

5. OTHER SECTIONS REQUIRED BY NEPA AND CEQA

5.1 Irreversible or Irretrievable Commitment of Resources

Section 15126.2(c) of the California Environmental Quality Act (CEQA) Guidelines states: “Uses of nonrenewable resources during the initial and continued phases of the Project may be irreversible since a large commitment of such resources makes removal or irreversible nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also, irreversible damage can result from accidents associated with the Project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.”

Implementation of Alternative A would result in a very limited irreversible or irretrievable commitment of resources, since no restoration activities would occur within the South Bay Salt Pond (SBSP) Restoration Project Area (although some tidal restoration may occur from unintentional levee breaching) and levee improvements would be limited. A limited degree of operations and maintenance (O&M) activities (*e.g.*, levee improvement and replacement of water control structures) would involve some labor as well as energy usage by construction equipment, but this would be considered a relatively minor commitment of resources.

Compared to Alternative A, implementation of Alternatives B and C would involve a greater use of resources such as fossil fuels and labor, due to the greater degree of energy required to implement the restoration, flood protection and recreation and public access features proposed under these alternatives. However, most of these resources would be used during the implementation stages of Alternative B or C, rather than on a continual basis over the long term. Therefore, this commitment of resources would not be considered significant.

5.2 Growth Inducement

Section 15162.2(d) of the CEQA Guidelines requires that an Environmental Impact Report (EIR) address the potential growth inducing impacts of a proposed project. Specifically, the EIR shall “discuss the ways in which a project could foster economic or population growth, or the construction of additional housing either directly or indirectly, in a surrounding environment.” Projects which could remove obstacles to population growth must also be considered in this discussion.

Existing and projected total population and households in the three counties and individual cities where the SBSP Restoration Project Area is located are shown in Tables 4-1 through 4-4 in Chapter 4, Cumulative Impacts. As shown, the growth rate ranges from 17 to 36 percent over 25 years, at an average annual growth rate of one percent for most cities. Growth rates are above one percent per year for the cities of Union City and San Jose. The SBSP Restoration Project does not propose construction of any housing, directly or indirectly, in the Project vicinity.

Because no restoration activities and only limited O&M activities (*e.g.*, levee improvements, replacement of water control structures) would occur under Alternative A, no economic, population or housing growth would result from implementation of this alternative.

Implementation of Alternatives B or C would lead to an increase in public access and recreational opportunities in the SBSP Restoration Project Area, potentially resulting in some economic growth to the area associated with an increase in area businesses (see Section 3.11, Socioeconomics). However, this potential economic growth would be considered minor relative to the local and regional economy. While these alternatives would increase recreational opportunities, such facilities are not a known constraint to population growth in the Bay Area. The proposed improvements are unlikely to induce or encourage additional population growth or development elsewhere, or remove obstacles to population growth. As such, the SBSP Restoration Project would not result in direct growth or induce substantial growth in the region. Potential effects are considered less than significant.

5.3 NEPA Consultation

5.3.1 Federal Endangered Species Act (16 USC Section 1521 et seq.)

Section 7 of the Federal Endangered Species Act (FESA) requires federal agencies, in consultation with the Secretary of the Interior, to ensure that their actions do not jeopardize the continued existence of endangered or threatened species, or result in the destruction or adverse modification of the critical habitat of these species. Under Section 7, a project that could result in incidental take of a listed threatened or endangered species must consult with the United States Fish and Wildlife Service (USFWS) to obtain a Biological Opinion (BO). If the BO finds that the project could jeopardize the existence of a listed species (“jeopardy opinion”), the agency cannot authorize the project until it is modified to obtain a “nonjeopardy” opinion.

Impacts to federally endangered and threatened species are discussed in Section 3.6, Biological Resources. The lead agencies, whose mandates are to protect fish and wildlife resources, have conducted extensive informal consultation with the USFWS Endangered Species Unit regarding potential impacts of the SBSP Restoration Project, and the development of the Project’s Biological Assessment and BO. As described in Section 3.6, potential significant effects to these listed species would either be avoided through the implementation of the Adaptive Management Plan that is an integral part of the SBSP Restoration Project, or through implementation of measures established in the BO to avoid or minimize potential effects to biological resources. Prior to construction of the SBSP Restoration Project, the lead agencies would obtain concurrence from the USFWS Endangered Species Unit that the Project, with implementation of the measures established in the Adaptive Management Plan and BO, would not adversely affect federally listed endangered or threatened species. Concurrence by USFWS and the United States Army Corps of Engineers (Corps) would fulfill the requirements of this Act.

5.3.2 Fish and Wildlife Coordination Act (16 USC Section 651 et seq.)

The Fish and Wildlife Coordination Act requires that agencies consult with fish and wildlife agencies (federal and state) on projects where the waters of any stream or other body of water are proposed or

authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatsoever, including navigation and drainage, and that could affect biological resources. Compliance with the Fish and Wildlife Coordination Act will be achieved through consultation with USFWS, NMFS, and CDFG by federal agencies when issuing permits for Project activities by sponsoring agencies, or when implementing other activities related to the SBSP Restoration Project.

5.3.3 Federal Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, and Executive Order 13168

The Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act prohibit the take of migratory birds (or any part, nest, or eggs of any such bird) and the take and commerce of eagles. Executive Order (EO) 13186 requires that any project with federal involvement address impacts of federal actions of migratory birds. Impacts to migratory birds and other protected birds and their nests are discussed in Section 3.6, Biological Resources, of this EIS/R. Potential significant effects to these species would be avoided through implementation of the Adaptive Management Plan, an integral part of the SBSP Restoration Project, or through implementation of measures established in the BO. The analyses provided in Section 3.6, Biological Resources, demonstrate USFWS's compliance with the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, and EO 13168.

5.3.4 National Historic Preservation Act (15 USC Section 470 et seq)

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to evaluate the effects of federal undertakings on historical, archaeological, and cultural resources. As described in Section 3.8, Cultural Resources, of this EIS/R, the Section 106 review process occurs in four steps: Initiation of the process; identification of historic properties; assessment of adverse effects; and resolution of adverse effects. As part of the Section 106 process initiation, USFWS requested consultation with the State Historic Preservation Offices (SHPO) regarding the SBSP Restoration Project. USFWS sent a letter to the Office of Historic Preservation in July 2004 to introduce the Project, define the Project's Area of Potential Effect (APE), establish the scope of the identification effort, and suggest the methods for consulting with SHPO. In addition, USFWS requested that the program alternatives be considered by the SHPO under the 1997 Programmatic Agreement (PA) between SHPO and USFWS; activities that do not meet the requirements of the PA will proceed through the standard Section 106 process. USFWS also indicated that the historic context report of the solar salt industry and evaluation framework for identifying historic resources within the APE will be provided to SHPO for review and comment. SHPO responded in November 2004 concurring with USFWS delineation of the Project's APE; however, it did not respond to the other requests by USFWS. USFWS will complete identification efforts for the SBSP Restoration Project either under the terms of the 1997 PA or the standard Section 106 process. Since the long-term restoration would occur over a 50-year planning period, the identification of historic properties and assessment of effects would be phased to match Project phasing. In order to facilitate an identification effort that is consistent and comprehensive throughout the life of the Project, USFWS will provide SHPO with a historic context and an evaluation framework to serve as the basis for eligibility determinations. Potential effects of the SBSP Restoration Project associated with cultural resources are

addressed in Section 3.8, Cultural Resources, of this EIS/R. The analysis provided in Section 3.8 and the continued consultation with SHPO will ensure that USFWS complies with the NHPA.

As the federal lead agency, USFWS is tasked with completing Section 106 consultation with Native Americans and other stakeholders for this undertaking.

5.3.5 Executive Order 11988 – Floodplain Management and Executive Order 11990 – Protection of Wetlands

EO 11988 requires federal agencies to recognize the values of floodplains and to consider the public benefits from restoring and preserving floodplains. Section 3.3, Hydrology, Flood Management and Infrastructure, describes EO 11988 in more detail. Under EO 11990, federal agencies must avoid affecting wetlands unless it is determined that no practicable alternative is available.

As discussed in Chapter 1, Introduction, two of the objectives of the proposed SBSP Restoration Project are to: (1) create, restore, or enhance habitats of sufficient size, function, and appropriate structure to promote restoration of native special-status plants and animals, maintain current migratory bird species, support increased abundance and diversity of native species, and (2) maintain or improve existing levels of flood protection in the South Bay. Section 3.3 discusses in further detail potential Project impacts associated with coastal flood risk. The objectives of the Project as well as the analysis provided in Section 3.3 demonstrate USFWS's compliance with these EOs.

5.3.6 Farmland Protection Policy Act (7 USC Section 4201 et seq.)

The Farmland Protection Policy Act (FPPA) requires a federal agency to consider the effects of its actions and programs on the nation's farmlands. The FPPA is intended to minimize the impact of federal programs with respect to the conversion of farmland to nonagricultural uses. It assures that, to the extent possible, federal programs are administered to be compatible with state, local, and private programs and policies to protect farmland. As discussed in Section 3.9, Land Use, no designated important farmlands are located within the SBSP Restoration Project Area. As such, the lead agencies would be in compliance with this Act.

5.3.7 Executive Order 12898 – Social Justice

EO 12898 prohibits discrimination against or exclusion of individuals and populations during the conduct of federal activities. It requires all federal agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs and activities on minority and low-income populations. Section 3.11, Socioeconomics and Environmental Justice, describes the socioeconomic setting as it relates to the SBSP Restoration Project Area and evaluates the potential for the Project to disproportionately affect minority or low-income groups. As described in Section 3.11, the SBSP Restoration Project would not disproportionately affect minority and low-income communities. The analysis provided in this EIS/R regarding socioeconomic effects demonstrates USFWS's compliance with this EO.

5.3.8 Executive Order on Trails for America in the 21st Century

The executive order on Trails for America requires federal agencies to protect, connect, promote, and assist trails of all types throughout the United States. As described in Chapter 1, Introduction, one of the objectives of the SBSP Restoration Project is to provide public access and recreational opportunities compatible with wildlife and habitat goals. Section 3.7, Recreation Resources, describes the existing and proposed recreational facilities within the SBSP Restoration Project Area, as well potential effects (beneficial and less than significant) on such resources. The SBSP Restoration Project would provide recreation and public access opportunities in the Project Area, including new trails. Therefore, USFWS would promote the goals of this EO.

5.3.9 Clean Air Act

Federal agencies must ensure that their actions conform to applicable federal, state, or tribal implementation plans for achieving national ambient air quality standards. To conform, federal actions must not contribute to new violations of the standards, increase the frequency or severity of existing violations, or delay the timely attainment of standards in the area of concern. Section 3.14, Air Quality, describes existing conditions in the Project Area, regulations relevant to air quality, and potential air quality effects resulting from the SBSP Restoration Project. The analysis provided in Section 3.14 demonstrates USFWS's compliance with this act.

