

5. OTHER NEPA AND CEQA CONSIDERATIONS

This chapter discusses broader considerations and other aspects of regulatory compliance that are required under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). Section 15126 of the CEQA Guidelines states that all aspects of a project must be considered when evaluating its impact on the environment, including planning, acquisition, development, and operation. This chapter describes any unavoidable, adverse, and potentially significant impacts that implementing Eden Landing Phase 2 of the South Bay Salt Pond (SBSP) Restoration Project would create, describes the relationship between short-term uses of the environment and long-term productivity, and discusses significant irreversible or irretrievable commitments of resources or foreclosures of future options that implementation of the Phase 2 project would create. This chapter also discusses compliance with federal executive orders and acts that may be required by the project but that are not directly included as part of this Draft Environmental Impact Statement/Report (EIS/R). This chapter is generally based on the detailed analysis of environmental resources of concern presented in Chapter 3, Environmental Setting, Impacts, and Mitigation Measures, as well as in the project designs and concepts described in Chapter 2, Alternatives.

5.1 Unavoidable Adverse Potentially Significant Impacts

Chapter 2, Alternatives, explains the efforts the agencies have made through the project development and environmental review process to design the Phase 2 project in a manner that avoids and minimizes impacts. Chapter 3, Environmental Setting, Impacts, and Mitigation Measures, describes the potential environmental consequences of developing the Phase 2 project. The program-level mitigation measures described in Chapter 2 were implemented as part of the project-specific designs, and additional project-level mitigation measures were prescribed for potentially significant adverse impacts that remained following those that were implemented. The impacts that cannot be mitigated to a less-than-significant level are the following:

- **Biological Resources:** Alternative Eden B would have potentially significant impacts to western snowy plovers. Since tidal marsh habitats are not well-suited for the western snowy plover, there would be a large net loss of nesting habitat for these birds. Additionally, the proposed trails may disturb individual plovers. This would cause a potentially significant impact.
- **Recreation Resources:** The temporary closure of existing trails and recreation facilities would be necessary to keep the public safe and provide a route through existing parks to bring materials and equipment to the project areas. Alternatives Eden B, Eden C, and Eden D would have significant and unavoidable impacts from construction activities related to the project resulting in temporary closure of existing trails and recreation facilities.
- **Traffic:** A traffic impact analysis was prepared to analyze the impact of construction-related traffic on each of the Action Alternatives; this study found that at the AM peak hour the impact is considered significant. The optimization of the I-880 Southbound Ramps/Whipple Road/Dyer Street intersection would mitigate the impact to less than significant. However, this mitigation is not feasible as this intersection is part of a synchronized series of intersections. This would therefore cause a significant and unavoidable impact for each Action Alternative.

- Air Quality: Construction-generated average daily NO_x emissions would exceed applicable regional significance thresholds during import and placement of dredge materials. Project-specific mitigation measures will be used to reduce NO_x emissions to the greatest extent feasible, but for those options where diesel fuel is used to power the offloading facility and booster pumps, NO_x emissions would still exceed the regional threshold of significance. Therefore, significant and unavoidable impacts would occur for each Action Alternatives if diesel fuel is used to power the construction equipment during import and placement of dredge materials; those would be Alternatives B1, C1, and D1. (Annual emissions would be below General Conformity *de minimis* levels with incorporation of the project-specific mitigation measures. Therefore, construction-related emissions associated with diesel powered construction equipment would conform to the State Implementation Plan, and a formal conformity analysis would not be required.)

5.2 Irreversible or Irretrievable Commitment of Resources

Section 15126.2(c) of the 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 (the No Action Alternative¹) would result in no irreversible or irretrievable commitment of resources, since no restoration or other activities would occur within the Phase 2 area and only maintenance-related 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. Further, implementation of the No Action Alternative as part of the Phase 2 project would not preclude the possibility of including one or more of the currently proposed actions as part of a future project phase (Phase 3 or later) and thus would be reversible.

Compared to Alternative Eden A, implementation of any of the Action Alternatives (Alternatives Eden B, Eden C, or Eden D) would generally involve a greater short-term use of resources such as fossil fuels and labor, due to the greater degree of energy required to implement the restoration, flood risk management, and recreation and public access features proposed under these alternatives. However, almost all of these resources would be used during the implementation (i.e., construction) stages of Action Alternatives, rather than on a continual basis over the long term. Over the operations stage of the project, the long-term commitment of resources would not be radically different than the current O&M activities require, and may be less in some cases. Therefore, this commitment of resources would not be considered significant.

¹ “No Action Alternative” is the NEPA term. It corresponds to the CEQA term “No Project Alternative.” This Draft EIS/R uses No Action throughout.

5.3 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 should “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. Included in this are projects which would remove obstacles to population growth... It is not assumed that growth in an area is necessarily beneficial, detrimental, or of little significance to the environment.” Projects that 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 Phase 2 area is located are shown in Tables 3.10-1 and 3.10-2 in Section 3.10, Socioeconomics and Environmental Justice. The Phase 2 project does not propose construction of any housing, directly or indirectly, in the South San Francisco Bay Area.

Because no restoration activities and only limited O&M activities (e.g., levee improvements, replacement of water control structures) would occur under Alternative Eden A, no economic, population, or housing growth would result from implementation of these alternatives. Implementation of Alternatives Eden B, Eden C, or Eden D would increase public access and recreational opportunities in the Phase 2 area, potentially resulting in some increase in visits to Eden Landing for hiking, bicycling, photography, wildlife viewing, and other similar activities. These additional visits may bring some economic growth to the area through an increase in area businesses (see Section 3.10, Socioeconomics and Environmental Justice). However, this potential economic growth would be considered minor relative to the local and regional economy. While these Action Alternatives would increase recreational opportunities within southern Eden Landing, the surrounding areas already include recreational visitation and use at northern Eden Landing and in the adjacent East Bay Regional Park District facilities. The additional recreation and public access opportunities are relatively small enhancements to these existing uses, and the projected increases in visitation are expected to be minimal (see Section 3.6, Recreation Resources).

Further, such recreational facilities are not a known constraint to population growth in the San Francisco 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 Phase 2 project would not result in direct growth or induce substantial growth in the region. Potential effects are considered less than significant.

5.4 NEPA Consultation

5.4.1 Federal Endangered Species Act (16 United States Code [USC] Section 1521 et seq.)

Section 7 of the Federal Endangered Species Act (ESA) 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) and/or the National Marine Fisheries Service (NMFS) – depending on the species in question – 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 3.5, Biological Resources. In the past, at the programmatic level, the lead agencies (USFWS and the California Department of Fish and Wildlife [CDFW]), whose mandates include protecting fish and wildlife resources, have conducted extensive formal consultation with the USFWS Endangered Species Unit regarding potential impacts of the 50-year SBSP Restoration Project as a whole. A Programmatic BO was issued and has guided the development and implementation of the program itself as well as the Phase 1 activities.

For Phase 2, consultation will occur in the form of one or more project-level Biological Assessments (BA), leading to a BO. This will address the potential impacts on ESA-listed species from the selected Eden Landing Phase 2 alternative. Generally, as described in Section 3.5, Biological Resources, potential significant effects to these federally listed species would either be avoided through the implementation of the Adaptive Management Plan (AMP) that is an integral part of the Phase 2 project, or through implementation of measures established in the BA/BO to avoid or minimize potential effects to biological resources. Prior to construction of the Phase 2 project, the lead agencies would obtain concurrence from the USFWS Endangered Species Unit that the Phase 2 project, with implementation of the measures established in the AMP and BO, would not adversely affect federally listed endangered or threatened species. Concurrence by USFWS would fulfill the requirements of this act.

5.4.2 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 or diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatsoever, including navigation and drainage, that could affect biological resources. Compliance with the Fish and Wildlife Coordination Act will be achieved through consultation with USFWS, NMFS, and CDFW by federal agencies when issuing permits for Phase 2 activities by sponsoring agencies or when implementing other activities related to the Phase 2 project.

5.4.3 Federal Migratory Bird Treaty Act and Executive Order 13186

The Migratory Bird Treaty Act prohibits the take of migratory birds (or any part, nest, or eggs of any such bird). Executive Order (EO) 13186 requires that any project with federal involvement address impacts of federal actions on migratory birds. Impacts to migratory birds and other protected birds and their nests are discussed in Section 3.5, Biological Resources, of this Draft EIS/R. Potential significant effects to these species would be avoided through project designs that include seasonal avoidance of migratory birds, through implementation of the AMP, and through implementation of measures established in the BA/BO and other regulatory documents. The analyses provided in Section 3.5 demonstrate lead agency compliance with the Migratory Bird Treaty Act and EO 13186.

5.4.4 Bald and Golden Eagle Protection Act

The Bald and Golden Eagle Protection Act prohibits the destruction of bald and golden eagles and their occupied and unoccupied nests. Impacts to bald and golden eagles and their nests are discussed along with other raptor species in Section 3.5, Biological Resources, of this Draft EIS/R. Potential significant

effects to these species would be avoided through project designs that include seasonal avoidance of migratory birds, through implementation of the AMP, and through implementation of measures established in the BA/BO and other regulatory documents. The analyses provided in Section 3.5 demonstrate lead agency compliance with the Bald and Golden Eagle Protection Act.

5.4.5 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 3.7, Cultural Resources, of this Draft 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, which occurred as part of the SBSP Restoration Project, USFWS requested consultation with the California State Historic Preservation Officer (SHPO) regarding the SBSP Restoration Project as a whole. 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 SHPO under the 1997 Programmatic Agreement between the SHPO and USFWS; activities that do not meet the requirements of the agreement would then 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 would be provided to SHPO for review and comment. SHPO responded in November 2004, concurring with the USFWS delineation of the project's APE. In 2010, SHPO concurred with a finding of adverse effect for project impacts to the National Register of Historic Places-eligible Alviso Salt Works Historic Landscape and Eden Landing Salt Works Historic Landscape. Pursuant to this finding, a Memorandum of Understanding was developed between USFWS and SHPO that outlines mitigation and the protocol for completion of the Section 106 process (Appendix F).

Since the long-term restoration would occur over a 50-year planning period, the identification of historic properties and the assessment of effects would be phased to match project phasing, such as with this Draft EIS/R for Phase 2. To facilitate an identification effort that is consistent and comprehensive throughout the life of the project, USFWS has provided SHPO with an historic context and an evaluation framework that will serve as the basis for eligibility determinations. Potential effects of the Phase 2 project associated with cultural resources are addressed in Section 3.7, Cultural Resources, of this Draft EIS/R. In addition, during the programmatic phase, USFWS consulted with SHPO on Phase 2 additions to the APE. SHPO has concurred that there are no additional historic properties affected as a result of the Phase 2 APE additions. The analysis provided in Section 3.7 and the updated (2014) consultation with SHPO to ensure that the USFWS continues to comply with the NHPA.

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

EO 11988 requires federal agencies to recognize the value of floodplains and to consider the public benefits from restoring and preserving floodplains. Section 3.2, 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 there is no practicable alternative.

As discussed in Chapter 1, Introduction, two of the objectives of the proposed Phase 2 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 de facto flood protection in the South Bay.

Section 3.2, Hydrology, Flood Management, and Infrastructure, discusses in further detail the potential project impacts associated with coastal flood risk. The objectives of the project as well as the analysis provided in Section 3.2 demonstrate compliance with EO 11988.

The Phase 2 Action Alternatives would impact some areas that are currently tidal wetlands. Section 3.5, Biological Resources, describes the location, amount, type, and reasons for these impacts to existing wetlands. However, the combined area of these impacts is small (on the order of tens of acres), while the implemented Phase 2 actions would restore and enhance approximately 2,000 acres of tidal wetlands. Thus, the objectives of the project as well as the analysis in Section 3.5 demonstrate compliance with EO 11990.

5.4.7 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 ensures 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 3.8, Land Use and Planning, no designated important farmlands are located within the Phase 2 area. As such, the lead agencies would be in compliance with this act.

5.4.8 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 3.10, Socioeconomics and Environmental Justice, describes the socioeconomic setting as it relates to the Phase 2 area and evaluates the potential for the project to disproportionately affect minority or low-income groups. As described in Section 3.10, the Phase 2 project would not disproportionately affect minority and low-income communities. The analysis provided in this Draft EIS/R regarding socioeconomic effects demonstrates lead agency compliance with this EO.

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

The EO 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 Phase 2 project is to provide public access and recreation opportunities compatible with wildlife and habitat goals. Chapter 2, Alternatives, communicated the amounts and locations of new recreational trails and associated public access opportunities (e.g., viewing stations and interpretive platforms). Section 3.6, Recreation Resources, further describes the existing and proposed recreation facilities within Phase 2 project area, as well potential effects (including beneficial outcomes, where appropriate) on such resources. The Phase 2 project would provide public access and recreation opportunities, including new trails, in the project area. Therefore, the analysis provided in this Draft EIS/R demonstrates lead agency compliance with this EO.

5.4.10 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 3.13, Air Quality, describes existing conditions in the project area, regulations relevant to air quality, and potential air quality effects resulting from the Phase 2 project. The analysis provided in Section 3.13 demonstrates lead agency compliance with this act.

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