief, or Jennifer Hobbs, Staff Biologist, of the Service at (916) 414-6645, and Todd Gardner, Staff Environmental Scientist, at (209) 745-1968, or Jeff Drongesen, Senior Environmental Scientist, at (916) 358-2919, of the DFG if you have any questions or concerns regarding this letter.

Sincerely,

Susan K. Moore
Field Supervisor
U.S. Fish and Wildlife Service

for Kent Smith
Acting Regional Manager
California Department of Fish and Game

cc:
Larry Combs, Administrator, County of Sutter, Yuba City, CA
Roger Dickinson, Sacramento County Board of Supervisors, Sacramento, CA
Tom Buford, City of Sacramento, Sacramento, CA
John Roberts, The Natomas Basin Conservancy, Sacramento, CA
Jeff Drongesen, California Department of Fish and Game, Rancho Cordova, CA
Todd Gardner, California Department of Fish and Game, Rancho Cordova, CA

Literature Cited

City of Sacramento, Sutter County, Natomas Basin Conservancy, Reclamation District No. 1000, and Natomas Mutual Water Company (NBHCP). 2003. Final Natomas Basin Habitat Conservation Plan. Sacramento, California: Prepared for the U. S. Fish and Wildlife Service and CDFG. April.

cc:
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Mr. Todd Gardner
California Department of Fish and Game
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1701 Nimbus Rd., Suite A
Rancho Cordova, California 95670

STATEMENT OF OBJECTION TO THE APPROVAL OF SAFCA PROJECT

WE, THE UNDERSIGNED, PURSUANT TO CALIFORNIA PUBLIC RESOURCES CODE SECTION 21177 (b), DO HEREBY OBJECT TO THE APPROVAL OF THE PROJECTS ENTITLED "NATOMAS LEVEE IMPROVEMENT PROGRAM AS SPONSORED BY THE SACRAMENTO AREA FLOOD CONTROL ASSOCIATION (SAFCA). THIS OBJECTION TO THE APPROVAL OF THE PROJECTS IS BASED IN PART ON THE OBJECTIONS TO THE PROJECTS (NEGATIVE COMMENTS) SENT TO SAFCA DURING THE EIR PUBLIC COMMENT PERIOD AND WE AGREE WITH AND ADOPT THESE NEGATIVE COMMENTS IN THEIR ENTIRETY.

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Georgann B. Johnston

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Rhoda Cossi
Deny Knight
Doug Cumming

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PAUL COAD
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	TOM LANGEVIN Jr.
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December 19, 2007

Benjamin Carter, President, and Members
The Reclamation Board
3310 El Camino Avenue, Room LL40
Sacramento, CA 95821

ATTN: Jay Punia, General Manager

Re: Application No. 18159-2, Sacramento Area Flood Control Agency, Natomas Levee Improvement Program, Natomas Cross Canal, Sutter County – December 21, 2007 Agenda Item 5.D.

Dear President Carter and Members of The Reclamation Board:

I am writing on behalf of our client the Garden Highway Community Association, which is made up of landowners who own property and residences immediately adjacent to the proposed landside levee improvements described as the Natomas Levee Improvement Program by the Sacramento Area Flood Control Agency ("SAFCA"). The environmental consequences of the proposed landside levee improvements were the subject of an environmental impact report ("EIR") entitled, Natomas Levee Improvement Program – Landside Improvements Project (SCH #2007062016), which was certified by SAFCA on November 29, 2007. In addition to certifying the EIR for the Natomas Levee Improvement Program, the SAFCA Board approved the "2008 construction projects, consisting 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).'"

Incorporating Garden Highway Community Association's Letter to SAFCA

Attached as Exhibit 1 to this letter, is a letter I submitted to SAFCA on behalf of our client on November 27, 2007, which highlights where we believe SAFCA has prejudicially abused its discretion by failing to follow the California Environmental Quality Act's ("CEQA") mandatory environmental review procedures, resulting in their CEQA document being inadequate. Although Application No. 18159-2 only brings to The Reclamation Board the south side levee improvements along the Natomas Cross Canal, our clients' comments on the legal inadequacy of the EIR's evaluation of the Natomas Levee Improvement Program apply to this portion of the

project, and I am, therefore, incorporating the comments in this letter and its exhibits for purposes of The Reclamation Board's proceeding.[1]

Garden Highway Community Association Has Challenged SAFCA's Approval

On December 19, 2007, the Garden Highway Community Association filed a petition for wri mandate in the Sacramento County Superior Court challenging SAFCA's certification of the Natomas Levee Improvement Program–Landside Improvements Project EIR (SCH #2007062016) and approval of the Natomas Levee Improvement Program and landside levee improvement projects, characterized by SAFCA in Resolution 07-105 as the "2008 constructi projects, consisting of the 'Natomas Cross Canal South Levee Phase 2 Improvement Project' the 'Sacramento River East Levee Phase 1 Improvement Project (Reaches 1 through 4B),'" fo failing to comply with CEQA.

The Reclamation Board Acts As A Responsible Agency Under CEQA

For CEQA's purposes SAFCA is the lead agency for the proposed Natomas Levee Improveme Program and, therefore, was required to prepare and certify the above-referenced EIR. The Reclamation Board is identified in SAFCA's certified EIR as a responsible agency by virtue of its regulatory authority in granting levee and floodway encroachment permits.[2]

Section 8710 of the California Water Code provides:

> Every plan of reclamation, flood control, drainage, improvement, dredging or work, that includes or contemplates the construction, enlargement, revetment or alteration of any levee, embankment, canal or other excavation in the bed of or along or near the banks of the Sacramento or San Joaquin Rivers or any of their tributaries or connected therewith, or upon any land adjacent thereto, or within any of the overflow basins thereof, or upon any land susceptible to overflow therefrom, shall be approved by the board before construction is commenced.[3]

In response to a comment from Reclamation District 2035 regarding The State Reclamation Board's jurisdiction,[4] SAFCA responded,

> The Reclamation Board has approval authority over ***portions*** of the NLIP Landside Improvements Project. The NLIP Landside Improvements Project would not alter water surface elevations and therefore would not increase flooding potential in the SRFCP.[5]

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[1] It is not clear why SAFCA is not seeking a permit from The Reclamation Board for the Sacramento River East Levee Phase 1 Improvement Project (Reaches 1 through 4B).
[2] NLIP Landside Improvement DEIR, Sacramento Area Flood Control Agency (EDAW, Sept. 2007) p. 1-4.
[3] California Water Code, Section 8710
[4] NLIP Landside Improvements Project FEIR, SAFCA (EDAW, Nov. 2007), p. 3-68
[5] NLIP FEIR, p. 3-71,

We criticized SAFCA for segmenting the environmental review of its landside levee improvements.[6] It appears SAFCA is continuing to segment the review of its landside levee improvements by forwarding only a portion of the 2008 construction project that it approved on November 29, 2007, for review by The Reclamation Board. It would appear Section 8710 of the Water Code gives The State Reclamation Board complete jurisdiction over SAFCA's Natomas Levee Improvement Program.

As a responsible agency The Reclamation Board must comply with CEQA; specifically, the duties of a responsible agency described in section 15096 of the CEQA Guidelines. Additionally, as a responsible agency, an inadequate CEQA document is a legal basis for the Board of Reclamation to deny this application.[7]

SAFCA's EIR Failed to Compare Project Impacts Against Baseline Conditions

SAFCA's EIR has failed to evaluate the environmental consequences of its proposed levee improvement program against the existing baseline environmental conditions.[8] During the staff presentation of the proposed levee improvement project at the November 29, 2007 SAFCA hearing, Joseph D. Countryman, President of MBK Engineers explained the hydraulic modeling that was used in determining that SAFCA's project would not change the river's elevation. The attached diagram at Exhibit 2 entitled "Cross-section: Sacramento River at USGS River Mile 76.1 (looking downstream)," was used by Mr. Countryman to show graphically the assumptions that went into MBK's computer model. This Cross-section of the Sacramento River demonstrates that the East side levee is higher than the west (Yolo) side levee.[9] SAFCA's project increases the height of the east side levee to provide the necessary freeboard to meet the new FEMA standards. MBK's computer model assumes that the west side levee will be raised to the 40 foot elevation line (see the red cap on the west side levee). In other words, MBK's computer model is based on a hypothetical situation – that the levees on the Yolo County side of the River have already been raised beyond their actual height. However, CEQA requires the lead agency to compare the impacts of its proposed project against the existing environmental conditions, not a hypothetical situation.[10] The real, existing, on-the-ground condition is the actual height of the west side levee without the non-existent additional height as indicated on the diagram by the red cap. Furthermore, Mr. Countryman also testified that he had to input additional fictitious data into the model in order to get the results desired by SAFCA, specifically that the levees upstream of the Natomas levees are currently stronger than they actually are and that these levees would not fail prior to the existing Natomas levees, which he stated was not the actual case.

I11-23

[6] Exhibit 1, pp. 10-12.
[7] California Code of Regulations, Tit. 23, Div. 1, Ch. 1, Art. 3, §15. subd. (c).
[8] See Exhibit 1, pp. 8-10.
[9] At an October 19, 2007 Reclamation Board Hearing Mr. Countryman provided an overview of the Natomas Levee Project in which he stated: "The existing levee in Natomas is over 2 feet higher than the levee across the river on the west side of the Sacramento River." An excerpt from the transcript of the meeting is attached as Exhibit 3 to this letter. Mr. Countryman's quote is at p. 247, lines 5 through 7.
[10] *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 121.

If you use baseline conditions and the design 200-year water surface for the Natomas Levee Improvement Program, you can see that the designed water surface elevation (the blue line labeled "200-yr NLIP Design WS (no failures)" is three to four feet higher than the west side levee. This means that the lands on the west side of the river are going to be flooded when the Sacramento River reaches the new 200-year designed elevation for the east side levee improvements. This would "expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee."[11]

I11-23
Cont'd

SAFCA's Levee Improvement Project Jeopardizes Adjacent Jurisdictions and Properties

Reclamation District 1001 commented on SAFCA's DEIR pointing out that by raising the south levee along the Natomas Cross Canal SAFCA could be jeopardizing RD 1001's lower north levee and lands on the north side of the canal.[12] Several property owners also raised concerns about the impact raising the south levee would have on properties to the north protected by the lower south levee.[13]

Reclamation District 2035 submitted a comment letter on SAFCA's DEIR criticizing SAFCA's flood modeling and for protecting the Natomas Basin at the risk of flooding other areas.[14]

The Reclamation Board may deny a permit if the proposed work could jeopardize directly or indirectly the physical integrity of levees or other works, or increase the damaging effects of flood flows.[15] Comments by landowners and the two reclamation districts directly affected by SAFCA's proposed action raise serious concerns about the risk of flooding in other areas. It would appear that SAFCA is creating a "levee parity" problem for neighboring jurisdictions by raising its levees three feet higher than the levees on the opposite sides of the Cross Canal and the Sacramento River, thus making these areas more vulnerable to flooding. When discussing another proposed project with a levee raise of only one foot on the Sacramento River, your Chief Engineer recently stated publicly that the Board of Reclamation staff ". . .can't endorse such an improvement because it would create a "levee parity" problem." [16] The proposed SAFCA project would raise levees three feet on one side of the river, creating an even larger levee parity problem than the one cited by your Chief Engineer.

I11-24

The members of our client organization who live on the riverside of the east side levee improvements are concerned that Yolo County will respond to SAFCA's project and will raise the west side levee. Then the blue line that represents the "200-yr NLIP Design [Water Surface]" will flood those homes on the riverside of the new improved levees. SAFCA's flood

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[11] CEQA Guidelines, Appendix G, Environmental Checklist, Sample Question, VII. Hydrology and Water Quality, Item (i).
[12] NLIP Landside Improvements Project FEIR, SAFCA, (EDAW, Nov. 2007), p. 3-56.
[13] NLIP FEIR, pp. 3-291, -293, & -311.
[14] *id.* at p. 3-60 through 3-62.
[15] California Code of Regulations, Tit. 23, Div. 1, Ch. 1, Art. 3, §15, subd. (a)(1) & (7).
[16] See Exhibit C (Sacramento Bee article entitled "Riverfront: Plans to extend walkways face large hurdles") attached to Exhibit 1, the November 27, 2007 letter from Bill Yeates to SAFCA Chair Heather Fargo.

modeling never addressed this situation, because it never evaluated the height of the residences on the west side of the levee. I11-24 Cont'd

SAFCA Failed to Evaluate An Alternative That Lowers The River's Elevation

Because SAFCA failed to evaluate the environmental effects of its project against existing baseline environmental conditions, SAFCA's environmental document has been severely skewed to favor the proposed project, at the expense of a comprehensive review of alternatives to the proposed project. Despite many comments by adjacent landowners and RD 2035, SAFCA never considered a feasible alternative to its project that would lower the elevation of the river at flood stage, rather than raise the height of the levees.[17] Comments suggested lowering the existing weirs or providing set back levees. Despite acknowledging that the existing levee system constricts the river causing "chronic erosion and seepage,"[18] SAFCA simply dismissed evaluation any alternative that would lower the elevation of the river by improving or expanding the use of the existing bypass system. Neither the public nor public decision-makers were given the opportunity to compare the effects of an alternative that lowered the height of the river to the proposed program SAFCA is promoting. I11-25

The Reclamation Board may also deny SAFCA's project based on the fact that SAFCA's EIR is inadequate.[19]

On behalf of the Garden Highway Community Association, we urge The Reclamation Board to deny SAFCA's application because the lead agency's EIR does not comply with CEQA and its levee improvement project will jeopardize other area levees, adjacent properties, structures, residents and will, therefore, increase flood damage in these areas.

Sincerely,

//s//

Bill Yeates

cc: [illegible]
Jim Buer, Executive Director, SAFCA

[17] See, e.g., NLIP FEIR, pp. 3-64, 3-134, 3-179, 3-208, 3-212, 3-218, 3-232, 3-257.
[18] NLIP FEIR, p. 3.4-4.
[19] California Code of Regulations, Tit. 23, Div. 1, Ch. 1, Art. 3, §15, subd. (c).

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SCOTT A. MORRIS

October 29, 2007

VIA E-MAIL (Email: BassettJ@SacCOunty.net)
and U.S. MAIL

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

Re: Comments on SAFCA's Landside Improvements Project and Bank Protection Project Draft Environmental Impact Reports

Dear Mr. Bassett:

A. Introduction

This letter provides Reclamation District 2035's ("RD 2035") joint comments on both Draft Environmental Impact Reports for the Natomas Levee Improvement Program Bank Protection Project, SCH# 2007062017, ("Bank Project") and the related Natomas Levee Improvement Program Landside Improvements Project, SCH# 2007062016, ("Landside Project"). RD 2035 is providing a single response letter in light of the Sacramento Area Flood Control Agency's ("SAFCA's") decision to simultaneously release both DEIRs (i.e., the "Landside DEIR" and the "Bank DEIR") for public review. Both DEIRs involve different parts of the same project, which is part of one overarching program that was evaluated in SAFCA's Local Funding Mechanisms Program DEIR ("Programmatic DEIR"). RD 2035 intends that all the comments in this joint comment letter be submitted separately to each DEIR and responded to separately by SAFCA in both the Landside and Bank FEIRs.

B. Reclamation District 2035

Reclamation District 2035 ("RD 2035") was formed in 1919 to provide levee maintenance and drainage services to approximately 20,500 acres of land in Yolo County near the City of Woodland. RD 2035 is a local public entity that has legal authority and jurisdiction under Water Code Section 50000 et. seq to implement flood control programs and projects that reconstruct, replace, improve, or add to facilities as defined in Public Resources Code Section 5096.805(j). RD 2035's service

area includes the Conaway Ranch property. The Conaway Ranch property covers over 17,000 acres on the west side of the Sacramento River between the cities of Davis and Woodland. Approximately 40 percent of the Ranch is located within the Yolo Bypass and the remainder lies west of the bypass. Both RD 2035 and the Conaway Preservation Group, LLC, which manages the Conaway Ranch, are actively involved in encouraging and seeking solutions to the region's flood problems while conserving open space, agriculture, and rural and environmental values.

C. SAFCA is Protecting Natomas at the Risk of Flooding Other Areas

SAFCA is attempting to proceed with levee improvements to only one side of the Sacramento River. While this approach may be more convenient for SAFCA, it represents a myopic focus on local benefits that is contrary to sound public policy and flood project planning for the entire region. SAFCA should acknowledge this short-sighted policy and admit that it creates an increased risk of flooding to lands on the opposite side of the Sacramento River and Natomas Cross Canal. Is it SAFCA's policy to increase flood risks to less urbanized or extra-jurisdictional areas in order to protect lands within its jurisdiction, like Natomas? What is SAFCA's view of its responsibility for the effects of its flood control activities on flood risk in other areas?

D. SAFCA is Using Improper Significance Thresholds to Analyze the Flood Threat to the Opposite Side of the River

The DEIRs significance criteria and conclusions based on them are improper. Given that the west side Sacramento River levees are already under great stress in flood events, any change to the hydraulics or river elevation should be considered significant. The catastrophic consequences of a levee failure on any stretch of the Sacramento River leave no room for further increases in river elevation. Thus, any increase in river elevation during floods is significant and should be the proper threshold used in the analysis, not 0.1 foot. What is the basis supporting the 0.1 foot threshold?

Regarding impacts to water surface elevations and freeboard, SAFCA's approach to using a different threshold of significance for levees within the SRFCP and those outside the SRFCP's protection is irrational. The threshold for impacts to flood risk should be the same for all levees. The choice of the "1957" design profile as the threshold for significant encroachment is not justifiable. The known flood threats using information after the 1986 and 1997 storm events, render the 1957 design profile outdated for use as a significance threshold.

If the 1957 design standard is an accurate threshold for significance, then SAFCA should be trying to achieve that standard along the Natomas levees – instead, SAFCA is pursuing a higher, more realistic standard for itself and judging its impacts on others using the outmoded standard. As SAFCA has stated,[1] the levees on the west side are already apparently below the freeboard

[1] At the public hearing before the SAFCA Board, Executive Director Stein Buer repeatedly maintained that the status quo (i.e., baseline) was that levees on the opposite side were already significantly shorter and weaker.

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standards that SAFCA is seeking for the east side levees. Thus, the west side levees already have a significant problem with freeboard encroachment using modern standards, not the outmoded 1957 design standard. Any further rise in water elevation makes this existing problem that much harder to solve and is a de facto significant impact, which SAFCA must recognize and mitigate. As SAFCA itself stated:

> These improvements could reduce the risk of overtopping and failure of these levees, thereby causing more water to be retained in the channels under rare flood conditions. This, in turn, could increase the potential for overtopping and failure elsewhere in the SRFCP system, either within the Sacramento metropolitan area or upstream or downstream of this area. (Landside DEIR at 3.4-6).

Regarding project impacts to river velocity and flow, the Bank DEIR states that "[s]ome slight increase in scour would result from the increased velocities that could result in surface erosion of exposed soils on the berm areas where vegetation was removed." (Bank DEIR pg. 7-7). But the Bank DEIR does not discuss the increase in elevation or water velocity caused by adding fill to the waterside banks of the levees as depicted in its Figures 5-1 and 5-2. Table 4-1 indicates that proposed bank protections from only next year's construction will involve almost 9,000 linear feet with an average width of 65 feet. (Bank DEIR pg. 4-3). What is the total cubic volume of fill that SAFCA intends to add to the Sacramento River next year and for all the remaining Natomas levee improvements? How did SAFCA quantitatively calculate the effects of all this additional fill within the levees?

Without quantitative analyses of the effects on the river (e.g., velocity, height, etc. …) of the fill, there is no justification for concluding the effects are less than significant. In light of the previously discussed stress that west side levees are already under during flood events, and the deficiencies of those levees assumed under SAFCA's baseline, any increase in scouring, erosion, or water elevation to the west side levees must be considered significant and must be mitigated.

E. SAFCA's Flood Modeling Should Include More Details

Several issues with regard to modeling require comment. First, it appears the baseline model run indicated that the Natomas levees would not overtop or fail at their current heights. In fact, this result is what SAFCA uses to justify its conclusion that there will be no impacts to the opposite side of the river, namely that the Natomas levees are stronger and higher already. But, as explained above, this baseline result weakens any need to implement the projects quickly. The model indicates that current infrastructure in Natomas is safe from the 100-year flood. Therefore, there is

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no reason to rush to invest hundreds of millions of dollars in the current flood control system when it is admittedly outdated and designed to solve problems that no longer occur (i.e., siltation).[2]

SAFCA should clarify that the main impetus for quick implementation of these projects is to avoid the FEMA remapping process that would occur. If alternatively, there is a real, physical 100-year flood threat to Natomas that must be repaired, then SAFCA's chosen modeling assumptions or methods are improper and inaccurate because the model does not accurately reflect that situation.

Please provide more specific information regarding the modeling methods. Please provide specific evidence of the exact location of Sacramento River levee failures (both west and east side) and/or overtopping for all model runs or scenarios for all three DEIRs. Please also explain the reason why the model indicates these levees failed. Please explain if the model indicates any east side Sacramento River levees would fail under any modeled scenarios and why they failed. If none failed, why not?

In regards to Section D's discussion of significance criteria, please explain how accurate and precise the UNET model used in this analysis is in detecting slight river elevation changes, or other metrics like river velocity and erosion or scouring potential. What is the confidence interval surrounding the model's results? What statistical methods were employed to assess the model's results? Were multiple model runs performed and the average taken? If so, what are the standard deviations around the averages? If no such information is available, then how can SAFCA rely on an abstract model to claim that the flood risk on the other side of the river will not be increased?

F. SAFCA Must Evaluate the Threat of Underseepage and Overall Levee Stability

The modeling in the DEIRs does not appear to analyze the threat of underseepage or levee instability. Did SAFCA analyze these threats in the UNET modeling or through other quantitative analyses of the flood risk its improvements would have to levees on the opposite side? If not, then SAFCA cannot assert that its projects will not affect the flood risk to the opposite levees.

The current modeling appears to indicate that the Natomas levees are already high enough to withstand the 100-year and 200-year flood threat because there is no overtopping. The urgency with which SAFCA is proceeding, however, suggests that the true concern may be levee underseepage and stability. If the UNET model did not model these factors, then it cannot be used to conclude that the baseline conditions of the Natomas levees are superior to the levees on the opposite side. What other information do the DEIRs contain to inform the public and decision makers of the superiority of the Natomas levees with regards to underseepage and stability. Without such information, SAFCA cannot support its baseline premise that the Natomas levees are

[2] At the public hearing on these EIRs, Executive Director Stein Buer explained that erosion of the Sacramento River bed, and not siltation, is the current condition.

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already stronger than the opposite side's and that the opposite side levees will fail first with or without the propsoed project(s).

The Natomas Levee Evaluation Report (prepared in 2006 for SAFCA by MBK Engineers and others) contains information about the composition and stability of the east side levees based on borings, but no comparable west-side levee data is provided. Please provide details of the stability and underseepage risk of the Natomas levees versus those across the Sacramento River to support the baseline premise that the current state of the Natomas levees has already shifted all of the flood risk to the other side. Were any borings or modeling of the sort done for the east side levees performed for the west-side levees? If so, please provide the information to prove that the stability and underseepage risk on the west-side levees is already materially greater than the east-side levees. We believe that this data is available from the Reclamation Board or the Army Corps of Engineers.

This issue is critically needed to assess the true increased flood risk that SAFCA's project creates for the opposite side. For instance, assume that levees on both sides of the river have an equal chance of failure and that one levee break must occur somewhere in that stretch of river during a 100-year flood to release pressure. Under this baseline each side effectively has a 50% chance of being flooded. If, however, one side then removes the chance of levee failure on its side, the other side is guaranteed to flood. The 50% risk of flooding on that side has been increased to 100% by the other side's actions. This oversimplified example shows the effects on flood risk that SAFCA's projects may have. SAFCA has presented no substantial evidence to support its premise that the east-side levees will not fail before the west-side levees as a result of underseepage and levee instability. Please provide such information or discuss the added flood risk to the opposite side of the river.

In sum, RD 2035 believes that SAFCA's baseline premise that Natomas area levees are already stronger than levees on the opposite side is unsupported in the DEIRs. Therefore, SAFCA's improvements may demonstrably increase the potential for a catastrophic levee break on the opposite side of the river, which may affect RD 2035 lands. This would be a significant impact under CEQA, for which SAFCA must provide mitigation.

G. SAFCA's Objective to Provide 100-year Flood Protection "As Quickly As Possible" Unnecessarily Forecloses the Development of Better Alternatives

The insertion of a time factor into the program and project objectives is not needed because SAFCA's own modeling in all three DEIRs did not indicate that the Natomas Basin levees would be overtopped or fail – even at the 200-year flood level. If this is true, the area already has 100-year flood protection by SAFCA's estimation and there should be no rush to spend large sums of money on a physical solution without an apparent physical problem. What does SAFCA mean by the 100-year flood protection it seeks to achieve as soon as possible?

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If SAFCA's real objective is to achieve FEMA 100-year certification as quickly as possible, then SAFCA must explain why FEMA 100-year certification is so critical given that its own modeling shows that the levees are currently strong enough to physically protect the Natomas Basin from a 100-year flood. Furthermore, the objective should be changed to more accurately state this. In this context FEMA 100-year protection appears to be merely an administrative determination that is separate from the physical threat evaluated and disclosed by the modeling. Which is the proper standard? Is it the FEMA determination or SAFCA's modeling?

The above issues present a logical disconnect in the DEIRs' explanation of why the project(s) is/are needed and what hydraulic effects they will have. As discussed in Section F, it appears SAFCA maintains that under baseline conditions its levees are already stronger than levees across the Sacramento River so that those levees would fail before the Natomas levees, thus reducing pressure on the Natomas levees even without the projects. But if this is the case, then the urgent need for these projects is obviated. SAFCA's own modeling, therefore, fails to disclose the urgent need for increased flood protection. Without this urgent need, SAFCA has more time to develop and discuss alternatives that will provide a comprehensive solution, as discussed in Section H. If this is not so, then SAFCA must explain the disconnect. RD 2035 suspects this is because, as discussed in Section F, levee stability and underseepage were not included in the modeling or any other quantitative analyses – a true failure of the DEIRs.

H. SAFCA Should Pursue A More Integrated and Comprehensive Flood Solution

Even with the proposed levee improvements, the threat of flooding in the Natomas Basin will remain, and the residents of the Sacramento region and the State of California will have to continue to periodically invest huge sums of money to support the levees and maintain SAFCA's project. The Programmatic DEIR explained that the current flood control system "although well suited to address the technical and financial challenges of a previous era, has left a succeeding generation of flood managers with two systemic problems and levee risk factors: chronic erosion and seepage." (Programmatic DEIR at 4.4-6). It also indicates that because "many segments of the mainstream levee system were constructed using relatively porous hydraulic mining sediments borrowed from the river channel, the levees have a propensity to seep when subjected to prolonged high water surface elevations." (*Id.*). The Bank DEIR concludes that:

> Over the long term, it is likely that additional bank protection will be needed in the region because the design of the SRFCP is expected to continue to induce erosion of unprotected banks and result in the loss of riparian vegetation. (Bank DEIR at 2-7).

The fact is that the Sacramento River levees are too narrow in many places. As explained in the quote above, the current configuration creates excessive erosion that requires constant monitoring and maintenance. Over time, this constant activity will further degrade the environmental, aesthetic, and recreational values of the Sacramento River. The DEIRs do not adequately discuss,

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analyze, or seek to avoid this problem. Quite the opposite, the Programmatic DEIR simply states that "by the mid-1950's it was agreed that bank protection would be a permanent capital cost of operating the SRFCP." (*Id.*). However, in the 1950's agencies did not have to comply with CEQA or consider alternatives. In 2007, CEQA requires that SAFCA consider longer lasting solutions to the flood situation and long-term impacts of its actions. The scanty selection of alternatives provided are not sufficiently innovative and are discounted too quickly without a real analysis of their comparative merits when compared to the long term environmental effects the chosen course of action commits to.

Instead of rushing to grab the low hanging fruit of continued fortification of the existing levee system to avoid being mapped a floodplain by FEMA for a few years, SAFCA should foster discussions and consideration of more comprehensive, overarching solutions to regional flood problems. RD 2035 stands ready to assist in this effort. While a comprehensive solution might take a few more years to develop, it would provide permanent and more effective flood control for the Natomas Basin and the region that would not need continued input of expensive construction and maintenance, which would also continually cause environmental impacts that CEQA requires a discussion of. Such a solution would provide a more dynamic, living river system that would provide lasting and greater environmental, recreational, and aesthetic benefits. CEQA requires that the public and decision-makers be presented with sufficient information about long-term environmental effects and potential alternatives before committing themselves to a long-term path that may foreclose other more viable paths.

Whether a comprehensive solution would include setting back existing levees, redesigning the Yolo Bypass, purchasing or creating additional flood storage in reservoirs, developing additional designated flood plains or temporary flood storage locations, or other solutions is up to SAFCA. Citing institutional hurdles is not a sufficient excuse that justifies avoiding these issues because there is currently a great deal of political momentum behind a comprehensive solution to flood issues. The recent passage, among other things, of SB 5, SB 17, AB 70, AB 162, and AB 156 are new events substantially changing the circumstances under which SAFCA is proposing its projects. These changed circumstances provide added incentive to pursue a broader solution and render any reliance on the Programmatic DEIR's alternatives discussion obsolete and inadequate under CEQA Guidelines section 15162. For instance, the Legislature has directed the Department of Water Resources to provide system-wide evaluations and recommended flood control measures in a few years. SAFCA should cooperate with DWR in this effort instead of going forward with its project. The DEIRs should be revised to discuss these issues and the potential for the current approach to foreclose better, long-term solutions that would allow the Sacramento River to remain a valuable environmental, aesthetic, and recreational resource and will require less frequent infusions of costly construction activities.

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I. SAFCA's Piecemeal Approach to the DEIRs Is Improper, Inconsistent, and Confusing

The division of the environmental review process into numerous DEIRs, both now and apparently in the future, is confusing and fails to disclose the true environmental effects of the overall program. The Landside and Bank projects, and all future SAFCA actions on the Natomas levees, are all parts of the same project because they are all collectively required to satisfy the project objectives and prevent FEMA from mapping the Natomas basin as a major flood zone. Improving only half the length of the east Sacramento River levees will not achieve the project objectives and would not be an action with independent utility unrelated to the other contemplated actions. CEQA requires an impact analysis of the "whole of the project," not chopping the project into smaller segments, each with a minor effect on the environment, but this is what SAFCA is doing.

By separating the Landside and Bank projects from one another and preparing two separate DEIRs, SAFCA has created a confusing muddle of documentation that is hard to follow and sometimes inconsistent. More importantly, by dividing the program into so many parts, each DEIR is able to address a smaller impact than the true impacts of the project. For instance, the impact to biological resources of the Landside project is distinct from that in the Bank project, but they should be considered together. The same is true of impacts to agricultural land that will be used to obtain the fill and raw materials for the levee fixes. Similarly, the impacts of future phases of both projects are not adequately discussed here. Why were the Bank DEIR and Landside DEIR not part of the same DEIR?[3]

SAFCA should develop a detailed description of all the levee improvements it intends to make, and which are required to achieve the project objectives of attaining (or maintaining) 100-year FEMA certification. Then, one EIR should evaluate the specific impacts to various resources that will occur as a result of the whole of those actions, which represents the single project's true environmental impact. Responding to this comment by pointing to the cumulative effects analysis in both DEIRs is not adequate because that analysis is intended to more generally analyze the effects of other reasonably foreseeable projects, not other parts of the same project. Citing the Programmatic DEIR is also inadequate because it did not provide sufficient detail of the various project components to adequately assess project-level impacts. That modeling also included revised Folsom Dam operations that are not yet possible because, to our knowledge, the revised spillway has not been completed.

While evaluations in the Programmatic DEIR may be appropriate for analyzing various parts of a program, there is a limit to how finely a lead agency may segment a program. Here, SAFCA has gone too far because it is not separately analyzing two different projects under the same program,

[3] The simultaneous release and circulation of both DEIRs indicates that both could have been combined into a single document, which would be easier for the public and the decision makers to review and would provide a better picture of the true impacts of the levee improvements SAFCA proposes.

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but rather two parts of the same project, and SAFCA has plans to do more of the same.[4] As stated, this shrouds the true impacts of the project, presents a confusing assembly of CEQA documents, and prevents a real evaluation of the merits of the proposed project versus alternatives.

J. SAFCA's No-Project Alternatives are Inconsistent

Both the Landside and Bank DEIR correctly state that an EIR "must evaluate a 'no-project' alternative, which represents 'what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.'" (Landside DEIR at 11-1, Bank DEIR 6-1). Oddly, however, the EIRs present different pictures of what would reasonably occur in the no-project alternative. Because both projects are related parts of the overall program, and SAFCA maintains each is required to provide adequate flood protection to Natomas, the no-project alternative in each should be the same. In contrast, the current no-project alternatives appear to present artificial assumptions instead of explaining the reasonably foreseeable actions that would occur in the absence of the contemplated projects.

Alternative 1 of the Bank DEIR indicates that "[w]hile future federal/state action is the most likely scenario if SAFCA did not implement bank protection, the No-Project Alternative is defined as no bank protection being implemented at the nine sites." (Bank DEIR at 11-5). Thus, it appears that instead of presenting the reasonably foreseeable consequences of not implementing the project (i.e., Federal/State action) SAFCA created an improper and artificial no-project alternative precluding these likely actions and mimicking the project baseline.

Confusingly, in Alternative 4 of the Landside DEIR, SAFCA presents a different no-project alternative than it presented in the Bank DEIR. The Landside DEIR no-project alternative does not even mention the possibility of other Federal/State actions. The Landside DEIR also presents different future actions and consequences than the Bank DEIR's no-project alternative. The Landside DEIR states:

> Federal Floodplain regulations would prevent the Natomas Basin from absorbing new development as currently anticipated in the regional blueprint for future (2030) growth adopted by the Sacramento Area Council of Governments [cite]. As a result, up to 60,000 dwelling units and associated commercial and industrial developments may be redirected to other areas in the region over the next 2 decades. (Landside DEIR at 6-14).

[4] At the October 19, 2007 public hearing on this issue, SAFCA's general counsel indicated that supplemental or subsequent EIRs would be prepared for levee improvements for the next 6 miles of levee improvements slated for 2009, and then a similar process would again be followed for improvements intended in 2010. Such year-to-year CEQA review of the same project is improper.

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The Programmatic DEIR presented a similar no-project discussion. (Programmatic DEIR at 7-4). The three no-project alternatives should all be the same. They should provide the public and decision-makers with SAFCA's best analyses of what will occur in the absence of the projects and the overall program because they are all one inter-related part of the whole.

K. SAFCA Requires Reclamation Board Approval

Lastly, SAFCA's projects will require approval by the Reclamation Board. It appears that under Water Code section 8710, SAFCA will require approval from the Reclamation Board before construction is commenced. Furthermore, under Water Code section 8722, the Reclamation Board may change the plans or specifications for work undertaken at any time upon its own initiative. How will this process fit with SAFCA's intended schedule of rapid implementation?

Conclusion

In sum, RD 2035 remains interested in working with SAFCA to resolve regional flood control issues and to develop comprehensive flood protection for the region. RD 2035 also supports flood protection for urbanized areas such as Natomas, but not without assurances that such actions will not affect the current and future flood risks to RD 2035, or some other measures or mitigation to offset this increased risk. The DEIRs do not presently provide sufficient information for RD 2035 to determine the effects of SAFCA's proposed project(s) on the flood risks to the opposite side of the Sacramento River or Natomas Cross Canal. SAFCA's analyses and approach in the DEIRs also create other inconsistencies that make the analyses incomplete or difficult to understand.

RD 2035 appreciates the opportunity to comment on the DEIRs, and will gladly work with SAFCA to resolve the issues raised in these comments. If more clarification or other information is needed regarding these comments, please contact me at (916) 321-4500.

As a public agency, RD 2035 looks forward to receiving your official responses at least 10 days prior to certification of the EIRs.

Very truly yours,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD

Scott A. Morris

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Letter	Garden Highway Community Association
I11	Doug Cummings, President
Response	July 24, 2008

USACE acknowledges that the Garden Highway Community Association attached four letters to its comment letter. Responses are provided below to comments raised in the first two letters (the SAFCA and Reclamation Board letters) because neither SAFCA nor USACE has previously responded in writing to them. Responses are not provided for the other two letters (the USFWS/DFG and Reclamation District [RD] 2035 letters) because SAFCA has previously responded to the comments raised in those letters in its *FEIR on the NLIP Landside Improvements Project* (November 2007), which is in the record and will be considered by USACE in its decision-making; however, the content of the USFWS/DFG and RD 2035 letters was considered during preparation of this EIS.

I11-1 SAFCA received this letter after the close of the public and agency comment period for the DEIR and considered its content when deciding whether to approve the project and certify the EIR.

See Responses to Comments I11-8 through I11-22.

I11-2 USACE received this letter during project scoping and considered its content during preparation of the EIS.

See Responses to Comments I11-23 through I11-25.

I11-3 SAFCA received this letter during the public and agency comment period for the DEIR. A response was provided in the FEIR, which was issued in November 2007. Neither USFWS nor DFG submitted further comments at that time. Since then, USACE and SAFCA have continued to coordinate closely with USFWS and DFG to achieve consensus on various Endangered Species Act (ESA)-related issues. This coordination is ongoing.

I11-4 SAFCA received this letter during the public and agency comment period for the DEIR. A response was provided in the FEIR, which was issued in November 2007. The comment letter, as well as SAFCA's response, was considered during preparation of this EIS.

I11-5 See Response to Comment L2-1 regarding piecemealing the environmental review. See Response to Comment L2-5 regarding rejection of the Yolo Bypass Improvements.

The EIS addresses the potential effects of the proposed project in Chapter 4.0, "Environmental Consequences," and includes mitigation measures, where appropriate, to reduce these effects. As described in various portions of the EIS, including in the "Executive Summary," the EIS considers the proposed project in its entirety, with the 2008 construction phase addressed at a detailed project level and the 2009 and 2010 construction phases addressed at a general, programmatic level. The commenter asserts that the EIS analysis was not adequate; however, no specifics are provided.

I11-6 All special-status species with the potential to occur in the Natomas Basin were considered in the EIS. The EIS indicates where these various special-status species may occur in the project area and, where applicable, states whether these species were

detected in surveys of potentially suitable habitat in the project area (see Sections 3.3.6, "Fish and Aquatic Habitat," 3.3.7, "Sensitive Aquatic Habitats," 3.3.8, "Vegetation and Wildlife," and 3.3.9, "Special-Status Terrestrial Species").

Relocation of Northwestern Pond Turtles: As stated in Mitigation Measure 4.9-d, to avoid direct loss of pond turtles, a qualified biologist retained by SAFCA shall survey aquatic habitats that will be dewatered and/or filled during project construction, and, if pond turtles are found, the biologist shall capture and move them to nearby suitable habitat outside of the direct project footprint. The relocation of turtles is generally supported by wildlife agencies and will reduce the likelihood of direct loss of this species to a less-than-significant level.

Creation of Connective Corridors for Giant Garter Snake: During the late 1800's and early 1900's, most of the native habitats in the Natomas Basin were removed. Channelized water drainage and delivery systems replaced the natural stream corridors, large natural lakes and seasonal flood basins were drained, and the natural floodplain was cut off from the river by construction of the original Natomas levee system. As a result, there is very little remaining of the historic natural habitats of the basin, and some wildlife species have been adapted to the agricultural habitats. The giant garter snake has adapted to utilizing these artificial waterways and the rice fields they supply. The viability of many of the waterways in the Natomas Basin in functioning as effective movement corridors for the giant garter snake, however, has been greatly diminished, as these canal corridors have been degraded, abandoned, or filled as a result of land use practices, a decline of irrigated agriculture, and urban expansion. The creation of a new waterway corridor will provide enhanced habitat functionality by permanently linking known giant garter snake population centers and TNBC properties in the northern and southern reserve areas that are managed for giant garter snake habitat. SAFCA's proposed GGS/Drainage Canal north of I-5 may in the future represent the only continuous, north-south movement corridor connecting the northern and southern giant garter snake population centers. Unlike the tenuous water supply to many existing canals, the new canals and canal improvements will have a permanent, reliable water supply and much larger marsh areas along both banks throughout the entire length of the north-south canal system on the west side of the basin.

Impacts to Oak Trees: Alternatives 1 and 3 would require the unavoidable removal of numerous large, mature trees in scattered locations along the landside toe of the Sacramento River levee, as described in Impact 4.8-a. In some locations, these trees are portions of larger groves, the major part of which would not be affected by the project. Many of these smaller groves, which are adjacent to but not affected by the levee and right-of-way footprint, will be permanently protected by being incorporated into the project's woodland corridor (see Plates 20a–20c). Additionally, approximately 16 acres of an existing, mature woodland grove in Reach 1 of the Sacramento River east levee would be preserved in perpetuity, with several hundred new trees planted south and east of the protected grove. Alternatives 1 and 3 also include offsetting the removal of existing trees with approximately 125 acres of woodland plantings, consisting largely of oaks and faster-growing cottonwood and sycamore trees, spread throughout the western portion of the basin. Oak trees measuring from three- to ten-inches in diameter that require removal from the project footprint will be transplanted during their dormant season to woodland preservation sites within the Natomas Basin. Several thousand new trees will be planted in these new protected woodland areas, exceeding both the number and acreage of the affected trees.

Impacts to Shaded Riverine Aquatic (SRA) Habitat: SAFCA designed Alternatives 1 and 3 to avoid and reduce impacts to waterside riparian vegetation. For example, between Stations 0+00 and 54+00 of the NCC, where most of the riparian trees are located, the levee raise would be adjusted an additional 15 feet to the landside to ensure that the waterside slope flattening did not affect riparian trees. Small amounts of waterside riparian scrub along the NCC south levee would be permanently affected in the raised levee footprint; small amounts of waterside riparian habitat along the Sacramento River east levee would be permanently affected by the construction of small drainage structures from Garden Highway runoff and modifications to the RD 1000 Pumping Plant 2 site. The removal of waterside riparian vegetation, some of which may provide SRA habitat function, is minimal. SAFCA is consulting with the National Marine Fisheries Service (NMFS) and DFG on potential disturbance to fish habitat, including SRA. NMFS and DFG may stipulate permit conditions to achieve no net loss of habitat function. Replanting and in-kind mitigation of SRA habitat on the waterside of the levees may not comply with USACE geotechnical requirements for no vegetation on or near levees. Thus, compliance with section 7 of the ESA and section 1602 of the Fish and Game Code may require off-site restoration or replacement of SRA habitat.

I11-7 See Response to Comment L2-5 regarding rejection of the Yolo Bypass Improvements. See Section 2.3, "Comparison of the Effects of the Alternatives," and Table 2-11 in the EIS for a summary and table comparison of the effects of the alternatives analyzed in the EIS. USACE will weigh the significant and unavoidable impacts of the proposed project with the project's benefits when determining whether to grant permission for the 2008 construction phase of the improvements proposed by SAFCA pursuant to Section 408 and Section 404.

See Response to Comment F2-12 regarding the consideration of sea level rise in the hydraulic impact analysis. Regarding the consideration of additional construction and changes along the Sacramento River with respect to the hydraulic impact analysis, Section 5.1.3.2 describes the related projects in the Natomas Basin that were considered in the cumulative impact analysis, which includes the NLIP elements, other flood control system improvements, Airport Master Plan elements, development projects, and utility infrastructure projects.

USACE and SAFCA considered these issues and others during preparation of the EIS. Specifically, the commenter identifies concerns about groundwater effects, the visual effects of power pole relocation, and the removal of oak trees.

Groundwater effects are discussed in Impact 4.4-c and Mitigation Measure 4.4-c. This mitigation measure requires SAFCA to conduct an investigation following installation of cutoff walls to determine the potential effects of cutoff walls on groundwater recharge and monitor well yields and reimburse owners of affected wells for the cost of lowering well screens to a level that will restore the preconstruction yields.

To address the potential adverse effects of relocating power poles and in response to public comments on the *DEIR for the Landside Improvements Project*, SAFCA modified Mitigation Measure 3.15-b (which is Mitigation Measure 4.17-b in the EIS) to state that no new utility poles shall be located on the water side of the Garden Highway in the vicinity of existing waterside residences unless there is no feasible alternative for providing service to these residences.

Potential loss of oak trees as it would affect visual resources is described in Impact 4.16-a. The impact analysis notes that loss of approximately 27 acres of canopy under Alternative 1 would be offset by creation of new woodlands and preservation of existing woodland (approximately 125 acres and 10–20 acres, respectively, under Alternative 1). Nevertheless, the loss of these trees would be a significant near-term effect on visual resources, for which no mitigation is available.

I11-8 Tables 4-5, 4-6, and 4-7 in Section 4.2.2 of the EIS display the effects of the proposed project on flows in the Sacramento River channel in the 100-year, 200-year, and 500-year flood events. By comparing the "with" and "without" project conditions in each of these flood scenarios, the tables indicate that the project would not measurably increase water surface elevations in the channel and would measurably reduce these comparative elevations in the portions of the channel immediately upstream and downstream of the mouth of the American River. On this basis, the EIS concludes that the project would not result in any significant adverse hydraulic impacts.

I11-9 As noted above, the UNET computer model simulations performed by MBK Engineers shows that the proposed project would not measurably increase water surface elevations in the Sacramento River channel during extreme floods by comparison to the without project condition. In fact, authorized improvements to Folsom Dam would lower these elevations as shown in the comparison of existing conditions to the without project condition. This is because the increase in reservoir storage capacity created by these improvements would allow Folsom Dam operators to control a wider range of flood events and thus reduce flows in the American River being discharged to the Sacramento River channel.

As noted in Response to Comment L2-4, the base model used in SAFCA's hydrologic modeling was originally developed by USACE and the State as part of the Sacramento-San Joaquin River Basin Comprehensive Study (Comprehensive Study). MBK Engineers' employment of this model for analysis of the hydraulic impacts of the proposed project has been extensively reviewed by USACE and the USACE's Hydrologic Engineering Center in Davis and represents the best available data for this purpose. USACE and the State are continuing to refine the model for application to other early implementation projects and to the development of an updated State Plan of Flood Control.

I11-10 The UNET computer model employed by MBK Engineers is designed to simulate rainfall and run-off conditions in the Sacramento and American River watersheds during extreme flood events based on current hydrologic and topographic data (channel cross-sections and top of levee profiles) developed in connection with the Comprehensive Study. The model was calibrated to the high water marks measured during the flood of 1997. In order to account for levee performance in the most extreme flood events, the model assumed that levees would contain floodwater in the channel until overtopped. At that point, the model created a breach in the levee and allowed water to be discharged from the channel into the exposed floodplain, thus reducing flows and water surface elevations downstream of the breach. Appendix A provides a more detailed discussion of this modeling effort, including tables and figures and summarizes the key findings.

I11-11 Tables 4-5, 4-6, and 4-7 make clear that authorized improvements to Folsom Dam included in the "without project" condition will lower water surface elevations in the Sacramento River channel under all of the flood scenarios included in the modeling

analysis (100-year, 200-year, and 500-year flood events). The modeling analysis conducted in connection with the Draft Floodway Management Plan (DFMP) for the Sacramento River focused on waterside encroachments into the Sacramento River channel between Freeport and Verona (project area). As noted in Appendix A, such encroachments are typically subject to heightened scrutiny because of their potential to increase channel roughness and raise water surface elevations. Accordingly, the DFMP analysis excluded the beneficial effects of improving Folsom Dam and assumed that no Sacramento-Feather River levees upstream of the project area would fail even if overtopped. This worst-case analysis was considered relevant to decision makers who could be asked to approve waterside improvements in advance of any agreement on a long-term urban levee design standard.

I11-12 The DFMP modeling analysis was based on a worst-case condition of intense development of new docks, new bridge piers, bank protection, and increased vegetation along both sides of the Sacramento River channel upstream and downstream of the mouth of the American River. The analysis indicated that the effect of increasing channel encroachments and vegetation roughness downstream and just upstream of the American River would be mitigated by the operation of the Sacramento Weir and Bypass, which would offset any increase in river stage by diverting more water to the Yolo Bypass. Further upstream of the American River, the analysis showed that this mitigating influence would attenuate and the water surface elevation would rise by up to 0.2 foot in the vicinity of the I-5 Bridge. In light of this increase, which, as pointed out by the commenter, would likely be considered a significant adverse impact, the DFMP contains recommendations aimed at minimizing future encroachments in this portion of the Sacramento River channel.

I11-13 The UNET model simulation referenced in this EIS compared the water surface elevations produced by the proposed project under various flood events (100-year, 200-year, and 500-year) to the water surface elevations corresponding to these flood events under existing conditions. Channel encroachments were assumed to be the same under all these conditions.

I11-14 The height and strength of levees throughout the Sacramento River Flood Control Project varies based on the people and property they protect. Levees protecting urban areas like Natomas are generally higher and stronger than levees protecting agricultural areas due to improvement efforts undertaken since 1986. This dichotomy has been recognized by the State Legislature in the language of Senate Bill 5.

I11-15 The assumptions that guided the UNET model simulations are described in Appendix A and summarized in Section 4.4.2 of the EIS.

I11-16 In approving the projects necessary to protect heavily urbanized portions of the Sacramento and American River floodplains, including the Natomas Basin, the State Legislature adopted the following language:

> The [authorized] projects…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 maintain water surface elevations. Accordingly, the [authorized] projects…will not result in significant adverse hydraulic impacts to the lands protected by the Sacramento River Flood Control Project and neither the Reclamation Board nor any other state agency shall require the authorized projects to include hydraulic mitigation. (Stats. 2007, ch. 641).

I11-17 Tables 4-6, 4-7, and 4-8 clearly compare the water surface elevations associated with the proposed project to water surface elevations associated with existing conditions and conditions without the project. As discussed above, these tables indicate that the proposed project would not have a measurable effect on these water surface elevations.

I11-18 See Response to Comment L2-1.

I11-19 See Response to Comment F2-12.

I11-20 The EIS considers, and eliminates from further consideration, alternatives that would either constrain the area protected by the proposed project (Reduced Natomas Urban Levee Perimeter) or greatly expand the area affected by the project (Yolo Bypass Improvements) because these alternatives are infeasible. Three perimeter levee protection alternatives are analyzed in detail. These alternatives provide a range of contrasting approaches to managing the interface between the Sacramento River east levee and the existing residences and vegetation along the waterside of the levee.

I11-21 Responses to USFWS and DFG comments on the NLIP Landside Improvement Project EIR are contained in the FEIR, which was certified by the SAFCA Board on November 29, 2007. The USFWS/DFG comment letter, as well as SAFCA's response, was considered during preparation of this EIS.

I11-22 This is not a comment on the EIS; furthermore, no information that would lead to recirculation has been identified.

I11-23 See Response to Comment I11-17.

I11-24 See Response to Comment I11-14.

I11-25 See Response to Comment L2-5.