

Final

LITTLE EGBERT MULTI-BENEFIT PROJECT

Environmental Documentation and Permitting Strategy Plan

Prepared for
Westervelt Ecological Services
Little Egbert Joint Powers Agency

January 2023



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LITTLE EGBERT MULTI-BENEFIT PROJECT

Environmental Documentation and Permitting Strategy Plan

1 Introduction

This Environmental Documentation and Permitting Strategy Plan (Strategy Plan, or Plan) is intended to identify and facilitate the overall environmental documentation and permitting approach for the Little Egbert Multi-Benefit Project (Proposed Project, or Project) in order to clarify and streamline the Project’s environmental compliance process to the maximum extent feasible. The Plan is based on a conceptual understanding of the Project’s objectives, elements, and design as of June 2022. As such, certain specifics about the environmental documentation and permitting approach cannot yet be known or identified, as they will depend on the selected Project design. The Plan will be refined based on coordination with the planning team, advancement of Project design, and evolving input from consultation with resource and regulatory agencies. Prior to preparation of the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) documents and the permit applications, a detailed Project description will be required.

The Strategy Plan presents a basic project understanding, then presents the anticipated environmental documentation (i.e., CEQA and NEPA) for the Project, followed by the federal and state permitting strategy by agency and permit type. The CEQA, NEPA and permitting phases are outside the scope of the current Feasibility Study. The Plan concludes with recommended next steps.

2 Project Understanding

The Proposed Project is located on an approximately 3,500-acre property known as the Little Egbert Tract (Project site), located in the legal Sacramento-San Joaquin River Delta in Solano County, California. The purpose of the Proposed Project is to restore tidal wetlands that would provide habitat for a suite of sensitive fish and wildlife species, while also allowing increased flood conveyance at the southern end of the Yolo Bypass. The Proposed Project would also support sustainable agriculture through flood risk reduction and levee improvements. The Proposed Project would include the following design elements:

- Create tidal wetlands adjacent to channels.
- Soften hardened shorelines with a vegetated margin that buffers levees.
- Maximize aquatic-terrestrial exchange with a crenulated wetland edge.
- Provide opportunities for sediment accretion that can promote tidal wetland expansion.

- Create an expanse of subtidal flats and channels for benthic and pelagic aquatic species.
- Increase habitat structural complexity for aquatic species.
- Increase connectivity of tidal wetland patches.
- Enhance riparian habitat for nesting birds.

The Proposed Project will involve two main breaches within the restricted-height levee along Cache Slough, including an upstream breach on the northern end of the Project site and a downstream breach at the southeastern end. Based on the results of pending design analyses, additional mid-channel breaches along Cache Slough may also be included. A meandering subtidal swale would be excavated along the length of the Project site between the upstream breach and downstream breach. Soils excavated during creation of the swale would be utilized to construct habitat berms on both the eastern and western perimeter of the site. The majority of the western perimeter of the Project site is bounded by a federal project levee (i.e., the Reclamation District [RD] 536 project levee). No breaches are proposed to the federal RD 536 project levee; however, a habitat berm would be constructed along the toe and slope of the existing RD 536 levee. The Project will also enhance or replace a series of levees along the southwestern edge of the Project site, respectively, from north to south: Solano County Levee 44, the Mellin Levee Extension, and the Mellin Levee. Of these three levees along the southwestern edge of the Project site, only the Mellin levee is a federal project levee.

3 Environmental Documentation

3.1 CEQA

3.1.1 Strategy

Opportunities to Streamline CEQA

Restoration Projects Statewide Order Program EIR

A Draft Program Environmental Impact Report (Draft PEIR) (June 2021) was circulated to federal, state and local agencies and interested organizations and individuals by the State Water Resources Control Board (State Water Board) from June 30, 2021, through August 13, 2021 for the proposed Order for Clean Water Act (CWA) Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide (General Order).¹ The Draft PEIR evaluates the potential impacts of the types of restoration projects that would be covered by the General Order and includes:

- General protection measures (Appendix E of the Draft PEIR)
- Species protection measures (Appendix F of the Draft PEIR)

Mitigation measures (summarized in the Executive Summary of the Draft PEIR and in Chapter 3). The Draft PEIR determined that construction, operation, and maintenance activities

¹ https://www.waterboards.ca.gov/water_issues/programs/cwa401/generalordersunderdev

associated with future restoration projects could result in a number of significant and unavoidable impacts, including on:

- Farmland conversion
- Conflict with an applicable air quality plan, increased emissions and greenhouse gas during construction
- Habitat for special-status plant and wildlife species, special-status fish, riparian habitat or sensitive natural communities
- Historical, archaeological and tribal cultural resources and human remains
- Paleontological resources
- Airport safety hazards
- Conflict with a land use plan

Depending on the details ultimately included in the final project description, the Proposed Project may qualify as a restoration project under the General Order. Once the project description is available, the Project team would reach out to the State Water Board to discuss the applicability of the General Order.

If the Proposed Project qualifies under the General Order, the PEIR would help streamline CEQA documentation for the Proposed Project. A Project-specific CEQA document would be prepared for the Proposed Project but could “incorporate by reference” text from the in the Draft PEIR, or tier off and incorporate by reference general discussions if the Final PEIR is certified.

Specifically, to focus (reduce the level of detail of) the analysis in the project-level CEQA document for the Proposed Project, information in the Draft PEIR for the General Order could be incorporated by reference, consistent with State CEQA Guidelines Section 15150, if the State Water Board does not certify the Program EIR prior to preparation of the CEQA document for the Proposed Project. If the Project qualifies as a restoration project under the General Order and the Draft PEIR is certified prior to preparation of the CEQA document for the Proposed Project, the CEQA document prepared for the Proposed Project could tier from the Program EIR consistent with State CEQA Guidelines Section 15152.

As described in the CEQA Guidelines Section 15150, the CEQA document for the Proposed Project may incorporate any applicable elements of the PEIR by reference including, but not limited to, direct and indirect impacts, mitigation measures, cumulative impacts, alternatives, or a statement of overriding considerations. As a result, the CEQA document for the Proposed Project could focus solely on the new or greater effects that were not previously considered; however, the Project-specific EIR would include sufficient detail and thorough analysis, especially in resource areas that have been of interest for other multi-benefit projects, and would include citations and references to the PEIR if relying on the PEIR. The potential opportunities, risks, and feasibility of this approach must be discussed and agreed upon with all state, regional and local agencies early in the process before a decision is made regarding how to proceed.

Use of Public Resources Code Section 21080.56

Another possibility that can be explored is California Department of Fish and Wildlife’s (CDFW) CEQA Statutory Exemption for Restoration (SERP), which is for restoration of California native fish and wildlife and habitats. Qualifying projects can have ‘incidental’ public benefits, but it is not clear if flood protection would be considered an incidental public benefit. The Project team would need to reach out to CDFW to discuss the applicability of this Statutory Exemption. The potential opportunities, risks, and feasibility of this approach must also be verified with all state, regional and local agencies early in the process before a decision is made regarding how to proceed.

Consideration of Delta Plan

Finally, the Lookout Slough Delta Plan Certification of Consistency² and the pending Delta Stewardship Council (DSC) Delta Plan Ecosystem Amendment (recreation analysis) should be monitored during strategy development for the Proposed Project because the approach taken for these current documents may influence the Proposed Project’s CEQA analysis approach. For example, following the first appeal hearing in 2021, the DSC remanded the Lookout Slough project because it determined that there was not substantial evidence in the record to document use of “best available science” as it pertained to methods to estimate existing recreational uses in the area of the project site. Additionally, the DSC opined that the record provided inadequate information to demonstrate that the Lookout Slough project would either avoid or reduce conflicts with existing recreational uses in the area. The Proposed Project’s CEQA analysis approach, particularly with respect to the recreation analysis, will apply lessons learned from the Lookout Slough project’s DSC process and reference the Delta Plan Ecosystem Amendment recreation analysis, if available during preparation of the Project’s Draft EIR.

Scoping and Outreach

Outreach to interested parties and applicable agencies and issues of concern discussed during development of the Proposed Project description should be documented by the Little Egbert Joint Powers Agency (LEJPA) and the California Department of Water Resources (DWR) for citation in the CEQA document, including communications with the City of Rio Vista (regarding potential changes in flooding and other concerns); Ryer Island; SCWA (regarding their upstream intake on Lindsay Slough, potential water quality issues, and work along Mellin levee); Solano County (including coordination for a conditional use permit and grading permit) and the Solano County Airport Land Use Commission (regarding potential changes in the presence of waterfowl, gulls and hawks near the airport); National Marine Fisheries Service (NMFS) (regarding baseline fish studies); CDFW; and U.S. Fish and Wildlife Service (USFWS) (regarding baseline terrestrial species data and Habitat Conservation Plan discussions). See also *Agency Coordination to Date* in permitting section below.

At least two CEQA public meetings will be held during preparation of the Proposed project EIR; one during release of the Notice of Preparation (NOP) to receive written and oral input on the

² The Lookout Slough Delta Plan Certification of Consistency was appealed on March 24, 2021, by Solano County Water Agency (SCWA), Central Delta Water Agency, RDs 2060 and 2068, and Liberty Island Access. It was appealed on January 31, 2022, by SCWA and Liberty Island Access.

scope and content of the Draft EIR, and a second during the Draft EIR public review period to receive written and oral input on the content of the public Draft EIR.

Consideration of Alternatives

Draft EIRs are required to include evaluation of alternatives to the project that are feasible, can meet most of the basic objectives of the project, and can reduce one or more of significant environmental impacts attributable to project implementation. A logical starting point for identifying such alternatives is in the Feasibility Study. Initial modeling and preliminary findings on alternatives studied during development of the Feasibility Study (such as breach locations and widths, potential tide gates, and other alternatives identified during the process) should be documented by the Project team for reference in the Draft EIR Alternatives chapter.

3.1.2 Process

Kick-Off Meeting

A CEQA kickoff meeting is targeted for Spring 2023. DWR will be the CEQA lead agency and the meeting will include discussion of communication protocols and the process for document reviews by the Project team.

Project Description Development

Detailed and stable project description information will be required to prepare the CEQA document (and the permit applications). The project description should graphically and textually describe the elements of the Project, Project footprint, staging areas, borrow sites, utility relocation, construction access, and timing and phasing. The planning process and relevant design modifications made for the Envision sustainability credentialing the Proposed Project is pursuing should be described in the CEQA project description to the extent applicable. The CEQA document will be NEPA-friendly but will not include sections specific to a NEPA analysis (such as environmental justice).

Assembly Bill 52 Compliance and Tribal Consultation

Consultation with Native American representatives, as required under California Public Resources Code Sections 21074(a)/21080.3.1 (Assembly Bill 52 [AB 52]) will be conducted by DWR. Consultation should also include non-AB 52 Tribal consultation, in accordance with the California Natural Resources Agency's *Final Tribal Consultation Policy* and the DWR's *Tribal Engagement Policy*. Consultation should be initiated prior to circulation of the CEQA NOP. Consultants with expertise in cultural resources can assist with drafting letters for Tribal consultation and will contact the California Native American Heritage Commission (NAHC) to request a search of their Sacred Lands File for the project area and a list of contacts for California Native American Tribes who may have an interest in the Proposed Project.

Scoping

An NOP will be circulated to regulatory agencies and interested parties through the State Clearinghouse and the distribution list developed by the Project team. Availability of the NOP will also be provided to Solano County Clerk's office and the notice will be placed in the newspaper of largest circulation in the project area. During the 30-day NOP review period, a

public scoping meeting will be held to receive written and oral input on the scope and content of the EIR.

An Initial Study (IS) Checklist will be prepared to serve as the basis for identifying potential environmental effects of the Proposed Project and the scope of the Draft EIR, along with the issues raised in the NOP comments. Effects determined not to be significant will be described in the IS Checklist, and the EIR will focus on those impacts that are potentially significant. The Draft EIR will be based on the project description developed and approved for use in the CEQA document. The IS Checklist will be included as an appendix to the Draft EIR.

Incorporation of Technical Studies into the Draft EIR

Findings from the biological technical studies, Cultural Resources Technical Report, and other Project reports and modeling, such as the basis of design report, recreation/public access evaluation, geotechnical, Phase I Environmental Site Assessment and hazardous materials survey, sediment and soil stability, hydrology and hydraulic, water quality report and salinity modeling, wildlife hazards analysis memorandum, and agricultural resources technical memorandum should be available for inclusion as appendices in the Draft EIR to support the impact conclusions.

Considerations for Resources and Alternatives

The Draft EIR will include technical resource sections that address the environmental and regulatory setting at the time of the circulation of the NOP and analyze the effects of the Proposed Project on the environment. Cumulative impacts can be in individual technical sections or in the Other CEQA-mandated chapter. Impact analyses and mitigation measures, as needed, will be included in the applicable section for each resource topic. The complete list of resource topics will be determined through the IS Checklist based on the final project description. Below are the likely resource topics to be addressed in the Draft EIR, with key considerations for analysis and Proposed Project design.

- Agricultural and Forestry Resources section will assess potential for onsite and regional farmland conversion. Irrigation diversion needs will be included in the IS Checklist Utilities section.
- Air Quality and Greenhouse Gas Emissions section will include discussion of current regulatory thresholds and modeling results for Project-related construction equipment emissions and operations. The Project team should discuss carbon crediting and decide whether to look into it for the Proposed Project.
- Biological Resources section will assess the presence of special-status plant and animal species (including but not limited to: Swainson's hawk, giant garter snake (GGS), vernal pool invertebrates, steelhead, Chinook salmon, green sturgeon, delta smelt) and their habitat, fish passage, and the potential impacts of the Proposed Project on these resources. This section will also describe results of the wildlife hazard assessment and changes in bird populations near the airport that may result from the Proposed Project. DWR has expressed interest in conducting an aquatic food web analysis for the Proposed Project, which may also be incorporated into the Draft EIR. This section will also evaluate consistency with the proposed Solano County Multispecies Habitat Conservation Plan (HCP).

- Cultural Resources and Tribal Cultural Resources sections will address cultural resources, including underwater cultural resources such as submerged wrecks or piers and removal of piles or piers, tribal use areas, tribal cultural resources, and early settler sites.
- Geology and Soils section will need technical findings from the Project team.
- Hazards and Hazardous Materials section will address safety hazards related to the Project's location in proximity to the Rio Vista Municipal Airport and Travis Air Force Base (for wildlife hazards), existing gas wells onsite, and capping existing utility lines and poles.
- Hydrology and Water Quality section will need drainage, hydrology, hydrodynamic and water quality modeling findings from the Project team.
- Land Use and Planning section will include information relevant to Solano County and the DSC approval.
- Minerals section will need information about any mineral rights onsite that require access for future use/to develop.
- Public Services section will include Project information relevant to nearby interested parties.
- Recreation section will need information on any proposed fishing and boat launch facilities, based on a public access evaluation (to be provided by the Project team).
- Transportation section will consider temporary disruption of service along Highway 84, Ryer Island ferry, and the Port of Sacramento, depending on the final project description.
- Climate Change and Resiliency chapter will be based on recommendations in DWR's 2018 *Climate Action Plan Phase 2: Climate Change Analysis Guidance*.

The Draft EIR will include a range of alternatives that could avoid or reduce the magnitude of one or more significant impacts identified for the Proposed Project (State CEQA Guidelines Section 15126.6[a]). Alternatives assessed during development of the Feasibility Study will be included in the Alternatives chapter to the extent applicable. The No Project Alternative will be included (this will include characterization of the No Project Alternative with climate change and sea level rise, which would result in a higher probability of flooding, levee failure and associated potential for fish stranding). Alternatives addressed in the Draft EIR must be potentially feasible, and capable of achieving most of the basic objectives of the Project while reducing potentially significant environmental impacts. Alternatives in the CEQA document will not be analyzed to the same level of detail as the Proposed Project (State CEQA Guidelines Section 15126.6[d]), unless technical findings on the alternatives are available from the Project team.

The cumulative impact analysis will need input from the Project team on past, current and probable future projects in the area.

Draft EIR Circulation

A Notice of Availability of the Draft EIR will be circulated to regulatory agencies and interested parties through the State Clearinghouse and the distribution list developed by the Project team. Availability of the Draft EIR will also be provided to the Solano County Clerk's office and the notice will be placed in the newspaper of largest circulation in the project area. One or more

CEQA public meetings will be held during the 45-day Draft EIR public review period to receive written and oral input on the content of the Draft EIR.

Final EIR Preparation and Certification

Following the close of the Draft EIR public review period, the Final EIR will be prepared and will include a brief introduction, a list of commenters, bracketed and numbered comment letters, responses to all comments on substantive environmental issues, a summary of proposed text changes to the Draft EIR (if applicable), and a Mitigation Monitoring and Reporting Program. Prior to adoption of the CEQA document, DWR may make the Final EIR available to parties that commented on the Draft EIR. Following certification of the CEQA document and Project approval, a Notice of Determination will be submitted to the State Clearinghouse and notice will be provided to the Solano County Clerk's office.

3.2 NEPA

The type of NEPA document(s) required for the Project, likely to be either a Categorical Exclusion or Environmental Assessment (EA), should be verified. If the U.S. Army Corps of Engineers (USACE) (Regulatory Division) is determined to be the federal lead agency based on their issuance of a discretionary project permit pursuant to the CWA/Rivers and Harbors Act (RHA), such as a Section 404/10 Nationwide Permit (NWP) 27 or an Individual Permit, they must document a project's compliance with NEPA. The USACE prepared a NEPA EA for all NWPs, and these EAs typically can be relied upon for projects which meet the terms and conditions for authorization pursuant to a NWP. For projects authorized pursuant to an Individual Permit, a project-specific EA must be prepared; these EAs are prepared internally by the USACE, but the USACE often requests draft EA text from the applicant, in order to assist in their preparation. The USACE Section 408 permit program, which would address project improvements to the federal project levee, is also expected to require NEPA documentation. The project team should seek confirmation that the 404 and 408 programs will use the same (i.e., a 'joint') NEPA document (assuming it can be prepared to address both programs), and/or whether the Regulatory Division can lead this (through the 404 process). The NEPA document should focus specifically on the elements of the Proposed Project relevant to the USACE's jurisdiction and the discretionary action(s) being undertaken. Alternatives described and analyzed in the NEPA document will require the same level of detail as the Proposed Project.

4 Permitting

4.1 Agency Coordination to Date

Early and consistent coordination with agencies will be vital for success of the Project. LEJPA and DWR have initiated outreach and coordination with federal, local, and state agencies. As the CEQA lead agency, DWR will take the lead on future public outreach and LEJPA will take a supporting role. We recommend the team track the status of outreach to ensure a coordinated and comprehensive approach with consistent information sharing. This can be supported with a simple tracking spreadsheet that documents agency name, date, and any key notes, decision, outcomes and/or action items.

Suggested touchpoints during the CEQA/NEPA and permitting processes are described in Section 5 *Conclusion and Next Steps*.

4.2 Regulated Resources

The following are the currently-known regulated resources present at, or immediately adjacent to, the Project site which may be affected – either directly or indirectly, and temporarily or permanently – by Project implementation; as such, these are the resources expected to trigger the requirement for permits, approvals, and/or consideration in environmental compliance documentation to be prepared for the Project:

- Jurisdictional waters and/or wetlands of the U.S. and/or state (including navigable waters)
- Riparian habitat and floodplains
- Federal (USACE) project levees and non-federal levees, other flood protection systems or components
- Special-status plants
- Special-status terrestrial wildlife, migratory birds
- Special-status fish
- Archaeological, historical, and/or tribal cultural resources
- Land Use: Delta Plan, Rio Vista Municipal Airport Land Use Restrictions
- State Route 84

4.3 Regulatory and Resource Agency Permits and Approvals Required

Table 1 summarizes the regulatory agency permits or approvals and the environmental documentation anticipated to be required for the Project, with key aspects or considerations for each requirement noted. A detailed discussion of some of the key agencies and permit requirements - including each requirement's strategy and process - can be found in the sections that follow.

Based on the anticipated complexity of the Project's permitting process, a permit tracking tool (such as a table or spreadsheet) should be maintained to manage the multi-agency permit process efficiently and effectively. The permit tracking tool can be used to track action items and assignments, due dates, contact information, agency coordination, and status for each of the permit applications or key supporting documents; it can also be used to succinctly convey the status of all permits. This tracking tool will further be useful during construction implementation and performance monitoring.

TABLE 1
ANTICIPATED ENVIRONMENTAL AND REGULATORY REQUIREMENTS

Agency	Permit or Approval	Notes
Federal	Section 404/10 Permit: NWP 27 (Restoration) or Individual Permit	<ul style="list-style-type: none"> • Project may be eligible for NWP 27 (Restoration), and possibly additional NWPs for other distinct elements (e.g., NWP 13 – Bank Stabilization), subject to USACE discretion. • If USACE determines a NWP 27 is appropriate to cover the entire Project, there is no impact threshold, and no requirement for compensatory mitigation for any permanent 'loss' (including 'type conversion') of waters that may result, based on demonstrated overall net project increases in aquatic functions and services. • USACE,^a as federal lead agency, conducts interagency consultations pursuant to the Fish and Wildlife Coordination Act (FWCA), Section 7 federal Endangered Species Act (FESA), Magnuson-Stevens Act (MSA), and Section 106 National Historic Preservation Act (NHPA) (see rows below). As such, the USACE requires supporting documentation, submitted with the application, to assess effects, ensure compliance, and issue a final permit. • If the Project is not deemed eligible for NWP(s) - for example due to public controversy or the inclusion of flood management objectives – either a Letter of Permission (threshold of <1ac/500lf 'loss') or an Individual Permit may be required. An Individual Permit would require submittal of an Alternatives Analysis (in compliance with the 404(b)(1) Guidelines), Public Noticing, and NEPA compliance documentation (see NEPA row below); because the project is expected to be self-mitigating (i.e., designed to result in overall net increases in aquatic functions and services, regardless of some potential for 'loss' and/or 'type conversion' of certain aquatic resource types), compensatory mitigation is not expected to be required.
USACE	Section 408 Permit	<ul style="list-style-type: none"> • Review of Project modifications to existing Federal project levees (present along western and southern site boundaries) are done by a separate division of the USACE, and require 100 percent design drawings. • Permit process is typically initiated by Central Valley Flood Protection Board (CVFPB) (see corresponding row below), and approval is required prior to CVFPB issuance of their encroachment permit. • Project is too large (>500ac) to meet Sacramento USACE's Section 408 'Categorical Permission' for environmental restoration projects. No information has been found regarding a 'programmatic' Section 408 approval that may be in-process by the USACE and CVFPB. • Requires NEPA documentation (distinct from that which may be required by the USACE for a Section 404/10 Individual Permit; see 'NEPA' below). • Permit process and duration is highly-unpredictable, and likely to be one of the longest in duration. Consideration should be given to executing an 1156 contract with the USACE to allow DWR to fund the 408 review process if the USACE 408 program runs out of funds in any given year.
	NEPA (via USACE)	<ul style="list-style-type: none"> • Assumes USACE is 'federal lead agency'^a • If Project is eligible for NWP(s), no new NEPA required (already covered under NWP Program NEPA EAs). • If Individual Permit is required, new NEPA required (likely an EA)

TABLE 1
ANTICIPATED ENVIRONMENTAL AND REGULATORY REQUIREMENTS

Agency	Permit or Approval	Notes
USFWS	Section 7 FESA Consultation (via USACE) – Informal, or Formal w/ Biological Opinion (BiOp)	<ul style="list-style-type: none"> • Requires Biological Assessment (BA) • May require protocol-level surveys and/or pre-construction surveys • Likely species (moderate or high likelihood): GGS and delta smelt. No federally listed plants found in course of preliminary surveys. • Several ‘Programmatic’ BiOps/Concurrence Determinations may be applicable to the Project, resulting in benefits to the permitting process. • May require mitigation for construction-related impacts and/or permanent loss of habitat/take of species (which can be costly); however, the project is expected to be self-mitigating (i.e., designed to result in overall net increases in aquatic functions and services, especially in the long-term) such that this requirement should be avoidable through design. • Draft Solano County Multispecies HCP’s proposed conservation area for GGS includes the Project site.
NMFS	Section 7 FESA and MSA Consultation (via USACE) – Informal, or Formal w/ BiOp	<ul style="list-style-type: none"> • Requires BA • Likely species/resources (moderate or high likelihood): Central Valley steelhead, green sturgeon, winter-run Chinook, spring-run Chinook, Essential Fish Habitat (EFH) • Will not require protocol-level surveys and/or pre-construction surveys, rather will rely on species occurrence/distribution as used by agencies. • Several ‘Programmatic’ BiOps/Concurrence Determinations may be applicable to the Project, resulting in potential streamlining of the permitting process. • May require mitigation for construction-related impacts and/or permanent loss of habitat/take of species (which can be costly); however, the project is expected to be self-mitigating (i.e., designed to result in overall net increases in aquatic functions and services, especially in the long-term) such that this requirement should be avoidable through design.
SHPO	Section 106 NHPA Consultation (via USACE)	<ul style="list-style-type: none"> • Addresses potential historic structures/buildings, tribal/archeological resources, and sunken vessels/structures • Requires Cultural Resources Inventory and Report, NAHC contact list request, and tribal coordination (latter is done by USACE^a) • Allow extra 1-3 months for tribal coordination by USACE, prior to start of Section 106 SHPO consultation (and before ground disturbing activities) • May require construction monitoring; may require costly mitigation measures if resources are present and within the disturbance footprint
USCG	Section 9 RHA Permit (via USACE)	<ul style="list-style-type: none"> • Addresses potential Project effects to navigation (from breaches, levee modification, in-channel bank stabilization, etc.) • Typically coordinated via USACE (Section 404/10) permit process
FEMA	CLOMR (Conditional Letter of Map Revision) and/or LOMR (Letter of Map Revision)	<ul style="list-style-type: none"> • To be determined – Project team to investigate applicability/requirements

**TABLE 1
ANTICIPATED ENVIRONMENTAL AND REGULATORY REQUIREMENTS**

Agency	Permit or Approval	Notes
EPA	Oversight for certain federal permits	<ul style="list-style-type: none"> The U.S. Environmental Protection Agency (EPA) has oversight authority pursuant to the federal CWA, amongst other federal regulatory programs, and may review and comment on CWA-related permit actions, including participating in interagency review of proposed mitigation banks for CWA impacts. The EPA also reviews and approves dredging proposals for sediment quality and suitability for disposal in designated off-shore disposal sites. However, the EPA is not expected to play a significant permitting role for this Project.
State		
LEJPA	CEQA	<ul style="list-style-type: none"> DWR is expected to serve as CEQA lead agency (and is also the Project sponsor/applicant) Project-specific EIR expected to be prepared If the Project qualifies, may use some analysis from Draft Program EIR for CWA Section 401 General Water Quality Certification and Waste Discharge Requirements for Implementation of Restoration Projects Statewide Order, prepared by State Water Board (June 2021) Compliance with AB 52 (tribal coordination) is required Document scoping and outreach to interested parties and agencies
Regional Water Quality Control Board (Regional Water Board)	Section 401 Water Quality (WQ) Certification/ Waste Discharge Requirements (WDRs)	<ul style="list-style-type: none"> May require preparation of an Alternatives Analysis, Hydrologic studies Requires analysis of Project impacts and/or benefits to 'designated Beneficial Uses' of waterbodies, per the applicable Basin Plan Needs CEQA to issue permit Project may be eligible for coverage under the Section 401 General WQ Certification and WDRs for Implementation of Restoration Projects Statewide Order May require mitigation for 'net loss' of state-jurisdictional waters or wetlands (which can be costly); however, the project is expected to be self-mitigating (i.e., designed to result in overall net increases in aquatic functions and services) such that this requirement should be avoidable through design Maximum permit fee, though not expected to be triggered/reached for the Project, is >\$200K (note: restoration projects are eligible for reduced flat rate fees)
	NPDES (Section 402 CWA) and SWPPP	<ul style="list-style-type: none"> Typically sought/prepared by construction contractor just prior to construction, to address construction and long-term stormwater management including dewatering
CDFW	1602 LSAA	<ul style="list-style-type: none"> For modifications to streambed, banks, or riparian habitat along Cache Slough and/or Sacramento River May require mitigation for permanent impacts to state-jurisdictional waters or wetlands (which can be costly); however, the project is expected to be self-mitigating (i.e., designed to result in overall net increases in aquatic functions and services) such that this requirement should be avoidable through design Needs CEQA to issue agreement

TABLE 1
ANTICIPATED ENVIRONMENTAL AND REGULATORY REQUIREMENTS

Agency	Permit or Approval	Notes
CDFW (cont.)	CESA Compliance: Section 2080.1- Consistency Determination (CD) (w/ federal BiOps) Or Section 2081 – Incidental Take Permit (ITP)	<ul style="list-style-type: none"> • Permit is at discretion of applicant, and may not be required (may be able to fully avoid 'take'); however, some potential for construction-related disturbance likely exists • Requires Biological Assessment (BA) • May require protocol-level surveys and/or pre-construction surveys • Likely species (moderate or high likelihood): delta smelt (state endangered), longfin smelt (state threatened), winter-run Chinook salmon (state endangered), spring-run Chinook salmon (state threatened), GGS (state threatened), Swainson's hawk (state threatened), and tricolored blackbird (state threatened) • No 'take' can be permitted for 'fully-protected species' (FPS) if any are deemed likely to occur (greater sandhill crane could be low likelihood for wintering) • If 'take' is anticipated and an ITP sought, compensatory mitigation may be required (and can be costly); however, the Project is expected to be self-mitigating to aquatic species (i.e., designed to result in overall net increases in aquatic functions and services, especially in the long-term) such that this requirement should be avoidable through design • Draft Solano County HCP identifies conservation areas for GGS, Swainson's hawk and burrowing owl on the Project site.
	MBTA Compliance	<ul style="list-style-type: none"> • Definition of 'take' under MBTA is limited to direct actions resulting in take (such as hunting, poaching, and poisoning, which is more limited than under FESA/CESA. • As MBTA take permits are less commonly required, avoidance and minimization measures to avoid take are often included in 1600 Lake and Streambed Alteration Agreements (LSAA), as is mention of project requirement to comply with MBTA. • Will require pre-construction surveys • Nesting season restrictions and active nests have the potential to significantly impact construction schedules and activities in areas with suitable nesting habitat (e.g., trees/shrubs on levees).
DSC	Delta Plan – CD/Certification of Consistency	<ul style="list-style-type: none"> • Requires an Adaptive Management Plan and documented use of Best Available Science • Provide a 'crosswalk' between Project Mitigation Measures and Delta Plan PEIR Mitigation Monitoring and Reporting Program • Submit the certification of consistency for this last (after all other environmental permit approvals); await 30-day online appeal period. • Note that the certification of consistency for a nearby project (Lookout Slough) has been appealed twice, causing significant delays.
SHPO	Section 106 NHPA Compliance	<ul style="list-style-type: none"> • (see USACE above)
CalGEM ^b	Well Permit(s)	<ul style="list-style-type: none"> • Permits may be required for gas (or oil) wells and various related activities including drilling, reworking, and permanently sealing and closing (a.k.a. plugging and abandoning) wells.
California Department of Transportation (Caltrans)	Encroachment Permit/Permit Engineering Evaluation Report (PEER) Process	<ul style="list-style-type: none"> • Related to State Route 84

TABLE 1
ANTICIPATED ENVIRONMENTAL AND REGULATORY REQUIREMENTS

Agency	Permit or Approval	Notes
CVFPB	Encroachment Permit	<ul style="list-style-type: none"> • Encroachment Permit may also include/require other permit types (Flowage Easement Modification, License to Place Fill, Temporary Entry Permit), depending on project design and specific activities proposed.
	Flowage Easement Modification	<ul style="list-style-type: none"> • 408 permit process is typically initiated by CVFPB (see above), and approval is required prior to CVFPB issuance of encroachment permit.
	License to Place Fill	<ul style="list-style-type: none"> • Requires 100 percent design drawings
	Temporary Entry Permit	<ul style="list-style-type: none"> • May require Hydrologic studies, flood modelling • May require Long Term Maintenance Plan (LTMP)
State Lands Commission (SLC)	Lease/Amendment	<ul style="list-style-type: none"> • May be required. Project team to confirm (note: Solano County is not on 'Granted Lands' list of SLC website, suggesting the Project may need SLC approval.) • If a breach/in-water work occurs in Cache Slough at the southern end of Powell Property, may apply depending on submerged cultural resources (i.e., historic wreck in Cache Slough)
Local		
Solano County	Grading Permit	<ul style="list-style-type: none"> • Grading: Typically sought/prepared by construction contractor
	Conditional Use Permit	<ul style="list-style-type: none"> • Determine consistency with the airport land use plan (ALUP)
	Airport Land Use Commission Land Use Compatibility Determination	<ul style="list-style-type: none"> • May need to incorporate design modifications to address concerns about increase bird strike risk
	Williamson Act, etc.	<ul style="list-style-type: none"> • To be determined - Project team to investigate applicability/requirements
Other local permits	PG&E Electrical Infrastructure Agreement	
	RD 536 Encroachment Permit	
	SCWA Encroachment Permit	
Permits/Approvals NOT expected to be required		
San Francisco Bay Conservation and Development Commission (BCDC)	Permit	<ul style="list-style-type: none"> • Not required (site not within BCDC jurisdiction of the San Francisco Bay, Suisun Marsh, or adjacent marshlands or shorelines)

NOTES:

^a For the purposes of this Plan, it is assumed that the USACE will serve as the federal lead agency, and as such will be responsible for federal interagency coordination. However, if the Project receives significant federal funds (e.g., from the EPA), this assumption may no longer be valid.

^b CalGEM is the California Geologic Energy Management Division (formerly known as the Division of Oil, Gas, and Geothermal Resources, or DOGGR).

4.3.1 USACE Section 404 and Section 10 Permit

Based on anticipated Project work within and/or impacts to federal jurisdictional waters and/or wetlands, the Project will require a USACE permit(s) pursuant to CWA Section 404 and RHA Section 10.

Strategy

As soon as the Feasibility Study is available in 2023, a project description should be drafted and presented to the USACE and other interested agencies at a USACE Interagency Pre-Application meeting.

The Project is anticipated to meet the terms and conditions of NWP 27, subject to verification by USACE; this should be verified shortly following the development of this Strategy Plan. Because the Project would affect navigable waters, the USACE will also need to engage with the U.S. Coast Guard (USCG), for Project approval under Section 9 of the RHA; informational requirements for this aspect of the federal permit should also be verified as soon as possible, during early environmental agency outreach efforts.

Programmatic BOs from NMFS are available for certain species (e.g., salmonids and green sturgeon) EFH, and a statewide Programmatic BO is being prepared by USFWS for a suite of federally listed species; its targeted completion is summer 2022. Additionally, general protection measures, species protection measures, and mitigation measures are available from the Program EIR circulated by the State Water Board for the pending CWA Section 401 General Water Quality Certification and Waste Discharge Requirements for Implementation of Restoration Projects Statewide Order (Order).

A BA will still need to be prepared that cites these resources. This could be a combined BA to address both federal- and state-listed species as well as Essential Fish Habitat (EFH), to support the USACE's FESA Section 7 consultation with USFWS and FESA Section 7 and MSA consultation with NMFS for the Proposed Project, as well as to support a Section 2080.1/2081 California Endangered Species Act ITP and/or CD from CDFW. Another approach that could avoid complication between USFWS/NMFS and CDFW would be to prepare separate documents for federal-listed species and for state-listed species, since there are three species that are only state-listed.

With respect to the cultural resources coordination process that is led by the USACE (and including the NAHC and State Historic Preservation Office [SHPO]), this process has been taking much longer than in times past. As such, this process should be prioritized and closely tracked.

Process

Permit application materials will be prepared following receipt of feedback from the agency attendees of the Interagency Pre-Application meeting (see below).

The materials will include a qualitative comparison of pre- and post-Project functions and values, to demonstrate an overall 'net benefit' from Project implementation. A quantitative analysis of the pre- and post-Project acreages and distribution of habitat types will be performed. Together,

this information will be used to provide a qualitative comparison, with supporting quantitative summary statistics, to support an assessment of expected site restoration and enhancement success. This information will also be utilized in assessing Project ‘impacts’ and ‘benefits’ for waters/wetlands permitting.

Interagency Pre-Application Meeting

As soon as it is available, the Project concept will be presented at one of the Sacramento District USACE-hosted Interagency Pre-Application meetings, typically scheduled for the first Thursday of each month, in order to solicit early design input and confirm the permitting approach for Project implementation/construction. A brief Project Summary will be submitted in advance of the meeting and a PowerPoint presentation will be provided at the interagency pre-application meeting.

USFWS and NMFS Section 7 FESA Consultations

As the anticipated federal lead agency, the USACE will be responsible for ensuring Project compliance with related federal environmental laws including the FWCA, and therefore will conduct federal interagency consultations with USFWS and NMFS pursuant to Section 7 of the FESA, and the MSA, amongst others. They will require supporting documentation (in the form of a BA, per below) to be submitted with the application.

A technical assistance meeting will be held with USFWS and NMFS (as well as CDFW) to discuss the project description, monitoring program, potential effects on federally- and state-listed species and protected habitats, and conservation measures included in the project description to avoid or minimize these effects. The meeting will serve to provide an overview of the Project, potential effects on listed species, and potential conservation measures. The applicability of various ‘programmatic BOs’ should also be discussed during the meeting to maximize streamlining of the permitting process.

A BA will be prepared according to USFWS, NMFS and CDFW guidelines and direction. It will assess federally-listed species and protected habitats with potential to occur at the site, anticipated Project effects (both from construction and over the long-term, including any site maintenance or adaptive management measures) to listed species and/or protected habitats, and make recommendations that maximize the feasible and appropriate avoidance and minimization measures.

Section SHPO Section 106 Consultations

As mentioned above, the USACE (as federal lead) will be responsible for conducting interagency consultation pursuant to Section 106 of the NHPA. They will require supporting documentation (in the form of a Cultural Resources Technical Report, per below) to be submitted with the application. The USACE will also conduct tribal coordination, prior to initiation of SHPO consultation, regardless of whether any independent tribal coordination has been completed by the Project proponent.

A Cultural Resources Technical Report will be prepared by the Project team, to document the methods for and findings from cultural resources work, comprising: background research,

California Historical Resources Information System (CHRIS) records searches, Native Americans coordination, outreach to historical societies, maps, surveys, appropriate California Department of Parks and Recreation 523 forms (site records), resource evaluations for National Register- and California Register-eligibility for resources in the project area, and a Section 106 Finding of Effects recommendation. The Cultural Resources Technical Report will be prepared according to the documentation requirements of SHPO and Section 106. It will be provided to the USACE for use in Section 106 consultation with SHPO.

4.3.2 Central Valley Flood Protection Board Encroachment Permit and USACE Section 408 Permit

The proposed modifications to existing flood control systems, including the federal levee, will require an encroachment permit from the CVFPB. A RHA Section 408 approval will also be required from the USACE, for alterations to Civil Works projects (such as federal program levees). The USACE Section 408 approval will be requested by and issued to the local levee maintaining agency, the CVFPB, as part of their encroachment permit process; the CVFPB is required to obtain a Section 408 approval prior to issuing their encroachment permit.

The CVFPB encroachment permit may also include/require other CVFPB permit or approval types, such as a flowage easement modification, license to place fill, and/or temporary entry permit, depending on project design and specific activities proposed.

Strategy

The encroachment permit and associated Section 408 process is expected to be the critical path for permitting, as the process can be very lengthy. Section 408 approvals may occur at the district or division level of the USACE and the initial coordination step will be to confirm that the Project can proceed with a district-level approval. Several criteria exist that can lead to a USACE headquarters review being required and a substantially longer review period. The planning team will assist with USACE coordination to support/encourage a district-level approval.

Section 408 and Section 404 permits are processed and approved by separate groups within the USACE which will coordinate and determine a lead for completing these processes. If the Project requires a Section 404/10 Individual Permit, it will be issued concurrently with the Section 408 permit. However, if the Project can utilize a Section 404/10 NWP, it can be verified prior to the Section 408 permit.

The Section 408 schedule may be controlled by the Project's ability to progress design to the required level of plan completion.

DWR will need to determine if LEJPA or DWR will take the lead on securing the Section 408 permission and the CVFPB permit. Some consideration should be given to which entity will execute construction contracts for planned improvements on federal levees.

If the USACE is determined to be the federal lead agency, they must document a project's compliance with NEPA; see the NEPA section above for this discussion.

Opportunities to Streamline Section 408

The CVFPB, the Sacramento District USACE, and DWR are in the process of developing a ‘programmatic’ Section 408 approval process for the Yolo Bypass Cache Slough Partnership that could result in time savings. However, the timing for the availability of the programmatic 408 is uncertain. As such, this opportunity for streamlining the 408 process for the Proposed Project is uncertain at this time.

Process

A CVFPB encroachment permit application will be prepared for the Proposed Project; there is not a separate Section 408 application required. The CVFPB application will incorporate information prepared by the engineering team, including: a hydrologic and hydraulics system performance analysis, a geotechnical analysis of the Project impacts to the levee, operation and maintenance information and a detailed plans and specification package related to all levee modification. Similar to a CWA Section 404 permit, a RHA Section 408 approval is a federal permit approval and will require completion of NEPA, FESA Section 7 threatened and endangered species consultation and NHPA Section 106 and tribal coordination. The lead program, as determined during the pre-application process, will initiate these consultations on behalf of UASCE.

4.3.3 Central Valley Regional Water Quality Control Board Section 401/Waste Discharge Requirements Notification

Based on anticipated Project impacts to federal and state jurisdictional waters and wetlands, the Project will require a Water Quality Certification and Waste Discharge Requirements, as jointly issued by the Regional Water Board under Section 401 of the CWA and the Porter-Cologne Water Quality Control Act.

Strategy

The State Water Board is developing a CWA Section 401 General Water Quality Certification and Waste Discharge Requirements for Implementation of Restoration Projects Statewide Order (General Order) to improve the efficiency of regulatory reviews for projects throughout the state that would restore aquatic or riparian resource functions and/or services. The General Order would establish an authorization process for environmentally beneficial restoration project types and associated measures to protect species and the environment.

A Draft Program EIR prepared for the General Order was circulated for state agency review in August/September 2021. The Draft Program EIR incorporates by reference the information contained in the programmatic BOs developed by NMFS for restoration projects for the North Coast (NMFS 2012), Central Coast (NMFS 2016), South Coast (NMFS 2015), and Central Valley (NMFS 2018) regions of California (collectively referred to as the NMFS Restoration PBOs). Certification of the Program EIR and authorization of the General Order are pending. It is expected that the State Water Board will adopt the General Order in August 2022.

Assuming it is authorized in time for potential use by the Proposed Project, the Regional Water Board will decide whether the General Order will be used or whether an application for an

individual certification will be needed. Regardless of the path, design guidelines³ and applicable general protection measures, species protection measures, and mitigation measures from the Program EIR should be referenced during design development and application preparation.

The Regional Water Board will also require a certified CEQA document to verify Project compliance with state law, prior to issuance of a Regional Water Board permit.

Process

Regional Water Board application materials will be prepared following receipt of feedback from the attendees of the USACE Interagency Pre-Application meeting (above). Much of the information required for the Regional Water Board application will be similar to that required by the USACE, but some information required, such as the assessment of Project effects to Regional Water Board-designated Beneficial Uses per the Sacramento River and San Joaquin River Basin Water Quality Control Plan (or Basin Plan), is unique to this application. In addition, the Central Valley Regional Water Board may require the preparation of an Alternatives Analysis in compliance with the EPA's 404(b)(1) Guidelines, regardless of whether the USACE requires it for its permit process (the USACE does not require it for a NWP 27, but would require it for an Individual Permit). Since the 2020 Wetland Procedures from the State Water Board would not apply to projects approved under the aforementioned pending Statewide Restoration Projects General Order, there is a possibility that an Alternatives Analysis would not be needed for a complete Regional Water Board application. However, it is important to note that each local Regional Board will determine whether the General Order is appropriate for their region and they are allowed to add additional requirements (which may include an Alternatives Analysis). As such, it is assumed a 404(b)(1) Alternatives Analysis will be prepared using details associated with various Project design alternatives considered prior to and during the permitting process. To be efficient, the 404(b)(1) Alternatives Analysis will be prepared so that it can be utilized by the Regional Water Board as well as the USACE (if determined necessary). The Regional Water Board will also require a certified CEQA document to verify Project compliance with state law, prior to issuance of a Regional Water Board permit. Several meetings with Regional Water Board staff may be necessary to address design considerations and/or to negotiate avoidance, minimization, and/or compensatory mitigation measures (if deemed required).

4.3.4 California Department of Fish and Wildlife Section 1602 Lake and Streambed Alteration Agreement

A CDFW LSAA pursuant to Section 1602 of the California Fish and Game Code (CFGF) is required for projects that result in temporary or permanent alterations to the bed, bank, or channel of all perennial, intermittent, and ephemeral rivers, streams, and lakes in the state, including removal of riparian vegetation associated with those resources. Therefore, it is expected that CDFW will require an LSAA for work within and adjacent to Cache Slough, Lindsey Slough and Sacramento River. The 1602 agreement typically also includes special conditions or avoidance measures aimed at ensuring the project proponent is also complying with the California

³ Appendix E of the Draft Program EIR

Endangered Species Act (below) and the Migratory Bird Treaty Act (MBTA)⁴; however, if project 'take' is anticipated pursuant to those acts, separate authorizations are required.

Strategy

The notification package should consist of information formatted to facilitate upload to CDFW's online application portal, or Environmental Permit Information Management System (EPIMS), including a document with information supporting/augmenting the brief responses which can be entered into EPIMS. Ideally, much of the information contained within the Notification package can be the same or similar to that presented in other (USACE and Regional Water Board) application packages.

The CDFW is purportedly planning or in the process of developing a 'programmatic' Section 1600 LSAA for restoration projects; however, this process is expected to be 2 or more years in the future. As such, this potential streamlining opportunity should not be expected to be available for this Project.

Process

A Section 1602 Notification of Lake or Streambed Alteration will be prepared for submittal to CDFW. Supporting information will include a delineation of the areas regulated by CDFW pursuant to Section 1600 CFGC, a quantification and description of construction techniques and impacts within CDFW-regulated areas and associated fish and wildlife resources, and a plan which addresses the restoration of temporarily-impacted resources.

CDFW requires demonstration of CEQA compliance in order to issue a final Section 1602 LSAA.

4.3.5 California Department of Fish and Wildlife Section 2081 ITP and/or 2080.1 Consistency Determination Application

Because the Project may affect species that are listed under California Endangered Species Act (CESA) (i.e., Swainson's hawk and GGS), the appropriate documentation will be needed to request approval from CDFW for State-listed species via a Fish and Game Code Section 2081 ITP and/or a Fish and Game Code Section 2080.1 CD for species co-listed under both FESA and CESA.

Strategy

The Project may be able to be designed to avoid the need to request a permit for 'take' coverage. This may include adopting a set of robust avoidance and minimization measures for Project construction.

⁴ The MBTA definition of 'take' is far more limited than the CESA definition. The 9th Circuit and other appellate circuits have limited the MBTA to direct actions resulting in take, such as hunting, poaching, and poisoning. The MBTA does not apply to indirect actions, such as habitat destruction. (Seattle Audubon Society v. Evans [9th Cir. 1991] 952 F.2d 297, 303.)

If take coverage is needed and all species with anticipated take are listed at both the state and federal level, a CD corresponding with BOs from USFWS and/or NMFS may be feasible for the Proposed Project. Otherwise, a separate ITP would be required.

The CDFW is in the process of finalizing a new Restoration Management Permit (RMP) for take associated with restoration projects. It covers all CDFW-protected species, and does not require a fee. The Project team should inquire about its availability for use and potential applicability to this Project.

Process

A cover letter for CDFW submittal with the combined BA will be prepared to apply for CDFW Project approval pursuant to Sections 2080.1/2081 of the California Endangered Species Act.

4.3.6 Delta Plan Consistency Certification

Strategy

The project is expected to be considered a “covered action” subject to Delta Plan regulations. An early consultation meeting will be held with the DSC. The meeting with DSC will help ensure consistency between the restoration project and the Delta Plan policies, as well as learn of any issues that have emerged from other projects’ certifications. As noted above, the nearby Lookout Slough Project has faced significant delays because its certification of consistency has been appealed twice by SCWA (for potential impacts to water quality at their water intake) and recreational users (to maintain existing access to Liberty Island for sport fishing). Therefore, local issues and concerns should be anticipated and carefully addressed in the CEQA document and supporting materials.

Process

A Delta Plan Certification of Consistency packet will be prepared and submitted to the DSC website, upon which the material will be immediately available to the public for review (i.e., DSC staff do not review the materials before the packet becomes accessible to anyone who visits the DSC website). Any member of the public has an opportunity to submit an appeal within 30 calendar days of the Certification of Consistency being uploaded to the DSC website. Such appeals are based on claims that the covered action is inconsistent with the regulatory policies of the Delta Plan and as a result of the inconsistency, the covered action would have a significant adverse impact on one of the coequal goals for the Delta or implementation of government sponsored control program.

The Delta Plan Certification of Consistency packet must include an Adaptive Management and Monitoring Plan. The Adaptive Management and Monitoring Plan will provide information about use of best science, uncertainties, compliance and effectiveness monitoring, triggers and responses. Information on basis of design (e.g., hydrodynamic modeling) will be referenced in the Adaptive Management and Monitoring Plan.

4.3.7 Other Permits

Permits that do not involve environmental resources but are generally triggered by construction activities and other land use implications, are also expected to be required from the following agencies. It is anticipated that WES will lead the coordination efforts with these agencies (or delegate such efforts to construction contractors), and that these permits will be straightforward and therefore not merit a particular ‘strategy,’ beyond planning and budgeting for the necessary time, information, and fees required for each.

- FEMA: Conditional Letter of Map Revision (CLOMR)⁵ and/or Letter of Map Revision (LOMR)
- PG&E: Electrical Infrastructure Agreement
- Caltrans: State Route 84 Encroachment Permit/PEER Process (and any related Caltrans permits or approvals for work along State Route 84)
- California Geologic Energy Management Division (CalGEM, formerly DOGGR)
- Reclamation District 536 (RD 536): Encroachment Permit
- SCWA: Encroachment Permit for Mellin Levee
- Solano County: Conditional Use Permit and Airport Land Use Compatibility Determination

5 Conclusion and Next Steps

As identified above, the Project is expected to require preparation of a project-specific CEQA document (likely an EIR) and is also expected to require preparation of a project-specific NEPA document (with the specific document type and format to be determined based on the identified federal lead agency[s] and the scope of federal Project approval). In addition, the Project will require a suite of state and federal agency permits or approvals, as well as a suite of local permits and approvals (Table 1). Ensuring Project compliance with these requirements will demand a high level of coordination and effort and could be lengthy and costly. Opportunities to streamline these approval processes, as identified above, should be sought wherever possible.

Below is a suggested list of next steps, primarily aimed at confirming the anticipated permitting requirements identified herein, as well as determining which avenues for streamlining may be well-suited to the Project and therefore should be ‘designed towards fitting,’ if deemed beneficial to the Project timeline and budget.

1. Early outreach (as soon as possible) should be made to confirm various agencies’ jurisdictions and permitting requirements, as well as (and importantly) exploring the applicability of any existing or in-development ‘streamlined’ or ‘programmatic’ permit or approval mechanisms the Project could ‘design towards fitting’ and thereby benefit from cost

⁵ A CLOMR is a letter from the Federal Emergency Management Agency (FEMA) commenting on whether a proposed project, if built as proposed, or proposed hydrology changes, would meet minimum National Flood Insurance Program standards. See: <https://www.fema.gov/flood-maps/change-your-flood-zone/lovr-clomr>.

and/or time savings, as well as the predictability of permitting conditions or outcomes. These early outreach efforts should include:

- a. Early outreach to the State Water Board regarding the Restoration Projects Statewide Order PEIR, to assess the potential for the Project to qualify as a restoration project under the program, and thereby either “incorporate by reference” or tier off of the program-level CEQA analysis, in preparing a project-specific CEQA document.
- b. Early outreach to CDFW regarding the CEQA SERP and the Restoration Management Permit (for take of CDFW-listed species associated with restoration projects) to assess the potential to utilize these avenues for the Project (in light of the ‘multi-benefit’ nature, and the flood control elements in particular).
- c. Early outreach to all other State agencies with jurisdiction over the Project, to determine/confirm the most efficient and appropriate CEQA approach (including the two potential streamlined CEQA approaches mentioned immediately above).
- d. Early outreach should also be made to other Project interested parties including:
 - Bay Institute
 - California Central Valley Flood Control Association
 - Caltrans
 - Central Delta Water Agency
 - Central Valley Flood Protection Board
 - City of Rio Vista
 - City of Vallejo
 - City of West Sacramento
 - Coalition for Sustainable Delta
 - Contra Costa Water Agency
 - County of Sacramento
 - County of Solano (Board of Supervisors)
 - County of Solano (Staff)
 - County of Yolo
 - Delta Protection Commission
 - Delta Stewardship Council
 - Golden State Salmon Association
 - National Oceanographic and Atmospheric Administration Fisheries
 - Natural Resources Defense Fund
 - North Delta Water Agency
 - Port of West Sacramento
 - RD 2060 (Hastings Tract)
 - RD 2068

- RD 2084 (Little Egbert Tract / LEJPA Member)
 - RD 501 (Ryer Island)
 - RD 536 (LEJPA Member)
 - Sacramento Area Flood Control Agency
 - Sacramento-San Joaquin Delta Conservancy
 - Solano County Airport Land Use Commission
 - Solano County Farm Bureau
 - Solano County Water Agency
 - Solano Resource Conservation District
 - State Parks Division of Boating and Waterways
 - The Nature Conservancy
 - U.S Geological Survey
 - U.S. Army Corps of Engineers
 - U.S. Bureau of Reclamation
 - U.S. Fish and Wildlife Services
 - Yolo Basin Foundation
 - Yolo Bypass Cache Slough Partnership
- e. Early outreach to USACE Section 408 and USACE Regulatory Division leads to confirm permit process specifics and NEPA documentation requirements for the Project (as these two permits/approvals are most likely to trigger the NEPA requirement), and to determine whether a single ('joint') NEPA document may be prepared.
- f. Early outreach to all other federal agencies with jurisdiction over the Project, to determine whether NEPA documentation prepared for the USACE (Regulatory Division and/or Section 408 Permit Program) will satisfy all involved federal agency requirements.
- g. Submit an inquiry to SLC regarding their jurisdiction over lands within the Project site, to determine whether a Lease or Lease Amendment may be required.
2. Present the Project's conceptual design⁶ at a USACE Inter-Agency Pre-Application Meeting (to include invitees from other key federal and state regulatory agencies), upon finishing the Feasibility Study. Solicit input on the preferred concept alternative, key agency concerns, permitting requirements (as initially anticipated herein), opportunities for streamlining (using existing programmatic permits), necessary studies or documentation (including USCG permitting informational needs), permitting timelines, and more. Agencies typically included or to invite: USACE, USFWS, NMFS, EPA, Regional Water Board, CDFW, SLC, and CVFPB.

⁶ Inter-Agency pre-application meetings enable potential applicants to obtain useful agency feedback on proposed project specifics, and are best attended once the project design (including any alternatives, if applicable) are known to a level of confidence that can enable identification of specific areas of impact, rough calculations of impact, and proposed mitigation concepts or alternatives. As such, a common 'rule of thumb' is that conceptual design should be at or beyond 30%, but this is not a requirement.

3. Present the Project at a second USACE Interagency Pre-Application meeting, upon design advancement of the preferred alternative, and prior to permit applications, to demonstrate implementation of prior agency feedback, and to solicit key input on: the development of complete permit applications, the need for additional studies or plans, and advancement of final designs.
4. Consider to what degree the Project is a ‘restoration’ project and to what degree it is a ‘flood control’ project (based on current Project commitments, funding sources, proponent goals and objectives, and ‘politics’) and how this balance will play into the Project’s eligibility for certain ‘programmatic’ permits that are earmarked for restoration projects.
5. Consider whether modifying Project design to ‘fit’ into any of the streamlining options (e.g., the CEQA statutory exemption, Regional Water Board statewide General Order for Restoration, USFWS/NMFS Programmatic BOs, CDFW Restoration Management Permit, and others as discussed above) would be advantageous to the Project, and whether there are funding or other limitations to doing so. Careful review of the requirements of each streamlined option should be conducted, to consider whether they may be more onerous than case-by-case permitting.
6. Document existing conditions of wildlife use and potential airstrike hazard and anticipate concerns from Solano County and Airport Land Use Commission. This will be important for impact analysis in CEQA and avoiding an appeal of the Delta Plan Consistency Determination. Conduct outreach with County and the Airport Land Use Commission.
7. Utilize a permit tracking tool (such as a table or spreadsheet) to track and manage the multi-agency permit process, as well as to succinctly convey the status of all permits.

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