

CENTRAL VALLEY FLOOD PROTECTION BOARD

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October 11, 2021

Governor's Office of Planning & Research

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STATE CLEARINGHOUSE

City of Manteca
c/o J.D. Hightower
1215 West Center Street
Manteca, CA 95337

Subject: Comments on the Storm Drain Zone 36/Zone 39 Improvement Project Initial Study/Mitigated Negative Declaration (SCH No. 2021090183)

Dear J.D. Hightower,

The Central Valley Flood Protection Board (Board) appreciates the opportunity to comment on the Initial Study/Mitigated Negative Declaration (IS/MND) for the proposed Storm Drain Zone 36/Zone 39 Improvement Project (proposed project). The IS/MND was prepared to disclose and address potential environmental impacts associated with the proposed project. The proposed project is located in San Joaquin County and involves the construction of discharge pipes, a concrete outfall structure, erosion protection material, and a stormwater pumping plant.

Responsibility of the Central Valley Flood Protection Board

The Board is the State's regulatory agency responsible for ensuring appropriate standards are met for the construction, maintenance, and operation of the flood control system that protects life, property, and habitat in California's Central Valley. The Board serves as the State coordinator between local flood management agencies and the federal government, with the goal of providing the highest level of flood protection possible to California's Central Valley.

The Board operates under authorities as described in California Water Code (Water Code), which requires the Board to oversee future modifications or additions to facilities of the State Plan of Flood Control (SPFC). In addition, pursuant to assurances provided to the United States Army Corps of Engineers (USACE) by the Board on behalf of the State, the USACE Operation and Maintenance Manuals, Code of Federal Regulations, Title 33, § 208.10, and United States Code, Title 33, § 408, the Board is responsible for the operation and maintenance of the SPFC facilities. The USACE requires the Board to serve as the lead non-Federal sponsor for projects to improve or alter facilities of the SPFC pursuant to Code of Federal Regulations, Title 33, § 408. The State's objectives include fulfilling the USACE's expectations pursuant to the assurances provided to the USACE.

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Encroachment Permit

Per California Code of Regulations, Title 23, Waters, Division 1 (Title 23), Section 6, approval by the Board is required for all proposed work or uses, including the alteration of levees within any area for which there is an Adopted Plan of Flood Control within the Board's jurisdiction. In addition, Board approval is required for all proposed encroachments within a floodway, on adjacent levees, and within any Regulated Stream identified in Title 23, Table 8.1. Specifically, Board jurisdiction includes the levee section, the waterward area between project levees, a minimum 10-foot-wide strip adjacent to the landward levee toe, the area within 30 feet from the top of bank(s) of Regulated Streams, and inside Board's Designated Floodways. Activities outside of these limits which could adversely affect Federal-State flood control facilities, as determined by Board staff, are also under the Board's jurisdiction. Permits may also be required for existing unpermitted encroachments or where it is necessary to establish the conditions normally imposed by permitting, including where responsibility for the encroachment has not been clearly established or ownership or uses have been changed. This proposed project is located within the Board's permitting authority, thereby requiring an encroachment permit. The Board received your encroachment application on September 23, 2021 and is currently reviewing it for acceptance.

Federal permits, including USACE Section 404 and Section 10 regulatory permits and Section 408 Permission, in conjunction with a Board permit, may be required for the proposed project. Any decision made by the 408 Permission Section is a federal action subject to the National Environmental Policy Act (NEPA) (NEPA Environmental Impact Statement, NEPA Environmental Assessment, or NEPA Categorical Exclusion) and other federal environmental and cultural resource compliance requirements, such as Section 7 of the Endangered Species Act³, Section 106 of the National Historic Preservation Act⁴, essential fish habitat consultation, tribal consultation, etc. Based on the features proposed in the project, a biological assessment and cultural report for federal consultation requirements may be needed.

In addition to federal permits, state and local agency permits, certification, or approvals may also be required. State approvals may include, but are not limited to, California Department of Fish and Wildlife's Lake and Streamed Alteration Agreement and Regional Water Quality Control Board's Section 401 Water Quality Certification. The Applicant must obtain all authorizations that the proposed project may require.

Flood Impacts Analysis

Pursuant to Section 15 of Title 23, the Board may deny an encroachment permit if the proposed project could:

- Jeopardize directly or indirectly the physical integrity of levees or other works;

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- Obstruct, divert, redirect, or raise the surface level of design floods or flows, or the lesser flows for which protection is provided;
- Cause significant adverse changes in water velocity or flow regimen;
- Impair the inspection of floodways or project works;
- Interfere with the maintenance of floodways or project works;
- Interfere with the ability to engage in flood fighting, patrolling, or other flood emergency activities;
- Increase the damaging effects of flood flows;
- Be injurious to, or interfere with, the successful execution, functioning, or operation of any adopted plan of flood control; or
- Adversely affect the State Plan of Flood Control, as defined in the California Water Code.

As a responsible agency under the California Environmental Quality Act (CEQA), the Board will need to have adequate information in order to evaluate whether to issue a permit at a future date. Accordingly, please be prepared to provide specific analyses to determine if the proposed project could result in any potential impacts listed above. This includes direct impacts to facilities under construction, as well as indirect impacts from the project to surrounding facilities. This encompasses any proposed work that contemplates modifications to a SPFC Facility, Lower San Joaquin Levee District Facility, or operation of any adopted plan of flood control or the hydrology of the water ways including: possible increases or decreases in water surface elevation due to construction activities and encroachments; any work including dewatering and vibrations from both pile driving and heavy machinery that may destabilize the SPFC levees; and potential levee damage resulting from heavy machinery construction activities and associated haul routes. It is therefore recommended that the environmental document include a specific flood facility impacts analysis section.

Document Specific Comments

The following constitutes specific comments on the Draft IS/MND.

- Title 23 provides standards that govern the design and construction of projects that affect the flood control works and floodways. Board staff recommends that you review Title 23 Standards, including Sections 121 (Erosion Control), 123 (Pipelines, Conduits, and Utility Lines), and 130 (Patrol Roads and Access Ramps).
- A summary of the analysis and findings of the hydraulic analysis prepared for the project should be included in the IS/MND. Title 23, Section 128 requires that all construction facilities (such as temporary staging, cofferdams, and falsework) must be designed to prevent bank erosion during normal flows and to maintain the maximum channel capacity during the flood season.

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- The California Governor's Water Resilience Portfolio (2020) and Governor's Executive Order N-10-19 requires "climate adaptability in California" by considering the impacts of climate change for future projects in California. Furthermore, in compliance with Water Code, § 8610.5(c), the Board shall consider, before taking any action, "The best available science that relates to the scientific issues presented by the executive officer, legal counsel, the department, or other parties that raise credible scientific issues."; and also shall consider the "Effects of reasonably projected future events, including, but not limited to, changes in hydrology, climate, and development within the applicable watershed". Moreover, the Board adopted the 2012 Central Valley Flood Protection Plan (CVFPP) and 2017 CVFPP Update, which require proposed projects to be consistent with the adopted 2017 CVFPP Update, including climate change considerations. The hydrologic and hydraulic analyses should incorporate future flows due to climate change considerations in compliance with the Governor's Water Resilience Portfolio (2020), Governor's Executive Order N-10-19, Water Code § 8610.5 (c), and the Board's adopted Central Valley Flood Protection Plan (2012 and 2017 Update).

Closing

The potential risks to public safety, including increased flood risks, need to be considered when developing proposed projects that seek to modify flood control works or the hydrology of the water ways. Board staff is available to discuss any questions you have regarding the above comments. Please contact Jennifer Calles at (916) 480-5413, or via email at Jennifer.Calles@CVFlood.ca.gov if you have any questions.

Sincerely,

Andrea Buckley

Andrea Buckley
Environmental Services and Land Management Branch Chief

cc: Office of Planning and Research
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