



## **Appendix B: Applicable Federal, State, and Local Plans, Policies, and Regulations**



*This page is intentionally left blank.*



## B.1 Federal and State Plans, Policies, and Regulations

The following discussion describes the adopted federal and State plans, policies, and regulations that are applicable to the proposed Project. A list of local plans, policies, and regulations is identified in Table B-1.

### B.1.1 LAND USE AND PLANNING

The following federal and State plans, policies, and regulations inform the evaluation of land use and planning in this Environmental Assessment (EA). A list of local plans, policies, and regulations is identified in Table B-1.

#### Federal Plans, Policies, and Regulations

##### *National Environmental Policy Act*

The National Environmental Policy Act (NEPA), enacted on January 1, 1970, requires the consideration of potential environmental effects and a discussion of inconsistencies or conflicts between a proposed undertaking and federal, state, regional, or local plans and laws.

##### *23 Code of Federal Regulations Part 771, Council of Environmental Quality*

23 Code of Federal Regulations (CFR) 771, Environmental Impact and Related Procedures, prescribes the policies and procedures of the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), and Federal Transit Administration (FTA) for implementing NEPA and provides the regulations and requirements for processing highway, public transportation, and railroad actions under NEPA. The United States Department of Transportation (USDOT) published a final rule in the Federal Register on November 28, 2018, that includes 23 CFR Part 771 and was considered effective.

#### State Plans, Policies, and Regulations

##### *California State Planning and Zoning Law*

The 2011 Edition of the California State Planning and Zoning Law specifies how the state delegates most of the state's local land use and development decisions to the respective city or county and identifies the laws pertaining to land use regulations set by the local government's general plan requirements, specific plans, and zoning.

##### *Sustainable Communities and Climate Protection Act*

The Sustainable Communities and Climate Protection Act, Senate Bill (SB) 375, was signed into law on September 30, 2008, and requires that regional planning agencies include a Sustainable Communities Strategy (SCS) or alternative planning strategy in regional transportation plans. This SCS provides guidance on the coordination of land use and greenhouse gas (GHG) planning in order to meet regional GHG emissions reduction targets set by the California Air Resources Board (CARB).



## B.1.2 COMMUNITY EFFECTS AND GROWTH

The following federal and State plans, policies, and regulations inform the evaluation of community effects and growth in this EA. A list of local plans, policies, and regulations is identified in Table B-1.

### Federal Plans, Policies, and Regulations

#### *23 Code of Federal Regulations Part 771*

23 CFR 771, effective November 28, 2018, prescribes the policies and procedures for FRA to implement NEPA. These policies and procedures supplement the NEPA regulation of the Council on Environmental Quality (CEQ), and together set forth all requirements under NEPA for the processing of highway, public transportation, and railroad actions.

#### *Uniform Relocation Assistance and Real Property Acquisition Policies Act*

NEPA requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act). The Uniform Act establishes a policy for the fair and equitable treatment of persons displaced as a result of federal and federally assisted programs and ensures that relocation services and payments will be made available to eligible residents, businesses, and nonprofit organizations displaced as a direct result of a project.<sup>1</sup>

The Uniform Act also sets minimum standards of benefits and compensation for relocation advisory and financial benefits and established basic standards and requirements for appraisal and acquisition to be followed in acquiring real property. The Uniform Act is not an entitlement program, but rather a reimbursement program to assist in relocating to a new site.

The purpose of the Uniform Act, and its implementing regulations at Title 49 CFR Part 24, is:

“To provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by federal and federally assisted programs and to establish uniform and equitable land acquisition policies for federal and federally assisted programs.”

The relocation services and benefits provision is administered without regard to race, color, national origin, or sex in compliance with Title VI of the Civil Rights Act (42 USC 2000d, et seq.).

#### *National Environmental Policy Act Requirements to Analyze Growth*

Positive and negative growth (i.e., change) is a potential impact of the proposed Project alternatives. CEQ regulations include a requirement to examine both direct and indirect effects. Direct growth effects include any jobs directly associated with the proposed Project alternatives, as well as any displacement of housing or commercial or industrial businesses related to the construction and operation of the proposed rail facility. Indirect growth effects may occur in areas beyond the immediate influence of a proposed action and at some time in the future, which may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air, water, and other natural systems, including ecosystems. Cumulative growth effects takes into account that although a proposed action may not have direct environmental effects, it may still induce cumulative effects by permitting other

---

<sup>1</sup> Federal regulations implementing the Uniform Act are contained in 49 CFR Part 24.



development activities that have significant effects on environmental resources at a regional or national scale, and are viewed as “connected actions.”

### **State Plans, Policies, and Regulations**

#### *Senate Bill 375 and Regional Transportation Plan/Sustainable Communities Strategy*

SB 375 was signed into law on September 30, 2008, and requires California’s 18 metropolitan planning organizations (MPO) to adopt an SCS. The SCS must demonstrate an ambitious and achievable approach on how land use development and transportation can work together to reduce GHG emissions from automobiles and light trucks within each region to meet emissions targets set by CARB as part of their Regional Transportation Plan (RTP). If an MPO is unable to meet the targets through the SCS, then an alternative planning strategy must be developed that demonstrates how targets could be achieved.

The San Joaquin Council of Governments (SJCOG), as the MPO and RTP agency of San Joaquin County, has developed an RTP/SCS. The foundation of the RTP/SCS is comprised of recent household and job growth forecasts, market demand and economic studies, and transportation studies including SJCOG’s Smart Growth Transit Oriented Development Plan, Goods Movement Study, and Regional Bike/Pedestrian Master Plan, which are used to understand the transportation network, economic, geographic, and regulatory setting of the San Joaquin region and provide projections on population, housing, and employment. The latest version of the RTP/SCS was approved on June 28, 2018, by the SJCOG Board. The 2018 RTP/SCS meets and exceeds the 5 percent in 2020 and 10 percent in 2035 GHG reduction targets set by CARB.

### **B.1.3 RELOCATIONS AND REAL PROPERTY ACQUISITION**

The following federal and State plans, policies, and regulations inform the evaluation of relocations and real property acquisition in this EA. A list of local plans, policies, and regulations is identified in Table B-1.

#### **Federal Plans, Policies, and Regulations**

##### *Uniform Relocation Assistance and Real Property Acquisition Policies Act*

Please see description under Section B.1.2, Community Effects and Growth.

#### **State Plans, Policies, and Regulations**

##### *California Relocation Assistance Act and California Code of Regulations*

Under the provision of Government Code 7260 et seq., all public entities adopt rules and regulations to administer relocation assistance and to implement the payments. The rules and regulations are to conform to the California Code of Regulations (CCR) 6000 et seq., the implementing regulation of Government Code 7260 et seq., also known as the “Guideline.” CCR 6000 et seq. as adopted pursuant to the provisions of Section 41135, Health and Safety Code, in order to implement, interpret, and make specific provisions relating to relocation assistance, last resort housing, and real property acquisition.



#### B.1.4 PARKS, RECREATION, AND SECTION 4(F) RESOURCES

The following federal and State plans, policies, and regulations inform the evaluation of parks, recreation, and Section 4(f) resources in this EA. A list of local plans, policies, and regulations is identified in Table B-1.

##### Federal Plans, Policies, and Regulations

###### *Section 4(f) of the Department of Transportation Act*

Requirements under Section 4(f) of the Department of Transportation Act of 1966, stipulate USDOT agencies cannot approve the use of land from publicly owned parks, recreational areas, wildlife and waterfowl refuges, or public and private historical sites unless there is no feasible and prudent avoidance alternative to the use of that land; and the action includes all possible planning to minimize harm to the property resulting from such use or that it is determined that the use of the property will have a *de minimis* impact.

###### *Section 6(f) Land and Water Conservation Fund Act (PL 88-578, 16 USC 460I-4-460I-11)*

Section 6(f) of the Land and Water Conservation Act of 1965 requires coordination with and approval from the National Park Service (NPS) prior to converting any lands or facilities acquired with Land and Water Conservation Act funds under the State Assistance program.

According to the official Land and Water Conservation Fund list for California, located on the California Department of Parks and Recreation website, there are no Section 6(f) properties within the Stockton Diamond Grade Separation RSA for parks or recreational facilities that could be affected by the proposed Project. Therefore, Section 6(f) is not applicable and does not require impact analysis.

##### State Plans, Policies, and Regulations

###### *California Public Park Preservation Act*

The California Public Park Preservation Act of 1971 requires that any public agency that acquires public park areas for non-park or recreational use must either pay compensation that is equivalent to the park area value or provide another park area of the same value and characteristics. The proposed Project will not acquire any public park areas for non-park use; thus, the California Public Park Preservation Act is not applicable to this proposed Project and does not require an impact analysis.

#### B.1.5 ENVIRONMENTAL JUSTICE

The following federal and State plans, policies, and regulations inform the evaluation of environmental justice (EJ) in this EA. A list of local plans, policies, and regulations is identified in Table B-1.



## Federal Plans, Policies, and Regulations

### *Title VI of the Civil Rights Act*

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance.

### *Federal Actions to Address EJ in Minority Populations (Executive Order 12898)*

Executive Order (EO) 12898, effective February 11, 1994, focuses federal attention on the environmental and human health effects of federal actions placed on minority and low-income populations with the goal of achieving environmental protection for all communities. Agencies are required to identify and address the disproportionate effects on minority and low-income populations due to project actions, to develop an EJ strategy during the planning phase, and to ensure that there are mitigation measures and opportunities for public input and participation during the planning process.

### *Presidential Memorandum Accompanying Executive Order 12898*

The Presidential Memorandum dated February 11, 1994, emphasizes the importance of existing laws, such as Title VI of the Civil Rights Act of 1964 and NEPA, that can assist with implementation of the principles of the order. The memorandum provides that, in accordance with Title VI, "each Federal agency shall ensure that all programs or activities receiving Federal assistance that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin."

### *Actions to Address EJ in Minority Populations and Low-Income Populations (U.S. Department of Transportation Order 5610.2c)*

USDOT Order 5610.2c effective May 16, 2021, requires the consideration of EJ principles in all USDOT programs, policies and activities. It describes how the objectives of EJ will be integrated into planning and programming, rulemaking, and policy formulation. It sets forth steps to identify and address, as appropriate, disproportionately high and adverse effects on minority populations or low-income populations through EJ analysis conducted as part of the planning and project delivery process for federally funded or approved transportation projects; it specifies the measures to be taken to address instances of disproportionately high and adverse effects; and requires consideration of the benefits of transportation programs, policies, and other activities where minority populations and low-income populations benefit, at a minimum to the same level as the general population as a whole when determining effect on minority and low-income populations.

### *Improving Access to Services for Persons with Limited English Proficiency (Executive Order 13166)*

EO 13166, signed on August 11, 2000, requires federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so people with LEP can have meaningful access to them.



## State Plans, Policies, and Regulations

### *Uniform Relocation Assistance and Real Property Acquisition Policies Act*

Please see description under Section B.1.2, Community Effect and Growth. California Government Code 65040.12(e)

California Government Code 65040.12(e) states that EJ is the “fair treatment and meaningful involvement of people of all races, cultures, incomes, and national origins, with respects to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”

### *California Government Code 11135(a)*

California Government Code 11135(a) states no one shall be discriminated to receive full and equal access to the benefits of any programs or activities conducted, operated or administered by the state or by any state agency.

## B.1.6 UTILITIES AND EMERGENCY SERVICES

The following federal and State plans, policies, and regulations inform the evaluation of utilities and emergency services in this EA. A list of local plans, policies, and regulations is identified in Table B-1.

### Federal Plans, Policies, and Regulations

#### *Water Conservation Act*

The Water Conservation Act of 2009 requires all water suppliers to increase efficiency in water use. Since the proposed Project involves operational improvements to an existing transportation facility, it is not anticipated that water use would increase. Therefore, this act is not applicable to the proposed Project.

### State Plans, Policies, and Regulations

#### *California Integrated Waste Management Act*

The California Integrated Waste Management Act of 1989 requires local jurisdictions to adopt an Integrated Waste Management Plan that addresses waste disposal, management, source reduction, and recycling and ultimately leads to a reduction of waste. The California Department of Resources Recycling and Recovery (CalRecycle) is the agency responsible for leading the initiative. Solid waste reduction would be part of the proposed Project construction plans.

#### *California Government Code*

The California Government Code (Section 4216) mandates that any person must notify and coordinate with relevant stakeholders prior to construction activities that involve ground disturbance. Contractors are required to mark any area that is to be disturbed with paint and notify Underground Service Alert North (USA North), at least 2 days prior to the start of any digging activities. After receiving the notification, USA North would transmit the information regarding the construction to all participating members.



### B.1.7 TRAFFIC AND TRANSPORTATION/PEDESTRIAN AND BICYCLE FACILITIES

The following federal and State plans, policies, and regulations inform the evaluation of traffic and transportation/pedestrian and bicycle facilities in this EA. A list of local plans, policies, and regulations is identified in Table B-1.

#### Federal Plans, Policies, and Regulations

##### *Federal Passenger Rail Investment and Improvement Act*

In accordance with the Federal Passenger Rail Investment and Improvement Act of 2008, the State of California adopted the 2018 California State Rail Plan in September 2018 (Caltrans 2018a). Federal law requires the State of California to update its California State Rail Plan every 5 years as a condition of eligibility for federal funding for rail programs.

##### *Highways, Statewide Planning*

Title 23 of the USC for Highways and Statewide Planning provides the general requirements for statewide planning to encourage and promote the safe and efficient management, operation, and development of the surface transportation system.

##### *SJCOG Regional Transportation Plan and Sustainable Communities Strategy*

At the statewide level, the proposed Project is included in the 2020 California Freight Mobility Plan, and the proposed Project's design and ROW phases are programmed in the interregional portion of the 2020 State Transportation Improvement program (STIP). The proposed Project is included in the 2018 San Joaquin County RTP/SCS, as well as the current SJCOG 2021 Federal Transportation Improvement Program (FTIP), which was adopted at the February 25, 2021, SJCOG Board Meeting.

The State of California requires each transportation planning agency to prepare and adopt a RTP directed at achieving a coordinated and balanced regional transportation system.

The 2018 RTP/SCS provides a "sustainability vision" through year 2042 that recognizes the significant impact the transportation network has on the region's public health, mobility, and economic vitality. As the region's comprehensive long-range transportation planning document, the Plan serves as a guide for achieving public policy decisions that will result in balanced investments for a wide range of multimodal transportation improvements.

##### *San Joaquin Regional Rail Commission Plans*

SJRRC's *ACEforward* project is relevant to the proposed project because of its proposed improvements in Stockton and use of the UP Fresno line and Stockton Diamond. Additionally, Valley Rail<sup>2</sup> implements two new daily round-trips for the Amtrak San Joaquin's service to better connect San Joaquin Valley travelers with the Sacramento Area, and an extension of ACE between Sacramento and Ceres/Merced.

---

<sup>2</sup> Valley Rail includes "ACEforward" and San Joaquin's expansion.



### B.1.8 VISUAL QUALITY AND AESTHETICS

The following federal and State plans, policies, and regulations inform the evaluation of visual quality and aesthetics in this EA. A list of local plans, policies, and regulations is identified in Table B-1.

#### Federal Plans, Policies, and Regulations

##### *National Environmental Policy Act*

NEPA requires the consideration of potential environmental effects, including potential aesthetic and visual effects, in the evaluation of any proposed federal agency action. NEPA also obligates federal agencies to consider the environmental consequences of their projects and programs as part of the planning process.

#### State Plans, Policies, and Regulations

There are no applicable state plans, policies, or regulations related to this resource topic.

### B.1.9 CULTURAL RESOURCES

The following federal and State plans, policies, and regulations inform the evaluation of cultural resources in this EA. A list of local plans, policies, and regulations is identified in Table B-1.

##### *National Environmental Policy Act*

NEPA requires the consideration of potential environmental effects, including potential effects on cultural resources, in the planning of any proposed federal action. According to the NEPA regulations, in considering whether an action may “significantly affect the quality of the human environment,” an agency must consider, among other things, unique characteristics of the geographic area such as proximity to historic or cultural resources and the degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the NRHP.

The NEPA regulations also require that, to the fullest extent possible, agencies integrate NEPA review concurrently with the requirements of other environmental regulations, including the National Historic Preservation Act (NHPA), which requires federal agencies to consider the effects of their actions on historic properties. When Section 106 of NHPA and NEPA are integrated, adverse project effects under Section 106 are considered to be adverse under NEPA.

##### *National Historic Preservation Act*

The NHPA of 1966 establishes the federal government policy on historic preservation and the programs, including the National Register of Historic Places (NRHP), through which this policy is implemented. Under the NHPA, significant cultural resources, referred to as historic properties, include any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the NRHP. A property is considered historically significant if it meets one or more of the NRHP criteria and retains sufficient historic integrity to convey its significance. The Advisory Council on Historic Preservation (ACHP) is responsible for implementing Section 106 of the NHPA and has developed regulations to protect cultural resources included in or eligible for inclusion in the NRHP, published in 36 CFR 60, 63, and 800.



### *Implementing Regulations for Section 106 of the National Historic Preservation Act*

Section 106 requires that effects on historic properties be taken into consideration in any federal undertaking. The process has five steps: (1) initiating the Section 106 process, (2) identifying historic properties, (3) assessing adverse effects, (4) resolving adverse effects, and (5) implementing stipulations in an agreement document.

Compliance with the act requires that federal agencies must identify and evaluate NRHP eligibility of properties within the area of potential effect (APE) and evaluate the effect of the undertaking on historic properties. The APE is defined as the area in which historic properties may be affected by the undertaking.

Section 106 affords the ACHP and the State Historic Preservation Office (SHPO), as well as other consulting parties, a reasonable opportunity to comment on any undertaking that would adversely affect historic properties. SHPOs administer the national historic preservation program at the state level, which includes consulting with federal agencies during Section 106 review.

The NRHP uses the NRHP eligibility criteria (36 CFR 60.4) to evaluate historic significance of cultural resources within the undertaking's APE. The criteria for evaluation are as follows:

- Criterion A: Association with “events that have made a significant contribution to the broad patterns of our history”
- Criterion B: Association with “the lives of persons significant in our past”
- Criterion C: Resources “that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction”
- Criterion D: Resources “that have yielded, or may be likely to yield, information important to history or prehistory”

Properties of traditional religious and cultural importance to a Native American tribe can be determined eligible for NRHP inclusion (54 USC Section 302706(a)). A broader range of traditional cultural properties may also be determined eligible for or listed in the NRHP. These are places associated with the cultural practices or beliefs of a living community that may be eligible because of their association with cultural practices or beliefs that (a) are rooted in that community's history, and (b) are important in maintaining its continuing cultural identity.

### *Section 4(f) of the Department of Transportation Act*

Please see description under Section B.1.4, Parks, Recreation, and Section 4(f) Resources.

## **State Plans, Policies, and Regulations**

### *California Register of Historic Resources*

Section 5024.1 of the California Public Resources Code (PRC) established the California Register of Historic Resources (CRHR). Generally, a resource is considered by the lead agency to be “historically significant” if the resource meets the criteria for listing in the CRHR (CCR, Title 14(3),



Section 15064.5(a)(3)). The eligibility criteria for the CRHR are similar to those of the NRHP, and a resource that meets one of more of the eligibility criteria of the NRHP will be eligible for the CRHR.

### **B.1.10 HYDROLOGY, FLOODPLAINS, AND WATER QUALITY**

The following federal and State plans, policies, and regulations inform the evaluation of hydrology, floodplains, and water quality in this EA. A list of local plans, policies, and regulations is identified in Table B-1.

#### **Federal Plans, Policies, and Regulations**

##### *Clean Water Act*

Important Clean Water Act (CWA) sections are as follows:

- Sections 303 and 304 require states to establish water quality standards, criteria, and guidelines.
- Section 401 requires an applicant for a federal license or permit to conduct any activity that may result in a discharge to waters of the US to obtain certification from the state that the project will be in compliance with state water quality standards. The 401 certifications are obtained from the appropriate Regional Water Quality Control Board (RWQCB), dependent on the project location, and are required before USACE issues a Section 404 permit (see below).
- Section 402 establishes the National Pollution Discharge Elimination System (NPDES), a permitting system for the discharges (except for dredge or fill material) of any pollutant into waters of the US, including regulating municipal and industrial discharges to surface waters of the U.S. The U.S. Environmental Protection Agency (EPA) delegated the implementation and administration of the NPDES program in California to the California State Water Resources Control Board (SWRCB).
- Section 404 establishes a permit program for the discharge of dredge or fill material into waters of the U.S., including wetlands. This permit program is administered by the U.S. Army Corps of Engineers (USACE).

##### *Executive Order 11988*

EO 11988 (Floodplain Management) directs all federal agencies to refrain from conducting, supporting, or allowing actions in floodplains unless it is the only practicable alternative. FHWA requirements for compliance are outlined in 23 CFR 650 Subpart A.

#### **State Plans, Policies, and Regulations**

##### *Porter-Cologne Water Quality Control Act (Water Code, §13000 et seq.)*

California's Porter-Cologne Water Quality Control Act, enacted in 1969, provides the legal basis for water quality regulation in California. This act requires a "Report of Waste Discharge" for any discharge of waste (liquid, solid, or gaseous) to land or surface waters that may impair beneficial uses for surface and/or groundwater of the state. Additionally, it prohibits discharges of "waste" as defined, and this definition is broader than the CWA definition of "pollutant." Discharges under the Porter-Cologne Act are permitted by Waste Discharge Requirements (WDR) and may be required even when the discharge is already permitted or exempt under the CWA. If an RWQCB determines



that waters are impaired for one or more constituents and that the standards cannot be met through point source or non-point source controls (NPDES permits or WDRs), the CWA requires the establishment of a total maximum daily load (TMDL). TMDLs specify allowable pollutant loads from all sources (point, nonpoint, and natural) for a given watershed.

#### *State Water Resources Control Board and Regional Water Quality Control Board*

The SWRCB adjudicates water rights, sets water pollution control policy, issues water board orders on matters of statewide application, and oversees water quality functions throughout the state by approving Basin Plans, TMDLs, and NPDES permits. RWCQBs are responsible for protecting beneficial uses of water resources within their regional jurisdiction using planning, permitting, and enforcement authorities to meet this responsibility.

#### *Construction General Permit*

The Construction General Permit (CGP; NPDES No. CAS000002, SWRCB Order No. 2009-0009-DWQ, adopted on November 16, 2010) became effective on February 14, 2011, and was amended by Order No. 2010-0014-DWQ and Order No. 2012-0006-DWQ. The CGP authorizes the discharge of stormwater (and certain unauthorized non-stormwater discharges) from construction sites that disturb 1 acre or more of land, and from smaller sites that are part of a larger, common plan of development. For all projects subject to the CGP, the applicant is required to develop and implement an effective Stormwater Pollution Prevention Plan (SWPPP), to implement soil erosion and pollution prevention control measures, and to obtain coverage under the CGP.

#### *Industrial General Permit*

On November 6, 2018, the State Water Board amended the Industrial General Permit (NPDES No. CAS000001; Order 2014-0057-DWQ as amended by Order 2015-0122-DWQ). The IGP regulates industrial storm water discharges and authorized non-storm water discharges from industrial facilities in California. The IGP is called a general permit because many industrial facilities are covered by the same permit but comply with its requirements at their individual industrial facilities. The State Water Resources Control Board (State Water Board) and Regional Water Quality Control Boards (collectively, the Water Boards) implement and enforce the IGP.

#### *Central Valley Regional Water Quality Control Board*

The Central Valley RWQCB's Waste Discharge Requirements/Monitoring & Reporting Program (Order No. R5 2015 0024, NPDES No. CAS083470) was adopted on April 17, 2015. The Waste Discharge Requirements/Monitoring and Reporting Program regulates and monitors waste discharge and establishes water discharge requirements.

### **B.1.11 GEOLOGY, SOILS, SEISMICITY, AND PALEONTOLOGY**

The following federal and State plans, policies, and regulations inform the evaluation of geology, soils, seismicity, and paleontology in this EA. A list of local plans, policies, and regulations is identified in Table B-1.



## Federal Plans, Policies, and Regulations

### *Clean Water Act*

The CWA establishes several major integrated regulatory programs, standards, and plans. Relevant items include the following:

NPDES Program – Establishes an effluent permit system for point source (e.g., pipe, ditch, sewer) discharges of pollutants into waters of the U.S. The NPDES permit system requires those permitted to maintain records and report on the amount and nature of discharged effluent waste components. The stormwater program is a part of the NPDES program and is designed to reduce or eliminate the discharge of contaminated stormwater into waters of the U.S. The program requires the following stormwater discharges to be covered by an NPDES permit:

- discharge associated with industrial activity
- discharge from a large or medium municipal separate storm sewer system
- discharge that EPA or the state/tribe determines contributes to a violation of a water quality standard or which is a significant contributor of pollutants to waters of the U.S.

National and Local Pretreatment Standards – Requires new and existing industrial users to pre-treat wastewater discharged to Publicly-Owned Treatment Works (POTW) to prevent pollutants in excess of certain limits from passing through POTWs, causing interference in the operation of the treatment works and to protect the quality of sludge generated by these plants (§ 307).

Dredge or Fill Discharge Permit Program – Establishes a permit system, administered by USACE, for regulating the placement of dredge or fill material into waters of the U.S., including wetlands (§ 404).

### *Paleontological Resources Preservation Act*

The Paleontological Resources Preservation Act (PRPA) of 2009 codified the generally accepted practice of limited vertebrate fossil collection and limited collection of other rare and scientifically significant fossils by qualified researchers. Researchers must obtain a permit from the appropriate state or federal agency and agree to donate any materials recovered to recognized public institutions, where they will remain accessible to the public and to other researchers. Both the U.S. Forest Service and the Bureau of Land Management (BLM) have adopted implementation policies for PRPA.

### *American Antiquities Act*

The American Antiquities Act of 1906 is the first law of the United States to protect the cultural and natural heritage of the U.S., providing legal protection of cultural and natural resources of historic or scientific interest on federal lands. Some federal agencies include fossils in their interpretation of “antiquities.”



## State Plans, Policies, and Regulations

### *Alquist-Priolo Earthquake Fault Zoning Act*

The Alquist-Priolo Earthquake Fault Zoning Act (Alquist-Priolo Act) was enacted in 1972 to reduce the hazard of surface faulting to structures designed for human occupancy. The main purpose of the law is to prevent the construction of buildings used for human occupancy on the surface trace of active faults.

### *California Public Resources Code*

The California PRC (Chapter 1.7, Sections 5097, 5097.5, and 30244) includes state requirements for the assessment and management of paleontological resources. Section 21000 et seq. (CEQA) addresses potential effects to paleontological resources under Appendix G, Section VII(f).

### *Seismic Hazards Mapping Act*

The Seismic Hazards Mapping Act of 1990 (SHMA) directs the California Department of Conservation, California Geological Survey to identify and map areas prone to earthquake liquefaction hazards, earthquake-induced landslides, and amplified ground shaking. SHMA requires the State Geologist to establish regulatory zones (Zones of Required Investigation) and to issue appropriate maps (Seismic Hazard Zone maps).

### *National Pollutant Discharge Elimination System Permit*

In California, the SWRCB administers regulations that are mandated by EPA and requires the permitting of stormwater-generated pollution under NPDES. See Section B.1.10, *Hydrology/Floodplains and Water Quality*, for more information about NPDES and SWPPP as they pertain to water pollution and runoff BMPs.

### *California Building Code*

Title 24 of the CCR, known as the California Building Standards Code (CBC) or "Title 24," contains the regulations that govern the construction of buildings in California. The CBC contains general building design and construction requirements relating to fire and life safety, structural safety, and access compliance (Division of the State Architect 2018). Chapter 18, Soils and Foundations, of the CBC regulates the excavation of foundations and retaining walls, including the preparation of preliminary soil, geologic, geotechnical, and supplemental ground-response reports. Chapter 18 also regulates expansive soils analysis and the depth to groundwater table determination.

## **B.1.12 HAZARDOUS WASTE AND MATERIALS**

The following federal and State plans, policies, and regulations inform the evaluation of hazardous waste and materials in this EA. A list of local plans, policies, and regulations is identified in Table B-1.

Hazardous materials, including hazardous substances and wastes, are regulated by many federal, state, and local laws. Statutes govern the generation, treatment, storage and disposal of hazardous materials, substances, and waste, and the investigation and mitigation of waste releases, air and water quality, human health, and land use. Worker and public health and safety are key issues when



addressing hazardous materials that may affect human health and the environment. Proper management and disposal of hazardous material is vital if it is found, disturbed, or generated during project construction.

## **Federal Plans, Policies, and Regulations**

### *Clean Air Act*

The federal Clean Air Act (FCAA) is intended to protect the public from hazardous airborne contaminants that can affect human health. The National Emissions Standards for hazardous air pollutants were established under the FCAA. These emissions standards include the regulation of asbestos.

### *Clean Water Act, Section 402(p) (33 U.S.C. 1342(p))*

The CWA regulates discharges and spills of pollutants, including hazardous materials, to surface waters and groundwater.

### *Safe Drinking Water Act (42 U.S.C. 300(f) et seq.)*

The Safe Drinking Water Act regulates discharges of pollutants to underground aquifers and establishes standards for drinking water quality.

### *Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 and 40 C.F.R. Parts 152 to 171)*

The Federal Insecticide, Fungicide, and Rodenticide Act regulates the manufacturing, distribution, sale, and use of pesticides.

### *Emergency Planning and Community Right to Know Act (42 U.S.C. 11001 et seq. and 40 C.F.R. Parts 350.1 et seq.)*

The Emergency Planning and Community Right to Know Act regulates facilities that use hazardous materials in quantities that require reporting to emergency response officials.

### *Executive Order 12088, Federal Compliance with Pollution Control*

U.S. Presidential EO 12088 requires federal agencies to take necessary actions to prevent, control, and abate environmental pollution from facilities and activities under the control of federal agencies.

### *Comprehensive Environmental Response, Compensation, and Liability Act (Superfund)*

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, commonly known as Superfund, provides broad federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. CERCLA establishes requirements concerning closed and abandoned hazardous waste sites, provides for the liability of persons responsible for releases of hazardous waste at these sites, and establishes a trust fund to provide for cleanup when no responsible party can be identified.



EPA compiles a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the US and its territories, known as the National Priorities List (NPL).

#### *The Hazardous Materials Transportation Act*

The Hazardous Materials Transportation Act in Chapter 51 of Title 49 of the United States Code was enacted in 1975 with the purpose of providing adequate protection against the risks to life and property in the commercial transportation of hazardous material by improving the Secretary of Transportation's regulatory and enforcement authority.

USDOT, along with the California Highway Patrol (CHP) and Caltrans, regulates hazardous materials transportation between states. FRA enforces the Hazardous Materials Regulations, which include requirements that railroads and other hazardous materials transporters, as well as shippers, have and adhere to security plans and also train their employees on both the safety and security matters involved in offering, accepting, or transporting hazardous materials.

#### *National Oil and Hazardous Substances Pollution Contingency Plan*

The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) is the federal plan for responding to oil spills and hazardous substances releases.

#### *Oil Pollution and Prevention Regulation*

EPA's oil spill prevention program includes the Spill Prevention, Control, and Countermeasure (SPCC) and the Facility Response Plan rules. The SPCC rule helps facilities prevent an oil discharge into navigable waters or adjoining shorelines. The Facility Response Plan rule requires certain facilities to submit a response plan and prepare to respond to a worst-case oil discharge.

#### *Occupational Safety and Health Act*

The Occupational Safety and Health Act of 1970, which is implemented by the Occupational Safety and Health Administration (OSHA), contains requirements, as set forth in Title 29 of the CFR Section 1910, that are designed to promote worker safety, worker training, and a worker's right-to-know. OSHA requirements would be in effect during the proposed Project's construction and operation to ensure worker safety.

#### *Resource Conservation and Recovery Act*

The Resource Conservation and Recovery Act (RCRA) provides EPA the authority to control hazardous waste including its generation, transportation, treatment, storage, and disposal. Under RCRA, EPA has the authority to control the generation, transportation, treatment, storage, and disposal of hazardous waste by large-quantity generators (1,000 kilograms/month or more). Under the RCRA regulations, hazardous wastes must be tracked from the time of generation to the point of disposal. In California, EPA has delegated RCRA enforcement to California Environmental Protection Agency Department of Toxic Substances Control (Cal/EPA DTSC).



### *Toxic Substances Control Act*

The Toxic Substances Control Act of 1976 (TSCA) provides EPA with authority to require reporting, record-keeping, and testing requirements and restrictions related to chemical substances and/or mixtures.

### *Atomic Energy Act*

In addition to the acts listed above, EO 12088, Federal Compliance with Pollution Control Standards, mandates that necessary actions be taken to prevent and control environmental pollution when federal activities or federal facilities are involved.

California regulates hazardous materials, waste, and substances under the authority of the CA Health and Safety Code and is also authorized by the federal government to implement RCRA in the state. California law also addresses specific handling, storage, transportation, disposal, treatment, reduction, cleanup, and emergency planning of hazardous waste. The Porter-Cologne Water Quality Control Act also restricts disposal of wastes and requires cleanup of wastes that are below hazardous waste concentrations but could impact ground and surface water quality. California regulations that address waste management and prevention and cleanup of contamination include Title 22 Division 4.5 Environmental Health Standards for the Management of Hazardous Waste, Title 23 Waters, and Title 27 Environmental Protection.

## **State Plans, Policies, and Regulations**

### *Cal/EPA Plans, Policies, and Regulations*

Cal/EPA and the SWRCB establish rules governing hazardous materials use and hazardous waste management. Within Cal/EPA, DTSC has primary regulatory responsibility, with delegation of enforcement to local jurisdictions that enter into agreements with the state agency, for hazardous materials management and hazardous waste generation, transport, and disposal under the authority of the Hazardous Waste Control Law.

### *Hazardous Materials Release Response Plans and Inventory Act (Business Plan Act)*

The Business Plan Act passed in 1986, requires businesses using hazardous materials to prepare a plan that describes their facilities, inventories, emergency response plans, and training programs. A business plan includes an inventory of hazardous materials handled, facility floor plans showing where hazardous materials are stored, an emergency response plan, and provisions for employee training in safety and emergency response procedures (California Health and Safety Code, Division 20, Chapter 6.95, Article 1). Since the proposed Project involves operational improvements to an existing transportation facility, it is not anticipated a new Hazardous Materials Business Plan would be needed. Therefore, this act is not applicable to the proposed Project.

### *Hazardous Materials Transportation, CCR Title 26*

The State of California has adopted DOT regulations for the intrastate movement of hazardous materials. State regulations are contained in CCR Title 26. In addition, the State of California regulates the transportation of hazardous waste originating in the state and passing through the state (26 CCR).



*CEQA (PRC Section 21000 et seq.) and CEQA Guidelines (Section 15000 et seq.)*

CEQA requires state and local agencies to identify the significant environmental effects of their actions, including potential significant hazardous materials and wastes effects, and to avoid or mitigate those effects, when feasible.

*Well Safety Devices for Critical Wells (CCR, Title 14, Section 1724.3)*

This regulation governs safety devices required on “critical wells” within 100 feet of an operating railway. Since the proposed Project involves operational improvements to an existing transportation facility, it is not anticipated that any new or additional “critical wells” would be identified within 100 feet of an operating railway that have not already been identified. Therefore, this act is not applicable to the proposed Project.

*Gas Monitoring and Control at Active and Closed Disposal Sites (CCR, Title 27, Section 20917 et seq.)*

The regulations within Article 6 set forth the performance standards and the minimum substantive requirements for landfill gas monitoring and control as it relates to active solid waste disposal sites and to proper closure, post-closure maintenance, and ultimate reuse of solid waste disposal sites to ensure that public health and safety and the environment are protected from pollution caused by the disposal of solid waste. The proposed Project does not involve the opening, closing, or reuse of landfill sites; thus, the Gas Monitoring and Control at Active and Closed Disposal Sites is not applicable to this Project and does not require an impact analysis.

*Closure and Post Closure Maintenance of Landfills (CCR, Title 27, Subchapter 5)*

This regulation provides post closure maintenance guidelines, including requirements for an emergency response plan and site security. It also regulates post-closure land use, requiring protection of public health and safety and the built environment, as well as the prevention of gas explosions. Construction on the site must maintain the integrity of the final cover, drainage and erosion control systems, and gas monitoring and control systems. Post-closure land use within 1,000 feet of a landfill site must be approved by the local enforcement agency. The proposed Project does not involve the closing or post closure maintenance of landfills; thus, the Closure and Post Closure Maintenance of Landfills is not applicable to this Project and does not require an impact analysis.

*California PRC Section 21151.4*

This code requires the lead agency to consult with a school district with jurisdiction over a school within 0.25 mile of the project about potential effects on the school if the project might reasonably be anticipated to emit hazardous air emissions or handle an extremely hazardous substance or a mixture containing an extremely hazardous substance.

*Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.)*

The Porter-Cologne Water Quality Control Act regulates water quality through SWRCB and RWQCB, including oversight of water monitoring and contamination cleanup and abatement.



*Hazardous Waste Control Act (California Health and Safety Code, Section 25100 et seq.)*

This act is similar to RCRA on the federal level in regulating the identification, generation, transportation, storage, and disposal of materials deemed hazardous by the State of California.

*Safe Drinking Water and Toxic Enforcement Act (Proposition 65, California Health and Safety Code, Section 25249.5 et seq.)*

The Safe Drinking Water and Toxic Enforcement Act is similar to the Safe Drinking Water Act and CWA on the federal level in regulating the discharge of contaminants to groundwater.

*Cortese List Statute (California Government Code Section 65962.5)*

This regulation requires DTSC to compile and maintain lists of potentially contaminated sites throughout the state of California (includes the Hazardous Waste and Substances Sites List).

*Unified Hazardous Waste and Hazardous Materials Management Regulatory Program (Unified Program)*

The Unified Program consolidates the following hazardous materials and waste programs:

1. Aboveground Petroleum Storage Act Program
2. Area Plans for Hazardous Materials Emergencies
3. California Accidental Release Prevention (CalARP) Program
4. Hazardous Materials Release Response Plans and Inventories (Business Plans)
5. Hazardous Materials Management Plan (HMMP) and Hazardous Material Inventory Statements (HMIS)
6. Hazardous Waste Generator and Onsite Hazardous Waste Treatment (tired permitting) Programs

*Underground Storage Tank Program*

CalEPA oversees California's Unified Program. The Unified Program protects Californians from hazardous waste and hazardous materials by ensuring local regulatory agencies consistently apply statewide standards when they issue permits, conduct inspections and engage in enforcement activities. A Certified Unified Program Agency (CUPA) is a local agency certified by CalEPA to implement the Unified Program elements in the CUPA's jurisdiction.

The Environmental Health Department is the CUPA for San Joaquin County and is responsible for implementing the aforementioned program elements in the county.

*State of California Emergency Plan*

California has developed an emergency response plan to coordinate emergency services provided by federal, state, and local government and private agencies. Responding to hazardous materials incidents is one part of this plan. The plan is administered by the State Office of Emergency Services (OES), which coordinates the responses of other agencies, including Cal/EPA, CHP, CDFW, the



Central Valley RWQCB (Water Board), and Stockton Fire Department (SFD). SFD provides first response capabilities, if needed, for hazardous materials releases and environmental emergencies within the proposed Project site vicinity. Additionally, SFD coordinates with state and local authorities to prepare for, prevent, respond to, mitigate, and determine the responsibility of a variety of hazardous materials releases.

### B.1.13 AIR QUALITY

The following federal and State plans, policies, and regulations inform the evaluation of air quality in this EA. A list of local plans, policies, and regulations is identified in Table B-1.

#### Federal Plans, Policies, and Regulations

##### *Clean Air Act and National Ambient Air Quality Standards*

The FCAA, promulgated in 1963 and amended several times thereafter, including the 1990 FCAA amendments, establishes the framework for modern air pollution control in the U.S. The FCAA is regulated by EPA, which sets standards for the concentration of pollutants in the air. At the federal level, these standards are called National Ambient Air Quality Standards (NAAQS). NAAQS standards have been established for six transportation-related criteria air pollutants that have been linked to potential health concerns: carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), ozone (O<sub>3</sub>), particulate matter, which is broken down for regulatory purposes into particles of 10 micrometers or smaller (PM<sub>10</sub>) and particles of 2.5 micrometers or smaller (PM<sub>2.5</sub>), and sulfur dioxide (SO<sub>2</sub>). In addition, national standards exist for lead (Pb). The NAAQS standards are set at levels that protect public health with a margin of safety and are subject to periodic review and revision. Toxic air contaminants (TAC) are covered, as well.

Federal air quality standards and regulations provide the basic requirements for Project-level air quality analysis under NEPA. In addition to this environmental analysis, a parallel Conformity requirement applies under FCAA.

The FCAA requires EPA to designate areas as attainment, nonattainment, or unclassified for each criteria air pollutant based on whether the NAAQS have been achieved. The federal standards are summarized in Table K-1 in Appendix K. EPA has designated the San Joaquin Valley Air Basin (SJVAB) as a nonattainment area for O<sub>3</sub> and PM<sub>2.5</sub> and as a maintenance area for PM<sub>10</sub>. A maintenance area is an area that was formerly in nonattainment and currently under a maintenance plan.

##### *General Conformity Rule*

The General Conformity Rule applies to all federal actions in areas that either: (1) do not meet NAAQS that are not exempt from the General Conformity Rule, covered by a Presumed-to-Conform approved list<sup>3</sup>, or (2) do not meet the *de minimis* emission levels established in the General Conformity Rule (40 CFR 93.153). The General Conformity Rule applies only to direct and indirect emissions generated by a federal action that are subject to New Source Review for which a federal

---

<sup>3</sup> Category of activities designated by a federal agency as having emissions below *de minimis* levels or otherwise do not interfere with the applicable State Implementation Plans or the attainment and maintenance of the NAAQS.



permitting agency has directly caused or initiated, has continued program responsibility for, or can practically control. The rule does not include stationary industrial sources requiring air quality permits from local air pollution control agencies. Because the proposed Project will likely require and/or receive one or more federal approvals, or future federal construction funding, the proposed Project is subject to the implementing regulations of Section 176 of the FCAA.

The evaluation of whether the total direct and indirect emissions exceed the requirements of 40 CFR Section 93.158(c) is performed by comparing the total annual emissions to the applicable *de minimis* emissions level listed in 40 CFR Section 93.153(b). If the evaluation indicates that emissions exceed General Conformity *de minimis* thresholds, FRA must perform a conformity determination. The method for determining conformity depends on the pollutant and the circumstances surrounding the federal action. Most conformity demonstrations either mitigate the emission increases or demonstrate that the emissions have been or will be included in the State Implementation Plan (SIP). If the evaluation indicates that the emissions do not exceed the *de minimis* thresholds, the action is exempt from a conformity determination and FRA must prepare a Record of Non-Applicability (RONA).

### State Plans, Policies, and Regulations

#### *California Clean Air Act and California Ambient Air Quality Standards*

The California Clean Air Act (CCAA) is administered by CARB at the State level and by the air quality management districts and air pollution control districts at the regional and local levels. The CCAA requires all air districts in the State to endeavor to achieve and maintain the CAAQS. CAAQS are generally more stringent than the corresponding federal standards and incorporate additional standards for sulfates, hydrogen sulfide, vinyl chloride, and visibility-reducing particles.

CARB regulates mobile air pollution sources, such as motor vehicles. CARB oversees the functions of local air pollution control districts and air quality management districts, which, in turn, administer air quality activities at the regional and county levels.

The State standards are summarized in Table K-1 located in Appendix K. The CCAA requires CARB to designate areas within California as either attainment or nonattainment for each criteria air pollutant based on whether the CAAQS have been achieved. Under the CCAA, areas are designated as nonattainment for a pollutant if air quality data shows that a State standard for the pollutant was violated at least once during the previous three calendar years. Exceedances that are affected by highly irregular or infrequent events are not considered violations of a State standard and are not used as a basis for designating areas as nonattainment. Under the CCAA, the SJVAB is designated as a nonattainment area for O<sub>3</sub>, PM<sub>2.5</sub>, and PM<sub>10</sub>.

#### *California State Implementation Plan*

Federal clean air laws require areas with unhealthy levels of ozone, inhalable particulate matter, carbon monoxide, nitrogen dioxide, and sulfur dioxide to develop SIP. SIPs are comprehensive plans that describe how an area will attain the NAAQS. SIPs are not single documents, but rather a compilation of new and previously submitted plans, programs, district rules, State regulations, and federal controls.



Many of California's SIPs rely on the same core set of control strategies, including emission standards for cars and heavy trucks, fuel regulations, and limits on emissions from consumer products. State law makes CARB the lead agency for all purposes related to the SIPs. Local air districts and other agencies prepare SIP elements and submit them to CARB for review and approval. CARB then forwards SIP revisions to EPA for approval and publication in the Federal Register.

#### *Assembly Bill 617*

In 2017, Governor Brown signed Assembly Bill (AB) 617 to develop a new community focused program to reduce exposure to air pollution more effectively and preserve public health. This bill directs CARB and all local air districts to develop and implement Community Emission Reduction Programs (CERP) to protect communities disproportionately affected by air pollution.

In 2019, Stockton was nominated by San Joaquin Valley Air Pollution Control District (SJVAPCD) and selected by CARB as a monitoring community. The Stockton CERP was adopted by SJVAPCD in March 2021 and has been forwarded to CARB for adoption consideration. The Stockton CERP identified a wide range of measures designed to reduce air pollution and exposure, including several partnership strategies to be implemented in between agencies and local organizations.

#### **B.1.14 NOISE AND GROUND-BORNE VIBRATION**

The following federal and State plans, policies, and regulations inform the evaluation of noise and ground-borne vibration in this EA. A list of local plans, policies, and regulations is identified in Table B-1.

##### **Federal Plans, Policies, and Regulations**

###### *Occupational Noise Exposure Standard*

The Occupational Noise Exposure Standard is noise standards set by OSHA. The standards set noise exposure protection for when the sound levels exceed the measurements set by OSHA.

###### *United States Environmental Protection Agency Railroad Noise Emission Standards*

Interstate rail carriers (such as freight railroads) must comply with EPA noise emission standards which are expressed as maximum measured noise levels and applicable to locomotives manufactured after 1979.

###### *Federal Railroad Administration Guidelines and Noise Emission Compliance*

FRA has regulations governing compliance with noise emissions from interstate railroads. FRA's Railroad Noise Emission Compliance Regulation (49 CFR 210) prescribes compliance requirements for enforcing railroad noise emission standards adopted by USEPA (40 CFR 201).

###### *Federal Transit Administration Guidelines*

Similar to FRA, FTA developed a guidance manual in September 2018 entitled Transit Noise and Vibration Impact Assessment Manual (guidance manual) for assessing noise and ground-borne vibration effects from major rail projects intended to satisfy environmental review requirements and



assist Project sponsors in addressing predicted construction and operation noise and ground-borne vibration during the design process. The FTA guidance manual noise and ground-borne vibration impact criteria for rail projects and their associated fixed facilities, such as storage and maintenance yards, passenger stations and terminals, parking facilities, and substations are described in Section 3.14, *Noise and Ground-borne Vibration*, and are the primary noise criteria used for the proposed Project. FTA guidance is accepted by FRA.

## State Plans, Policies, and Regulations

### *California Noise Control Act*

At the state level, the California Noise Control Act, enacted in 1973 (Health and Safety Code 46010 et seq.), requires the Office of Noise Control in the Department of Health Services to provide assistance to local communities developing local noise control programs. The Office of Noise Control also works with the Office of Planning and Research to provide guidance for preparing required noise elements in city and county general plans, pursuant to Government Code Section 65302(f). In preparing the noise element, a city or county must identify local noise sources and analyze and quantify, to the extent practicable, current and projected noise levels for various sources, such as passenger and freight railroad operations, including commuter rail alignments. The California Noise Control Act stipulates the mapping of noise-level contours for these sources, using community noise metrics appropriate for environmental impact assessment as defined in Section 3.14.3. Cities and counties use these as guides to making land use decisions to minimize the community residents' exposure to excessive noise.

## B.1.15 BIOLOGICAL RESOURCES

The following federal and State plans, policies, and regulations inform the evaluation of biological resources in this EA. A list of local plans, policies, and regulations is identified in Table B-1.

### Federal Plans, Policies, and Regulations

#### *Endangered Species Act*

The Endangered Species Act (ESA) of 1973 provides protective measures for federally listed endangered or threatened species and their habitats, from unlawful take. The ESA defines "take" to mean to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." In 50 CFR Part 222, harm is further defined as an act that actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including feeding, spawning, rearing, migrating, feeding, or sheltering.

ESA Section 7(a)(1) requires federal agencies to use their authority to further the conservation of listed species. ESA Section 7(a)(2) requires consultation with U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) if a federal agency undertakes, funds, permits, or authorizes any action that may affect endangered or threatened species or designated critical habitat (referred to as a federal nexus).



### *Magnuson-Stevens Fishery Conservation and Management Act*

Magnuson-Stevens Fishery Conservation and Management Act of 1976 (revised in 1996 and reauthorized 2007) is the primary law governing marine fisheries management in US federal waters.

Among other items, the Sustainable Fisheries Act revision in 1996 specifically outlined the responsibility of the US to conserve and facilitate long-term protection of Essential Fish Habitat (EFH), defined as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity" (16 USC 1801). The 1996 revision also designated Habitat Areas of Particular Concern (HAPC), which are subsets of EFH for more focused consideration.

Under the act, federal agencies that fund, permit, or carry out activities that may adversely affect EFH or HAPCs are required to consult with NMFS regarding the potential adverse effects of proposed project activities, as well as to respond in writing to NMFS project-specific recommendations.

### *Clean Water Act Section 404*

The basis of CWA was enacted in 1948 and was called the Federal Water Pollution Control Act, but the Act was significantly reorganized and expanded in 1972. "Clean Water Act" became the Act's common name with amendments in 1972. CWA Section 404 established the program to regulate the discharge of dredged or fill material into waters of the US, including wetlands. Under this regulation, certain activities proposed in waters of the US, such as the placement of fill for the purposes of development, require a permit prior to initiation. The primary objective of this program is to stipulate that the discharge of dredged or fill material is not permitted if a practicable alternative to the proposed activities exists that would result in less effects on waters of the US, or if the proposed activity would result in significant adverse effects on these waters. To comply with these objectives, a permittee must document the measures taken to avoid and minimize effects on waters of the US and provide compensatory mitigation for any unavoidable effects.

### *Clean Water Act Section 401*

Under CWA Section 401, federal agencies are not authorized to issue a permit or license for any activity that may result in discharges to waters of the US unless a state or tribe where the discharge originates either grants or waives CWA Section 401 certification. Decisions made by states or tribes are based on the proposed Project's compliance with EPA water quality standards as well as applicable effluent limitations guidelines, new source performance standards, toxic pollutant restrictions, and any other appropriate requirements of state or tribal law. In California, SWRCB is the primary regulatory authority for CWA Section 401 requirements.

### *Bald and Golden Eagle Protection Act*

The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c), enacted in 1940 and amended several times since, prohibits anyone, without a permit issued by the Secretary of the Interior, from "taking" bald or golden eagles, including their parts, nests, or eggs. The Act provides criminal penalties for persons who "take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald eagle ... [or any golden eagle], alive or dead, or any part, nest, or egg thereof." The Act defines "take" as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb."



### *Migratory Bird Treaty Act*

Migratory birds are protected under the Migratory Bird Treaty Act of 1918 (MBTA). A list of species protected by the MBTA is currently codified in 50 CFR 10.13. In its current form, section 2(a) of the MBTA provides in relevant part that, unless permitted by regulations, it is unlawful:

At any time, by any means of in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof.

### *Fish and Wildlife Coordination Act*

The Fish and Wildlife Coordination Act of 1958 requires that whenever any body of water is proposed or authorized to be impounded, diverted, or otherwise controlled or modified, the lead federal agency must consult with USFWS, the state agency responsible for fish and wildlife management, and NMFS. Section 662(b) of the act requires the lead federal agency to consider the recommendations of USFWS and other agencies.

### *Executive Order 13112 – Invasive Species*

EO 13112 was signed on Feb 3, 1999, directing all federal agencies to refrain from authorizing, funding, or carrying out actions or projects that may spread invasive species.

### *National Invasive Species Act*

The National Invasive Species Act of 1996 reauthorized and amended the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 with a number of findings that highlighted a need for additional management measures to prevent further introduction and infestation of destructive species.

### *Executive Order 11990 – Protection of Wetlands*

EO 11990, signed on May 24, 1977, requires federal agencies to provide leadership and take action to minimize destruction, loss, or degradation of wetlands and to preserve and enhance the natural qualities of these lands.

## **State Plans, Policies, and Regulations**

There are no applicable State plans, policies, or regulations related to this resource topic.

### **B.1.16 CUMULATIVE EFFECTS**

The following federal and State plans, policies, and regulations inform the evaluation of cumulative effects in this EA. A list of local plans, policies, and regulations is identified in Table B-1.



## Federal Plans, Policies, and Regulations

### *National Environmental Policy Act*

Until 2020, CEQ's NEPA Regulations defined cumulative effects as "the effect on the environmental which results from the incremental effect of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time (40 CFR 1508.7, 1978)." In 2020 CEQ revised its NEPA implementing regulations, which included repealing the definition of cumulative effect. Under a Notice of Proposed Rulemaking dated October 7, 2021, CEQ proposes to restore the definition of cumulative effect and the requirement for a cumulative effect analysis.

## State Plans, Policies, and Regulations

There are no applicable State plans, policies, or regulations related to this resource topic.

### **B.1.17 CONSISTENCY WITH FEDERAL, STATE, REGIONAL, AND REGIONAL LOCAL PLANS AND PROGRAMS**

Federal, state, regional, and local plans and regulatory documents applicable to the proposed Project were reviewed for goals and policies applicable to the proposed Project. Table B-1 analyzes the consistency of the proposed Project with the identified goals and policies.



**Table B-1. Consistency with Goals and Policies**

Goals and Policies	Consistency
<p><b>Land Use and Planning</b></p> <p><b>23 CFR Part 771, CEQ</b></p> <p>23 CFR Part 771 Environmental Impact and Related Procedures prescribes the policies and procedures of the FHWA, FRA, and FTA for implementing the NEPA and provides the regulations and requirements for processing highway, public transportation, and railroad actions under NEPA. USDOT published a final rule in the Federal Register that includes 23 CFR Part 771, that was considered effective on November 28, 2018.</p> <p><b>California State Planning and Zoning Law</b></p> <p>The 2011 Edition of the California State Planning and Zoning Law specifies how the state delegates most of the state’s local land use and development decisions to the respective city or county and identifies the laws pertaining to land use regulations set by the local government’s general plan requirements, specific plans, and zoning.</p>	<p><b>Consistent.</b> The proposed Project’s goal is to improve regional passenger travel efficiency by reducing conflicting train movements. Additionally, the proposed Project would improve roadway access, safety, and mobility at the existing railway crossing for bicyclists and pedestrians. Therefore, the proposed Project is consistent with 23 CFR Part 771, CEQ.</p> <p><b>Consistent.</b> The proposed Project will result in the permanent conversion of 10.87 acres of industrial zoned parcels for transportation use. However, the proposed Project will implement Measure MM-1 (General Plan Amendment), in Section 3.1, <i>Land Use and Planning</i>, which requires that SJRRC, in coordination with CHSRA, will coordinate with the City to ensure that the City’s General Plan is amended to reflect the new land use designations. Therefore, the proposed Project is consistent with California State Planning and Zoning Law.</p>
<p><b>Sustainable Communities and Climate Protection Act</b></p> <p>SB 375, signed into law on September 30, 2008, requires that regional planning agencies include a SCS or alternative planning strategy in RTPs. This SCS provides guidance on the coordination of land use and GHG planning in order to meet regional GHG emissions reduction targets set by the CARB.</p> <p><b>San Joaquin County General Plan</b></p> <p><b>Goal LU-1.8:</b> Support for Alternative Transportation Modes: The County shall encourage land use patterns that promote walking and bicycling and the use of public transit as alternatives to the personal automobile.</p>	<p><b>Consistent.</b> The proposed Project is intended to improve regional passenger and freight rail efficiency and travel reliability by reducing conflicting train movements; and thus, would result in long-term reductions in criteria pollutant emissions and an overall benefit to the community surrounding the air quality RSA. Therefore, the proposed Project is consistent with SB 375.</p> <p><b>Consistent.</b> The proposed Project’s goal is to improve regional passenger travel efficiency by reducing conflicting train movements. Additionally, the proposed Project would improve roadway access, safety, and mobility at the existing railway crossing for bicyclists and pedestrians. Therefore, the proposed Project is consistent with this general plan goal.</p>



**City of Stockton General Plan**

**Policy LU-3.2:** Retain narrower roadways and reallocate ROW space to preserve street trees and mature landscaping and enhance the pedestrian and bicycle network within and adjacent to residential neighborhoods.

**Consistent.** The proposed Project's goal is to improve regional passenger travel efficiency by reducing conflicting train movements. Additionally, the proposed Project would improve roadway access, safety, and mobility at the existing railway crossing for bicyclists and pedestrians.

Aesthetic treatments, such as trees, would be if the viaduct or retaining wall design option is chosen, included as BMP AES-2 (Coordinate Design Elements to Reduce Visual Effects) in Table 3.8-1, in Section 3.8, *Visual Quality and Aesthetics*. Therefore, the proposed Project is consistent with this general plan policy.

**Policy LU-3.3:** Maintain or expand the amount of public park and open space area currently available in each neighborhood.

**Consistent.** The proposed Project would not require any permanent full or partial acquisitions of existing open space resources. A TCE at Union Park would be required as part of the proposed Project. However, this impact would be temporary, and the portion of the park used as a TCE would be reverted its original condition after Project completion. Therefore, the proposed Project is consistent with this general plan policy.

**Action LU-6.3C:** Coordinate, to the extent possible, upgrades and repairs to roadways with utility needs, infrastructure upgrades, and bicycle and pedestrian improvements.

**Consistent.** The proposed Project's goal is to improve regional passenger travel efficiency by reducing conflicting train movement. Additionally, the proposed Project would improve roadway access, safety, and mobility at the existing railway crossing for bicyclists and pedestrians. During construction, SJRRC would coordinate, to the extent possible, any potential upgrades and repairs to roadways with utility needs, infrastructure upgrades, and bicycle and pedestrian movements. Therefore, the proposed Project is consistent with this general plan action.



**Policy CH-1.1:** Maintain walking and wheeling facilities and parks that are safe and accessible in all areas of Stockton.

**Consistent.** The proposed Project's goal is to improve regional passenger travel efficiency by reducing conflicting train movements. Additionally, the proposed Project would improve roadway access, safety, and mobility at the existing railway crossing for bicyclists and pedestrians.

In conjunction with the SJRRC Cabral Station Expansion Project, the Stockton Diamond Grade Separation Project extends sidewalk improvements to Union Street on East Weber Avenue, East Main Street, East Market Street, and East Scotts Avenue. The at-grade rail crossings and sidewalk improvements will be constructed to Americans with Disabilities Act (ADA) standards and will be designed to current California Public Utilities Commission (CPUC), City, and Union Pacific (UP) Railroad standards. Improvements will also include required lighting and multimodal warning devices and will be coordinated with the City, CPUC, and UP. Therefore, the proposed Project is consistent with this general plan policy.

**Goal TR-1:** Provide an integrated transportation system that enables safe and efficient movement of people and goods for all modes of travel.

**Consistent.** The proposed Project's purpose is to reduce passenger and freight rail delays and associated congestion, maintain key community connections, improve multimodal access, provide local and regional environmental and economic benefits, and address safety by closures and enhancements at key roadway-rail grade crossings. Therefore, the proposed Project is consistent with this general plan goal.

**Policy TR-1.2:** Enhance the use and convenience of rail service for both passenger and freight movement.

**Consistent.** The proposed Project's goal is to improve regional passenger travel efficiency by reducing conflicting train movements, which would also improve freight rail travel efficiency. Therefore, the proposed Project is consistent with this general plan policy.

**Goal TR-3:** Design transportation infrastructure to help reduce pollution and vehicle travel and its associated policies and actions.

**Consistent.** The proposed Project will replace at-grade crossing with a grade separated crossing at East Hazelton Avenue and East Scotts Avenue. Further, as discussed in Section 3.13, *Air Quality*, the improved freight mobility would reduce the total daily occupancy of the roadway crossings by approximately 30 percent in 2045. The reduction in crossing occupancy would improve on-road traffic flow and reduce vehicle idling in the proposed Project Study Area. Therefore, the proposed Project is consistent with this general plan goal.



**Community Effects and Growth**

***Uniform Relocation Assistance and Real Property Acquisition Policies Act***

Provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by federal and federally assisted programs and to establish uniform and equitable land acquisition policies for federal and federally assisted programs.

**Consistent.** As discussed in Section 3.3, *Relocations and Real Property Acquisition*, the proposed Project would implement Measure MM RLC-1 (Relocation Assistance) to ensure uniform and equitable treatment of persons displaced from their businesses and ensure that they are fairly compensated for private property that is acquired as part of the proposed Project. Therefore, no adverse effects on the community related to acquisition of private property would occur and the proposed Project is consistent with the Uniform Act.

***2018 Regional Transportation Plan/Sustainable Communities Strategy***

**Policy:** Enhance the environment for existing and future generations and conserve energy

**Consistent.** As discussed in Chapter 1, *Proposed Project*, the proposed Project’s purpose is to reduce passenger and freight rail delays and associated congestion, maintain key community connections, improve multimodal access, provide local and regional environmental and economic benefits, and address safety by closures and enhancements at key roadway-rail grade crossings. Thereby, also improving roadway access, safety, and mobility at the existing railway crossing for bicyclists and pedestrians and resulting in long-term reductions in criteria pollutant emissions. Therefore, the proposed Project is consistent with these RTP/SCS policies.

**Policy:** Maximize mobility and Accessibility

**Policy:** Increase safety and security

**Policy:** Preserve the efficiency of the existing transportation system

**Policy:** Support economic vitality

**Policy:** Promote interagency coordination and public participation for transportation decision making and planning efforts

**Consistent.** As discussed in Chapter 4, *Comments and Coordination*, Project Development (PDT) meetings between representatives from CHSRA, SJRRC, SJCOG, and the City have been held to discuss the status of the proposed Project. In addition, the Draft EA will be circulated for public comments from community stakeholders, local agencies, regional agencies, and utility providers. Therefore, the proposed Project is consistent with this 2018 RTP/SCS policy.

**Policy:** Improve quality of life for residents

**Consistent.** As discussed above, the proposed Project would reduce passenger and freight rail, enhance community connections, improve multimodal access, and address safety at key roadway-rail grade crossings. Therefore, with the proposed improvements, the quality of life for residents would be improved upon as well. Therefore, the proposed Project is consistent with this 2018 RTP/SCS policy.



**San Joaquin County General Plan**

**Goal TM-1.17:** The County shall minimize social and economic disruptions to communities resulting from the maintenance and construction of the transportation system.

**Consistent.** As discussed in Section 3.2, *Community Effects and Growth*, and Section 3.3, *Relocations and Real Property Acquisition*, the proposed Project would incorporate Measures BMP TR-7 (Transportation Management Plan) in Table 3.7-6, and BMP COM-1 (Outreach and Engagement Plan) in Table 3.2-2, which would address effects associated with local communities during construction. Therefore, the proposed Project is consistent with this general plan goal.

**Goal ED-3.3:** Ensure Adequate Transportation Improvements. The County shall strive to provide an adequate circulation system to support job growth and economic development, connecting critical goods movement facilities and minimizing conflict with other transportation needs.

**Consistent.** The proposed Project's purpose is to reduce passenger and freight rail delays and associated congestion, maintain key community connections, improve multimodal access, provide local and regional environmental and economic benefits, and address safety by closures and enhancements at key roadway-rail grade crossings. Therefore, the implementation of the proposed Project would support the goal of providing an adequate circulation system to support community needs. Additionally, as discussed in Appendix A, *Alternatives Considered but Eliminated from Further Consideration*, the alternative developed for the proposed Project was the alternative that would result in the least amount of effects to local circulation. Thus, the proposed Project is consistent with this general plan goal.

**San Joaquin County Community Response to Homelessness Strategic Plan 2020**

**Goal 1:** Establish a coordinated and engaged regional system of care.

**Consistent.** As discussed in Section 3.2, *Community Effects and Growth*, the proposed Project would incorporate BMP COM-1 (Outreach and Engagement Plan) in Table 3.2-2, which would address the homeless encampments that are present within the Mormon Slough area and to provide relocation assistance for transient populations. Therefore, the proposed Project is consistent with these San Joaquin County Community Response to Homelessness Strategic Plan 2020 goals.

**Goal 2:** Increase access and reduce barriers to homeless crisis response services.

**Goal 3:** Ensure households experiencing homelessness have access to affordable and sustainable permanent housing.



**City of Stockton General Plan**

**Policy CH-2.2:** Prioritize maintenance of streets and improvement of sidewalks, parks, and other infrastructure in areas of the city that historically have been comparatively underserved by public facilities, including implementation of complete streets where needed, especially in conjunction with infrastructure maintenance and improvement projects.

**Policy CH-2.3:** Focus on reducing the unique and compounded environmental impacts and risk in disadvantaged communities.

**Policy CH-4.2:** Support homeless members of the Stockton community with programs to improve quality of life.

**Action CH-4.2A:** Coordinate with local and regional agencies and community organizations to address the needs of homeless people, including shelter, food, clothing, health care, mental health, and transportation.

**Action CH-4.2B:** Provide information about shelter and food assistance programs via the range of the City's communication tools.

**Consistent.** As discussed in Section 3.4, *Parks and Recreation and Section 4(f) Resources*, 3.7 *Traffic and Transportation*, the proposed Project would implement sidewalk and street improvements and return area temporarily impacted by the proposed Project to preconstruction conditions once construction is complete. Therefore, effects to community resources and access would be minimized and improved. The proposed Project is consistent with this general plan policy.

**Consistent.** As analyzed throughout Chapter 3, effects resulting from the proposed Project would be reduced or mitigated for through the implementation of BMP and mitigation measures. Therefore, as summarized in Section 3.2, *Community Effects and Growth*, and Section 3.5, *Environmental Justice*, and 3.16, *Cumulative*, compounded environmental effects to disadvantaged communities would not be adverse. Therefore, the proposed Project is consistent with this general plan policy.

**Consistent.** As stated above, the proposed Project incorporates BMP COM-1 (Outreach and Engagement Program). Therefore, the proposed Project is consistent with this general plan policy and related actions.



**Relocations and Real Property Acquisition**

***California Relocation Assistance Act and CCRs***

Under the provision of Government Code 7260 et seq., all public entities adopt rules and regulations to administer relocation assistance and to implement the payments. The rules and regulations are to conform to CCR 6000 et seq.,—the implementing regulation of Government Code 7260 et seq.—also known as the “Guideline”. The Guideline is adopted pursuant to the provisions of Section 41135, Health and Safety Code, in order to implement, interpret, and make specific provisions relating to relocation assistance, last resort housing, and real property acquisition.

**Consistent.** As discussed in Section 3.3, *Relocations and Real Property Acquisition*, the proposed project would implement Measure MM RLC-1 (Relocation Assistance) to ensure fair compensation of private property that is acquired as part of the proposed Project. Therefore, no adverse effect to private property would occur and the proposed Project is consistent with the California Relocation Assistance Act and CCRs.

**Parks, Recreation, and Section 4(f) Resources**

***Section 4(f) of the Department of Transportation Act***

Requirements under Section 4(f) of the Department of Transportation Act of 1966, stipulate USDOT agencies cannot approve the use of land from publicly owned parks, recreational areas, wildlife and waterfowl refuges, or public and private historical sites unless there is no feasible and prudent avoidance alternative to the use of that land; and the action includes all possible planning to minimize harm to the property resulting from such use or that it is determined that the use of the property will have a *de minimis* impact.

**Consistent.** As discussed in Section 3.4, *Parks and Recreation and Section 4(f) Resources* and Appendix D, *Section 4(f) and 6(f) Evaluation*, the parks identified within the resource study areas would not be permanently impacted. Although a portion of Union Park would be temporarily affected by a TCE during construction, this would be considered a temporary use of the Section 4(f) resource, and the area used for the TCE would be restored in its original condition after completion of construction activities. Therefore, the proposed Project is consistent with the Section 4(f) of the Department of Transportation Act.

***San Joaquin County General Plan***

**Goal LU-8:** Protect open space for its recreational, agricultural, safety, and environmental value and provide adequate parks and open space areas throughout the County.

**Consistent.** As discussed in Section 3.4, *Parks and Recreation and Section 4(f) Resources* and Appendix D, *Section 4(f) and 6(f) Evaluation*, the parks identified within the resource study areas would not be permanently impacted and would be protected from conversion from the proposed Project as Section 4(f) properties. Although a portion of Union Park would be temporarily affected by a TCE during construction, all parks within the proposed Project Study Area would continue to operate during construction. Therefore, the proposed Project is consistent with the San Joaquin County General Plan goal.



**Goal LU-8.1:** The County shall limit, to the extent feasible, the conversion of open space and agricultural lands to urban uses and place a high priority on preserving open space lands for recreation, habitat protection and enhancement, flood hazard management, public safety, water resource protection, and overall community benefit.

**Goal LU-8.3:** The County shall encourage the conservation and restoration of rivers, creeks, and sloughs as multi-functional open space corridors that complement adjoining development and connect city and County recreation facilities (e.g., parks).

**Consistent.** The proposed Project would not result in the conversion of open space and agricultural lands to urban uses. As previously stated, a portion of Union Park will be temporarily affected by a TCE; however, once construction is complete, the affected portion would be returned to preconstruction conditions. Therefore, the proposed Project is consistent with this general plan goal.

**Consistent.** The proposed Project would entail a crossing over the Mormon Slough. As discussed in Section 3.15, *Biological Resources*, the proposed Project will incorporate BMP BIO-5 (Restoration of Temporarily Affected Areas) and BMP BIO-6 (Vehicle Access and Speed Limits). The proposed Project will also implement mitigation through Measures MM BIO-2 (National Oceanic and Atmospheric Administration Consultation), MM BIO-3 (Mitigation for Aquatic Resources), MM BIO-4 (Compliance with Permitted Mitigation Measures), and BIO-5 (Preparation of Formal Jurisdictional Delineation). Therefore, no direct or indirect long-term adverse effects would occur as a result of the proposed Project related to the Mormon Slough. Additionally, as previously stated, the temporarily affected portion of Union Park by a TCE, would be returned to preconstruction conditions once construction is complete. Therefore, the proposed Project is consistent with this general plan goal.



**City of Stockton General Plan**

**Policy LU-5.2.** Protect natural resource areas, fish and wildlife habitat, scenic areas, open space areas, agricultural lands, parks, and other cultural/historic resources from encroachment or destruction by incompatible development.

**Consistent.** As discussed in Section 3.15 *Biological Resources*, the proposed Project will incorporate all BMP measures identified in Table 3.15-2. Further, the proposed Project will implement mitigation in the form of Measures MM BIO-1 (Compliance with SJMSCP), MM BIO-2 (National Oceanic and Atmospheric Administration Consultation), MM BIO-3 (Mitigation of Aquatic Resources), MM BIO-4 (Compliance with Permitted Mitigation Measures), and MM BIO-5 (Preparation of Formal Jurisdictional Delineation). Therefore, no direct or indirect long-term effects to natural resources and habitat would be considered adverse.

Additionally, the temporarily affected portion of Union Park by a TCE, would be returned to preconstruction conditions once construction is complete. No scenic areas, open space areas, agricultural lands, parks would be adversely impacted.

Further as discussed in Section 3.9, *Cultural Resources*, the proposed Project would not affect existing built historic property features or character, or archaeological resources within the proposed Project Study Area. During construction BMP CUL-1 (Archaeological and Tribal Monitoring), BMP CUL-2 (Worker Environmental Awareness Protection Training), BMP CUL-3 (Archaeological and Tribal Monitor), and CUL-3 (Inadvertent Discovery of Remains During Construction), would require monitoring and proper handling of unanticipated discoveries. Therefore, the proposed Project is consistent with this general plan policy.

**Policy LU-6.3.** Ensure that all neighborhoods have access to well-maintained public facilities and utilities that meet community service needs.

**Consistent.** Please refer to the consistency discussion under the topic of *Land Use and Planning*. Based on that discussion, the proposed Project is consistent with this general plan goal under this topic, *Parks, Recreation, and Section 4(f) Resources*.



## Environmental Justice

### ***Federal Actions to Address EJ in Minority Populations (EO 12898)***

EO 12898 effective February 11, 1994, focuses federal attention on the environmental and human health effects of federal actions placed on minority and low-income populations with the goal of achieving environmental protection for all communities. Agencies are required to identify and address the disproportionate effects on minority and low-income populations due to project actions, to develop an EJ strategy during the planning phase, and to ensure that there are mitigation measures and opportunities for public input and participation during the planning process.

**Consistent.** As discussed in Section 3.2, *Community Effects and Growth*, no direct or indirect long-term effects on residents would occur within the community effects and growth study area, which is comprised primarily of EJ populations, as there would be no acquisition of residential properties as part of the proposed Project. The proposed Project would reduce train congestion that causes vehicle delays at roadway-rail crossings and creates potential motor vehicle, rail, bicycle, and pedestrian conflicts. The reliability of rail operation is also essential for those residing and working in the region who need improved access to essential services and economic centers. Additionally, on top of the extensive public outreach efforts aimed at EJ communities during the EIR process, the proposed Project team will implement a similar public outreach plan aimed for EJ communities during the EA process. Therefore, the proposed Project is consistent with the Federal Actions to Address EJ in Minority Populations EO 12898.

### ***Presidential Memorandum Accompanying EO 12898***

The Presidential Memorandum dated February 11, 1994, emphasizes the importance of existing laws, such as Title VI of the Civil Rights Act of 1964 and NEPA, that can assist with implementation of the principles of the order. The memorandum provides that, in accordance with Title VI, "each Federal agency shall ensure that all programs or activities receiving Federal assistance that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin."

**Consistent.** As discussed in Section 3.5, *Environmental Justice*, the proposed Project would not result in disproportionately high and adverse human health and environmental effects, including social and economic effects, on EJ minority and low-income populations. Therefore, the proposed Project is consistent with this Presidential Memorandum Accompanying EO 12898.



**Actions to Address EJ in Minority Populations and Low-Income Populations, USDOT Order 5610.2c**

USDOT Order 5610.2c effective May 16, 2021, requires the consideration of EJ principles in all USDOT programs, policies and activities. It describes how the objectives of EJ will be integrated into planning and programming, rulemaking, and policy formulation. It sets forth steps to identify and address, as appropriate, disproportionately high and adverse effects on minority populations or low-income populations through EJ analysis conducted as part of the planning and project delivery process for federally funded or approved transportation projects; it specifies the measures to be taken to address instances of disproportionately high and adverse effects; and requires consideration of the benefits of transportation programs, policies, and other activities where minority populations and low-income populations benefit, at a minimum to the same level as the general population as a whole when determining impacts on minority and low-income populations.

**Consistent.** As discussed in Section 3.5, *Environmental Justice*, the proposed Project would not result in disproportionately high and adverse human health and environmental effects, including social and economic effects, on EJ minority and low-income populations. Therefore, the proposed Project is consistent with the Actions to Address EJ in Minority Populations and Low-Income Populations, USDOT Order 5610.2c.

**Improving Access to Services for Persons with Limited English Proficiency (EO 13166)**

EO 13166 signed on August 11, 2000, requires federal agencies to examine the services they provide, identify any need for services to those with LEP, and develop and implement a system to provide those services so people with LEP can have meaningful access to them.

**Consistent.** As discussed in Section 3.5, *Environmental Justice*, on top of the extensive public outreach efforts aimed at EJ communities during the EIR process, the proposed Project team will implement a similar public outreach plan aimed for EJ communities during the EA process. Therefore, the proposed Project is consistent with the Improving Access to Services with LEP EO 13166.

**California Government Code 11135(a)**

No one shall be discriminated to receive full and equal access to the benefits of any programs or activities conducted, operated or administered by the state or by any state agency.

**Consistent.** As discussed in Section 3.5, *Environmental Justice*, the proposed Project would not result in disproportionately high and adverse human health and environmental effects, including social and economic effects, on EJ minority and low-income populations. Thus, there would be full and equal access to the long-term improvements provided by the proposed Project, and the proposed Project is consistent with California Government Code 11135(a).



## Utilities and Emergency Services

### **California Integrated Waste Management Act**

The California Integrated Waste Management Act of 1989 requires local jurisdictions to adopt an Integrated Waste Management Plan that addresses waste disposal, management, source reduction, and recycling and ultimately leads to a reduction of waste. CalRecycle is the agency responsible for leading the initiative. Solid waste reduction would be part of the proposed Project construction plans.

**Consistent.** As discussed in Section 3.6, *Utilities and Emergency Services*, construction of the proposed Project would generate solid waste from construction activities. The solid waste created would be reused or recycled where possible, the remainder would be disposed of in local solid waste landfills in accordance with the proposed Project's specific Waste Management Plan. Therefore, the proposed Project is consistent with the California Integrated Waste Management Act.

### **California Government Code**

The California Government Code (Section 4216) mandates that any person must notify and coordinate with relevant stakeholders prior to construction activities that involve ground disturbance. Contractors are required to mark any area that is to be disturbed with paint and notify USA North, at least 2 days prior to the start of any digging activities. After receiving the notification, USA North would transmit the information regarding the construction to all participating members.

Consistent. As discussed in Section 3.6, *Utilities and Emergency Services*, the proposed Project will incorporate BMP UTL-3 (Utility Avoidance Coordination), which requires a coordination with the City and other utility providers during final design to address utility relocation effects. Standard best practices such as identify and marking any areas to be disturbed by paint prior to digging will be incorporated. Therefore, the proposed Project is consistent with the California Government Code.

### **San Joaquin County General Plan**

**Objective IS-1.8.** Infrastructure Financing, Design, and Construction: The County shall require new development to fund the initial financing, design, and construction of required infrastructure facilities. All financing (including operation and maintenance) and improvement plans shall be subject to County review and approval.

**Consistent.** As discussed in Section 3.6, *Utilities and Emergency Services*, during final design SJRRC in coordination with CHSRA, will coordinate with the governing bodies and utility providers to ensure utility infrastructure and required relocations will be completed as a part of the proposed Project and limit service interruptions to existing customers. Therefore, the proposed Project is consistent with general plan Objective IS-1.8.



**City of Stockton General Plan**

**Policy LU-6.3:** Ensure that all neighborhoods have access to well-maintained public facilities and utilities that meet community service needs.

**Consistent.** The proposed Project’s goal is to improve regional passenger travel efficiency by reducing conflicting train movement, maintain key community connections, improve multimodal access, and address safety by closures and enhancements at key roadway-rail grade crossings. As discussed in Section 3.2, *Community Effects and Growth*, the proposed Project would incorporate BMP TR-7 (Transportation Management Plan), which would provide continuous access within the neighborhoods within Project Study Area. Therefore, the proposed Project is consistent with this general plan policy.

**Action LU-6.3C:** Coordinate, to the extent possible, upgrades and repairs to roadways with utility needs, infrastructure upgrades, and bicycle and pedestrian improvements.

**Consistent.** Please refer to the consistency discussion under the topic of *Land Use and Planning*. Based on that discussion, the proposed Project is consistent with this general plan action under this topic, *Utilities and Emergency Services*.

**Stockton Municipal Code**

Chapter 8.28 Construction and Demolition Debris Waste Reduction

**Consistent.** As discussed in Section 3.6, *Utilities and Emergency Services*, construction debris would be disposed by an industrial waste collector or a commercial recyclable material collector that is authorized by the City with a necessary solid waste hauling permit. Solid waste will be taken the Forward Landfill in Manteca, the North County Landfill and Recycling Center in Lodi, or the Foothill Sanitary Landfill in Linden; and construction material will be processed at the East Stockton Transfer Station. Therefore, the proposed Project is consistent with Chapter 8.28 of the Stockton Municipal Code.

Chapter 13.36 Regulations and Procedures for the Removal of Overhead Utility Facilities and the Installation of Underground Facilities in Underground Utility Districts

**Consistent.** As part of project approval and permits needed for construction, the proposed Project would be required to be designed according to local regulations as well as coordinate with utility providers that may be impacted. Therefore, the proposed Project is consistent with Chapter 13.36 of the Stockton Municipal Code.



**Traffic and Transportation/Pedestrian and Bicycle Facilities**

***Federal Passenger Rail Investment and Improvement Act***

Federal law requires the State of California to update its California State Rail Plan every 5 years as a condition of eligibility for federal funding for rail programs

**Consistent.** The proposed Project is currently planned and programmed in the California State Rail Plan; and thus, eligible for federal funding for rail programs. Therefore, the proposed Project is consistent with the Federal Passenger Rail Investment and Improvement Act.

***Highways, Statewide Planning***

Title 23 of the USC for Highways and Statewide Planning provides the general requirements for statewide planning to encourage and promote the safe and efficient management, operation, and development of the surface transportation system.

**Consistent.** The proposed Project’s goal is to improve regional passenger travel efficiency by reducing conflicting train movement, maintain key community connections, improve multimodal access, and address safety by closures and enhancements at key roadway-rail grade crossings. Therefore, the proposed Project is consistent with Title 23 of the USC for Highways and Statewide Planning.

***SJCOG RTP and SCS***

At the statewide level, the proposed Project is included in the 2020 California Freight Mobility Plan, and the proposed Project’s design and ROW phases are programmed in the Interregional portion of the 2020 STIP. The proposed Project is included in the 2018 San Joaquin County RTP/SCS, as well as the current SJCOG 2021 FTIP, which was adopted at the February 25, 2021, SJCOG Board Meeting.

**Consistent.** The proposed Project is included in the 2020 California Freight Mobility Plan, and the proposed Project’s design and ROW phases are programmed in the Interregional portion of the 2020 STIP. Further, the proposed Project is included in the 2018 San Joaquin County RTP/SCS as well as the current SJCOG 2021 FTIP.

The State of California requires each transportation planning agency to prepare and adopt an RTP directed at achieving a coordinated and balanced regional transportation system.

Additionally, the proposed Project’s goal is to improve regional passenger travel efficiency by reducing conflicting train movement, maintain key community connections, improve multimodal access, and address safety by closures and enhancements at key roadway-rail grade crossings. Therefore, the proposed Project is consistent with the SJCOG RTP/SCS.

The 2018 RTP/SCS provides a “sustainability vision” through year 2042 that recognizes the significant impact the transportation network has on the region’s public health, mobility, and economic vitality. As the region’s comprehensive long-range transportation planning document, the Plan serves as a guide for achieving public policy decisions that will result in balanced investments for a wide range of multimodal transportation improvements.



**San Joaquin Regional Rail Commission Plans**

SJRRC’s *ACEforward* project is relevant to the proposed project because of its proposed improvements in Stockton and use of the UP Fresno line and Stockton Diamond. Additionally, Valley Rail<sup>4</sup> implements two new daily round-trips for the Amtrak San Joaquin’s service to better connect San Joaquin Valley travelers with the Sacramento Area, and an extension of ACE between Sacramento and Ceres/Merced.

**Consistent.** The proposed Project’s goal is to improve regional passenger travel efficiency by reducing conflicting train movement, maintain key community connections, improve multimodal access, and address safety by closures and enhancements at key roadway-rail grade crossings, which will directly assist SJRRC’s *ACEforward* project objectives by providing better connections within the San Joaquin Valley. Therefore, the proposed Project is consistent with the San Joaquin Regional Rail Commission Plans.

**San Joaquin County General Plan**

San Joaquin County adopted the San Joaquin County General Plan in December 2016. The General Plan provides a comprehensive framework to address the current issues in the County, the vision for the future, and strategies to achieve such visions.

**Consistent.** The proposed Project’s goal is to improve regional passenger travel efficiency by reducing conflicting train movement, maintain key community connections, improve multimodal access, and address safety by closures and enhancements at key roadway-rail grade crossings, which would address San Joaquin County’s General Plan and policies for transportation. Therefore, the proposed Project is consistent with the San Joaquin County General Plan.

**City of Stockton General Plan**

The City of Stockton’s General Plan was adopted on December 4, 2018. The General Plan provides a tool for the city to plan for the future. It contains goals, policies, and actions that can boost the economy and improve community facilities and well-being.

**Consistent.** The proposed Project’s goal is to improve regional passenger travel efficiency by reducing conflicting train movement, maintain key community connections, improve multimodal access, and address safety by closures and enhancements at key roadway-rail grade crossings, which would address City of Stockton’s General Plan’s goals and policies for transportation. Therefore, the proposed Project is consistent with the City’s general plan.

**City of Stockton Bicycle Master Plan**

The City of Stockton adopted the Bicycle Master Plan in December 2017. This update to the City of Stockton Bicycle Master Plan is “intended to not only envision a future for Stockton where bicycling is a viable option for people of all ages and abilities, but to also serve as an implementation roadmap for elected officials and City staff to achieve that goal”.

**Consistent.** The proposed Project would not preclude the implementation of any of the master bicycle plans within the City as identified in the City of Stockton Bicycle Master Plan. Therefore, the proposed Project is consistent with the City of Stockton Bicycle Master Plan.

<sup>4</sup> Valley Rail includes “*ACEforward*” and San Joaquin’s expansion.



## Visual Quality and Aesthetics

### *City of Stockton Municipal Code*

**Chapter 15.32.** Neglected, vacant and abandoned properties create nuisance conditions that must be remedied by owners of the property.

**Consistent.** As discussed in Section 3.3, *Relocations and Real Property Acquisitions*, remnant portions of existing parcels from the permanent acquisition of existing parcels may result in indirect long-term moderate adverse effects from large open space areas becoming voids in the Downtown area fabric.

These direct effects on real property from remnant properties would be mitigated through the implementation of Measure MM RLC-2 (Property Ownership and Agreement Coordination Efforts). Therefore, with the implementation of Measure MM RLC-2, the proposed Project would be consistent with Chapter 15.32 of the City's Municipal Code.

### *City of Stockton General Plan*

**Action LU-1.3B.** Work with transportation agency partners and private property owners to improve maintenance, code enforcement, screening, and landscaping of viewsheds along major transportation routes into Stockton, including rail corridors, Highway 99, Highway 4, and Interstate 5.

**Action LU-5.1C.** Require landscape plans to incorporate native and drought-tolerant plants in order to preserve the visual integrity of the landscape, conserve water, provide habitat conditions suitable for native vegetation, and ensure that a maximum number and variety of well adapted plants are maintained.

**Action LU-5.3A.** At the interface between development and rural landscapes, use landscaping and other attractive edging instead of soundwalls and similar utilitarian edges of developments to maintain the visual integrity of open space.

**Consistent.** The proposed Project will incorporate BMP AES-1 through BMP AES-3, in Table 3.8-1, in Section 3.8, *Visual Quality and Aesthetics*. BMP AES-1 (Lighting Plan) would ensure lighting is selected and installed to minimize glare on adjacent properties or into the night sky to maintain visual integrity within the proposed Project Study Area. BMP AES-2 (Coordinate Design Elements to Reduce Visual Effects) and BMP AES-3 (Street Tree Planting) would add additional visual interest with cultural or natural elements to improve the visual quality in the Visual Quality and Aesthetics RSA. Therefore, with the incorporation of these BMPs, the proposed Project would be consistent with these general plan actions.



**Action LU-6.3D.**

Design public facilities and infrastructure to maintain and improve the visual quality of the urban environment, including through the following approaches:

- Designing buildings and infrastructure to fit into and complement their ultimate surroundings.
- Buffering buildings and infrastructure from their surroundings as appropriate to shield unsightly areas from public view.
- Providing appropriate landscaping.

**Cultural Resources**

**NEPA**

Determine if action may “significantly affect the quality of the human environment,” an agency must consider, among other things, unique characteristics of the geographic area such as proximity to historic or cultural resources and the degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the NRHP.

**Consistent.** No archaeological resources have been identified within the APE; therefore, none have been identified as significant under Section 106 of the NHPA. Ground disturbing activities associated with the proposed Project, however, may affect unknown buried cultural resources.

Therefore, the proposed Project will incorporate BMP CUL-1 through BMP CUL-4, in Table 3.9-3, in Section 3.9, *Cultural Resources*, which will assist in the avoidance and minimizations of such effects. With the incorporation of BMP CUL-1 through BMP CUL-4, no direct or indirect short-term adverse effects on archeological properties would be anticipated under the proposed Project. Therefore, with Project would be consistent with NEPA.

**Section 106 of the NHPA**

Identify and evaluate NRHP eligibility of properties within the APE and evaluate the effect of the undertaking on historic properties.

ACHP and SHPO, as well as other consulting parties, must have a reasonable opportunity to comment on any undertaking that would adversely affect historic properties. SHPOs administer the national historic preservation program at the state level, which includes consulting with federal agencies during Section 106 review.

**Consistent.** As discussed in Section 3.9, *Cultural Resources*, CSHRA has determined that the proposed Project would have no adverse effect on built historic properties within the APE. The proposed Project Finding of Effect (FOE) Report was submitted to SHPO on August 4, 2021; SHPO concurred with the finding of no adverse effect on December 9, 2021. Therefore, the proposed Project is consistent with Section 106 of the NHPA.



**Section 4(f) of the Department of Transportation Act**

Prohibits the use of a publicly owned park, recreation area, wildlife or waterfowl refuge, or publicly or privately owned historic sites of national, state, or local significance listed in or determined eligible for listing in the NRHP for a transportation project unless the Secretary of Transportation has determined that there is no feasible and prudent alternative to such use. A de minimis impact to a Section 4(f) historic property can be made when there is a Section 106 finding of no adverse effect on a historic property, a Section 106 finding of no effect or a finding of no historic properties affected.

**Consistent.** The proposed Project would not result in any direct or indirect short-term or long-term effects on a Section 4(f) historic property. Therefore, the proposed Project is consistent with Section 4(f) of the Department of Transportation Act.

**California Register of Historical Resources**

**Section 5024.1.** Generally, a resource is considered by the lead agency to be “historically significant” if the resource meets the criteria for listing in the CRHR (CCR, Title 14(3), Section 15064.5(a)(3)).

**Consistent.** As discussed in Section 3.9, *Cultural Resources*, the proposed Project would not affect the existing character or use of any built historic property within the APE, as there are no direct physical effects to the resources. Therefore, the proposed Project is consistent with Section 5024.1 of the CRHR.

**City of Stockton General Plan**

**Goal LU-5:** Protect, maintain, and restore natural and cultural resources.

**Consistent.** As discussed above, the proposed Project will incorporate BMP measures identified in Table 3.13-2, in Section 3.13, *Biological Resources*, which includes Measures BMP BIO-1 through BIO-8, and mitigation of biological resources effect through Measures MM BIO-1 (Compliance with SJMSCP), MM BIO-2 (National Oceanic and Atmospheric Administration Consultation), MM BIO-3 (Mitigation of Aquatic Resources), MM BIO-4 (Compliance with Permitted Mitigation Measures), and MM BIO-5 (Preparation of Formal Jurisdictional Delineation).

Additionally, the proposed Project will incorporate all BMP measures identified in Table 3.9-3, in Section 3.9, *Cultural Resources*, which includes Measures BMP CUL-1 through BMP CUL-4. Therefore, short-term or long-term Project effects on natural resources and effect to known or undiscovered cultural resources within the proposed Project Study Area, would not be considered adverse. Therefore, the proposed Project is consistent with this general plan goal.



**Policy LU-5.2:** Protect natural resource areas, fish and wildlife habitat, scenic areas, open space areas, agricultural lands, parks, and other cultural/historic resources from encroachment or destruction by incompatible development.

**Action LU-5.2D:** Require the following tasks by a qualified archaeologist or paleontologist prior to project approval: 1) Conduct a record search at the Central California Information Center located at California State University Stanislaus, the University of California Museum of Paleontology at Berkeley, and other appropriate historical or archaeological repositories, 2) conduct field surveys where appropriate, 3) prepare technical reports, where appropriate, meeting California Office of Historic Preservation or other appropriate standards, and 4) where development cannot avoid an archaeological or paleontological deposit, prepare a treatment plan in accordance with appropriate standards, such as the Secretary of the Interior's Standards for Treatment of Archaeological Sites.

**Action LU-5.2E:** Continue to consult with Native American representatives, including through early coordination, to identify locations of importance to Native Americans, including archaeological sites and traditional cultural properties.

**Action LU-5.2F:** If development could affect a tribal cultural resource, require the developer to contact an appropriate tribal representative to train construction workers on appropriate avoidance and minimization measures, requirements for confidentiality and culturally appropriate treatment, other applicable regulations, and consequences of violating State laws and regulations.

**Consistent.** Please refer to the consistency discussion under the topic of *Parks, Recreation, and Section 4(f) Resources*. Based on that discussion, the proposed Project is consistent with this general plan goal under this topic, *Cultural Resources*.

**Consistent.** As discussed in Section 3.9, *Cultural Resources*, based on an archaeological and records search, site visit, and the technical report analysis, no archaeological resources have been identified within the APE. Ground disturbing activities associated with the proposed Project, however, may affect unknown buried cultural resources. Therefore, the proposed Project will incorporate BMP CUL-1 through BMP CUL-4, in Table 3.9-3, in Section 3.9, *Cultural Resources*, which will assist in the avoidance and minimizations of such effects.

With the incorporation of BMP CUL-1 through BMP CUL-4, no direct or indirect short-term adverse effects on archeological resources would be anticipated under the proposed Project. Therefore, the proposed Project is consistent with this action in relation to archaeological resources. For paleontological requirements that have been met under this action, please refer to the discussion under *Geology, Soils, Seismicity, and Paleontology*.

**Consistent.** As discussed in Section 3.9, *Cultural Resources*, outreach letters were sent to tribal governments providing information about the proposed Project and seeking input from the tribal community. Section 106 consultation with the tribes was formally initiated in December 2020.

Representatives of CHRSA met with a representative of the North Valley Yokuts Tribe and the Confederated Villages of Lisjan in January and February 2021, respectively. BMP Measures to ensure proper treatment of any inadvertent discoveries of interest to tribal representatives during proposed Project construction activities were discussed and have since been agreed to and included in Table 3.9-3, which includes Measures BMP CUL-1 through BMP CUL-4. Therefore, the proposed Project is consistent with these general plan actions.



**Action LU-5.2G:** Comply with appropriate State and federal standards to evaluate and mitigate impacts to cultural resources, including tribal, historic, archaeological, and paleontological resources.

**Consistent.** Part of the proposed Project's approval is contingent upon consistency with all applicable federal, state, and local standards. Further, as discussed above, the proposed Project representatives of CHSRA have consulted with interested tribes and the proposed Project would incorporate BMP measures, identified as Measures BMP CUL-1 through BMP CUL-4, in Table 3.9-3 of Section 3.9, *Cultural Resources*.

Additionally, the proposed Project would incorporate BMP GEO-4 (Preparation and Implementation of Paleontological Resources Management Plan) from Table 3.11-2, in Section 3.11, *Geology, Soils, Seismicity, and Paleontology*, to address short-term and long-term effect to paleontological resources. Therefore, the proposed Project would not result in effect to cultural resources, including tribal, historic, archaeological, and paleontological resources, and Project is consistent with this general plan action.



## Hydrology, Floodplains, and Water Quality

### CWA

Important CWA sections are as follows:

- Sections 303 and 304 require states to establish water quality standards, criteria, and guidelines.
- Section 401 requires an applicant for a federal license or permit to conduct any activity that may result in a discharge to waters of the US to obtain certification from the state that the project will be in compliance with state water quality standards. The 401 certifications are obtained from the appropriate RWQCB, dependent on the project location, and are required before USACE issues a Section 404 permit (See below).
- Section 402 establishes the NPDES, a permitting system for the discharges (except for dredge or fill material) of any pollutant into waters of the US, including regulating municipal and industrial discharges to surface waters of the U.S. The US EPA delegated the implementation and administration of the NPDES program in California to the California SWRCB.
- Section 404 establishes a permit program for the discharge of dredge or fill material into waters of the U.S., including wetlands. This permit program is administered by the USACE.

### EO 11988

EO 11988 (Floodplain Management) directs all federal agencies to refrain from conducting, supporting, or allowing actions in floodplains unless it is the only practicable alternative. FHWA requirements for compliance are outlined in 23 CFR 650 Subpart A.

As discussed in Section 3.10, *Hydrology, Floodplain, and Water Quality*, though Mormon Slough is dry and fed mainly through intermittent surface runoff, Mormon Slough is listed on the Final 2014/2016 California Integrated Report (CWA Section 303[d] List / 305[b] Report) (SWRCB 2017) for the pollutants listed in Table 3.10-1, 303(d) Listed Pollutants.

Additionally, a large portion of the proposed Project falls within the Mormon Slough Stockton Diverting Canal to Commerce Street segment. This segment is outside the Stockton Urban Water Bodies Pathogen TMDL; however, the downstream segment (Mormon Slough from Commerce Street to Stockton Deep Water Channel) is on the 303[d] list for indicator bacteria and organic enrichment/low dissolved oxygen. Therefore, the proposed Project is consistent with the CWA.

**Consistent.** The proposed Project would not alter Mormon Slough and would require an encroachment permit (BMP HYD-2) from CVFPB for work in and adjacent to Mormon Slough. A drainage report (BMP HYD-5) would be prepared during final design for the permanent proposed structure over Mormon Slough. The proposed Project would be constructed to be consistent with the standards set by CVFPB. Additionally, the proposed Project would be designed to allow for current and both projected future flow cases but would leave the existing Fresno Subdivision culverts in place. Therefore, the proposed Project is consistent with EO 11988.



**Porter-Cologne Water Quality Control Act (Water Code, §13000 et seq.)**

California’s Porter-Cologne Water Quality Control Act, enacted in 1969, provides the legal basis for water quality regulation in California. This act requires a “Report of Waste Discharge” for any discharge of waste (liquid, solid, or gaseous) to land or surface waters that may impair beneficial uses for surface and/or groundwater of the state. Additionally, it prohibits discharges of “waste” as defined, and this definition is broader than the CWA definition of “pollutant.” Discharges under the Porter-Cologne Act are permitted by WDR and may be required even when the discharge is already permitted or exempt under the CWA. If a RWQCB determines that waters are impaired for one or more constituents and that the standards cannot be met through point source or non-point source controls (NPDES permits or WDRs), the CWA requires the establishment of a TMDL. TMDLs specify allowable pollutant loads from all sources (point, nonpoint, and natural) for a given watershed.

**SWRCB and RWQCB**

The SWRCB adjudicates water rights, sets water pollution control policy, issues water board orders on matters of statewide application, and oversees water quality functions throughout the state by approving Basin Plans, TMDLs, and NPDES permits. RWQCBs are responsible for protecting beneficial uses of water resources within their regional jurisdiction using planning, permitting, and enforcement authorities to meet this responsibility.

**Consistent.** The proposed Project will incorporate BMP HYD-3 (Construction SWPPP and BMP HYD-4 (Industrial Stormwater Prevention Plan), identified in Table 3.10-2 in Section 3.10, *Hydrology, Floodplain, and Water Quality*, which will ensure that during construction the proposed Project will comply with thresholds and standards set forth in the NPDES permit and the TMDLs, and other applicable plans for discharges from the proposed Project construction limits. Therefore, the proposed Project is consistent with the Porter-Cologne Water Quality Control Act.

**Consistent.** Please see the response above, Porter-Cologne Water Quality Control Act. The proposed Project will incorporate BMPs HYD-3 (Construction SWPPP) and HYD-4 (Industrial SWPPP) to ensure consistency with regulatory permits and plans. The proposed Project is consistent with the SWRCB and RWQCB.



### **CGP**

The CGP (NPDES No. CAS000002, SWRCB Order No. 2009-0009-DWQ, adopted on November 16, 2010) became effective on February 14, 2011, and was amended by Order No. 2010-0014-DWQ and Order No. 2012-0006-DWQ. The CGP authorizes the discharge of stormwater (and certain unauthorized non-stormwater discharges) from construction sites that disturb 1 acre or more of land, and from smaller sites that are part of a larger, common plan of development. For all projects subject to the CGP, the applicant is required to develop and implement an effective SWPPP, to implement soil erosion and pollution prevention control measures, and to obtain coverage under the CGP.

### **RWQCB Basin Plan**

The proposed Project is under the jurisdiction of the Central Valley RWQCB. The Central Valley RWQCB implements the Basin Plan for the Sacramento River Basin and the San Joaquin River Basin (2018) to regulate surface and groundwater quality in the region

### **CVFPB (California Code Regs. Title 23, Division 1)**

CVFPB exercises regulatory authority within its jurisdiction to maintain the integrity of the existing flood control system and designated floodways by issuing permits for encroachments. The CVFPB has mapped designated floodways along more than 60 streams and rivers in the Central Valley.

**Consistent.** As previously stated in Section 3.10, *Hydrology, Floodplains, and Water Quality*, the proposed Project will incorporate BMP HYD-3 (Construction SWPPP) and BMP HYD-4 (Industrial SWPPP) to prepare a construction SWPPP and an industrial SWPPP which will incorporate sediment, erosion, and pollution prevention best management practices and to obtain coverage under the CGP. Therefore, the proposed Project will be consistent with the CGP.

**Consistent.** The proposed Project would result in construction in and adjacent to the Mormon Slough. The Central Valley RWQCB's Basin Plan for the Central Valley Region does not list beneficial uses for Mormon Slough; however, the Lower Calaveras Hydrologic Area with a Hydrologic Sub-Area number of 531.30 as having beneficial uses for cold freshwater habitat, fish spawning, and fish migration that occurs outside of the RSA.

BMP HYD-1 (Stormwater Treatment Prevention Plan), BMP HYD-3 (Construction SWPPP) and BMP HYD-4 (Industrial SWPPP) will be incorporated as a part of the proposed Project to ensure compliance with the Central Valley RWQCB Basin Plan. Therefore, the proposed Project is consistent with the RWQCB Basin Plan.

**Consistent.** The proposed Project would not alter Mormon Slough and would require an encroachment permit from CVFPB for work in and adjacent to Mormon Slough as identified in BMP HYD-1 (Stormwater Management Prevention Plan). Therefore, the proposed Project would be consistent with the CVFPB.



***City of Stockton – Mormon Channel Specific Plan***

The City of Stockton adopted and approved the Mormon Channel Specific Plan in August of 1989. The specific plan was created to facilitate minor improvements to provide 100-year flood protection as well as identify the channel's right-of-way, westerly from SR 99 to the Stockton Channel. The plan identifies the future 500-year flood hydraulic capacity of 3000 cubic feet per second within the Mormon Channel and includes implementation techniques for the City's General Plan with regard to drainageways and floodways.

**Consistent.** The proposed Project would result in a permanent structure over Mormon Slough. A drainage report, as identified in BMP HYD-5 would be prepared during final design that would include hydraulic analysis for the proposed structure over Mormon Slough.

The hydraulic analysis would include the criteria set forth in the City of Stockton Mormon Channel Specific Plan of a future flow of 3,000 cubic feet per second for Mormon Slough. Therefore, the proposed Project is consistent with the City of Stockton Mormon Channel Specific Plan.



## Geology, Soils, Seismicity, and Paleontology

### CWA

The CWA establishes several major integrated regulatory programs, standards, and plans. Relevant items include the following:

The NPDES Program - Establishes an effluent permit system for point source (e.g., pipe, ditch, sewer) discharges of pollutants into waters of the U.S. The NPDES permit system requires those permitted to maintain records and report on the amount and nature of discharged effluent waste components. The stormwater program is a part of the NPDES program and is designed to reduce or eliminate the discharge of contaminated stormwater into waters of the U.S. The program requires the following stormwater discharges to be covered by an NPDES permit:

- discharge associated with industrial activity
- discharge from a large or medium municipal separate storm sewer system, or
- discharge which EPA or the state/tribe determines contributes to a violation of a water quality standard or which is a significant contributor of pollutants to waters of the United States

National and Local Pretreatment Standards - Requires new and existing industrial users to pre-treat wastewater discharged to POTWs to prevent pollutants in excess of certain limits from passing through POTWs, causing interference in the operation of the treatment works and to protect the quality of sludge generated by these plants (§ 307). Dredge or Fill Discharge Permit Program - Establishes a permit system, administered by USACE, for regulating the placement of dredge or fill material into waters of the U.S., including wetlands (§ 404).

**Consistent.** The proposed Project will incorporate the City of Stockton's Municipal Code Section 15.48.050, *Construction and Application* to address potential adverse effects related to erosion.

In addition, the proposed Project will incorporate BMP GEO-1 (Geologic Hazards) identified in Table 3.11-2, and BMP HYD-3 (Construction SWPPP), identified in Table 3.10-2 in Section 3.10, *Hydrology, Floodplain, and Water Quality*. With the incorporation of BMP GEO-1 and BMP HYD-3, no direct or indirect short-term or long-term adverse effects on geology, soils, and seismicity as it relates to erosion is anticipated under the proposed Project. Therefore, the proposed Project is consistent with the CWA.



### **PRPA**

The PRPA of 2009 codified the generally accepted practice of limited vertebrate fossil collection and limited collection of other rare and scientifically significant fossils by qualified researchers. Researchers must obtain a permit from the appropriate state or federal agency and agree to donate any materials recovered to recognized public institutions, where they will remain accessible to the public and to other researchers. Both the U.S. Forest Service and the BLM have adopted implementation policies for the PRPA.

**Consistent.** The proposed Project utilized the BLM adopted implementation policies for the PRPA. As discussed in section 3.11, *Geology, Soils, Seismicity, and Paleontology*, the BLM Potential Fossil Yield Classification (PFYC) system (BLM 2016) was used to complete a paleontological sensitivity analysis of the RSA using the results of data reviews and field survey. As stated in that section, PFYC is a commonly used predictive resource management tool that classifies geologic units on their likelihood to contain paleontological resources using a scale of 1 (very low potential) to 5 (very high potential). The PFYC ranking system is summarized in Table 3.11-1 of that section. Therefore, the proposed Project is consistent with the PRPA.

### **American Antiquities Act**

The American Antiquities Act of 1906 is the first law of the United States to protect the cultural and natural heritage of the U.S., providing legal protection of cultural and natural resources of historic or scientific interest on federal lands. Some federal agencies include fossils in their interpretation of “antiquities.”

**Consistent.** As discussed in Section 3.11, *Geology, Soils, Seismicity, and Paleontology*, although there are no documented paleontological localities within the boundaries of the paleontological RSA, construction activities for the proposed Project may result in effects on paleontological resources if the early Holocene- to late Pleistocene-age Modesto Formation is encountered during excavations. The proposed Project would incorporate BMP GEO-4 (Preparation and Implementation of a Paleontological Resources Management Plan), identified in Table 3.11-2. With incorporation of BMP GEO-4, no direct or indirect short-term adverse effects on paleontological resources would occur under the proposed Project. Further, by employing the same BMP measures, no direct or indirect long-term adverse effects on paleontological resources would result. Therefore, the proposed Project would be able to help protect AQA antiquities, and the proposed Project would be consistent with the American Antiquities Act.



**Alquist-Priolo Act**

The Alquist-Priolo Act was enacted in 1972 to reduce the hazard of surface faulting to structures designed for human occupancy. The main purpose of the law is to prevent the construction of buildings used for human occupancy on the surface trace of active faults.

**Consistent.** As discussed in Section 3.11, *Geology, Soils, Seismicity, and Paleontology*, the proposed Project is not located within an Alquist-Priolo Earthquake Fault Zone. Therefore, no direct or indirect short-term or long-term effects on geology, soils, and seismicity as it relates to fault rupture would be anticipated and the proposed Project is consistent with the Alquist-Priolo Act.

**California PRC**

The California PRC (Chapter 1.7, Sections 5097, 5097.5, and 30244) includes state requirements for the assessment and management of paleontological resources. Section 21000 et seq. (CEQA) addresses potential effect to paleontological resources under Appendix G, Section VII(f).

**Consistent.** As discussed in Section 3.11, *Geology, Soils, Seismicity, and Paleontology*, although there are no documented paleontological localities within the boundaries of the paleontological RSA, construction activities for the proposed Project may result in effects on paleontological resources if the early Holocene- to late Pleistocene-age Modesto Formation is encountered during excavations.

The proposed Project would incorporate BMP GEO-4 (Preparation and Implementation of a Paleontological Resources Management Plan), identified in Table 3.11-2. With incorporation of BMP GEO-4, no direct or indirect short-term adverse effects on paleontological resources would occur under the proposed Project and short-term impacts on paleontological resources would be considered less than significant under CEQA.

Further, by employing the same BMP measures, no direct or indirect long-term adverse effects on paleontological resources would result, and long-term impacts on paleontological resources would be considered less than significant. Therefore, the proposed Project would be consistent with the California PRC.



### **SHMA**

The SHMA of 1990 directs the California Department of Conservation, California Geological Survey to identify and map areas prone to earthquake liquefaction hazards, earthquake-induced landslides, and amplified ground shaking. SHMA requires the State Geologist to establish regulatory zones (Zones of Required Investigation) and to issue appropriate maps (Seismic Hazard Zone maps).

**Consistent.** As discussed in Section 3.11, *Geology, Soils, Seismicity, and Paleontology*, no active faults have been mapped on the proposed Project site and the proposed Project is not located within an Alquist-Priolo Earthquake Fault Zone. Therefore, no direct or indirect short-term or long-term effects on geology, soils, and seismicity as it relates to fault rupture is anticipated under the proposed Project.

Additionally, the proposed Project will incorporate BMP GEO-1 (Geologic Hazards) and BMP GEO-2 (Geology and Soils) identified in Table 3.11-2. With the incorporation of BMP GEO-1 and BMP GEO-2, no direct or indirect short-term or long-term adverse effects to geology, soils, and seismicity as it relates to the City's vulnerability to seismic activity due to its proximity to major earthquake faults or any seismic hazards are anticipated under the proposed Project. Further, the proposed Project will incorporate BMP GEO-3 (Implement Geotechnical Recommendations), in Table 3.11-2. With the incorporation of BMP GEO-3, no direct or indirect short-term or long-term adverse effects on geology, soils, and seismicity as it relates to the earthquake-induced liquefaction is anticipated under the proposed Project.

Based on the discussion above, with the incorporation of BMP GEO-1 through BMP GEO-3, the proposed Project would be consistent with the SHMA.



**NPDES Permit**

In California, the SWRCB administers regulations that are mandated by EPA and requires the permitting of stormwater-generated pollution under NPDES. See Section 3.9, Hydrology/Floodplains and Water Quality, for more information about NPDES and SWPPP as they pertain to water pollution and runoff BMPs.

**Consistent.** The proposed Project will incorporate the City of Stockton's Municipal Code Section 15.48.050, *Construction and Application* to address potential adverse effects related to erosion, which contributes to stormwater-generated pollution. The proposed Project will also incorporate BMP GEO-1 (Geologic Hazards) identified in Table 3.11-2, and BMP HYD-3 (Construction SWPPP), identified in Table 3.10-2 in Section 3.10, *Hydrology, Floodplain, and Water Quality*. With the incorporation of BMP GEO-3 and BMP HYD-3, no direct or indirect short-term or long-term adverse effects on geology, soils, and seismicity as it relates to erosion and its contributions to storm-water run-off is anticipated under the proposed Project. Therefore, the proposed Project is consistent with the NPDES permit.

**CBC**

Title 24 of the CCR, known as the CBC or "Title 24," contains the regulations that govern the construction of buildings in California. The CBC contains general building design and construction requirements relating to fire and life safety, structural safety, and access compliance (Division of the State Architect 2018). Chapter 18, Soils and Foundations, of the CBC regulates the excavation of foundations and retaining walls, including the preparation of preliminary soil, geologic, geotechnical, and supplemental ground-response reports. Chapter 18 also regulates expansive soils analysis and the depth to groundwater table determination.

**Consistent.** As discussed in Section 3.11, *Geology, Soils, Seismicity, and Paleontology*, the proposed Project will incorporate BMP GEO-1 through BMP GEO-3, identified in Table 3.11-2. With the incorporation of BMP GEO-1 through BMP GEO-3, no direct or indirect short-term or long-term adverse effects on geology, soils, and seismicity, as it relates to the proposed Project's exposure to underlying expansive soils consisting of expansive clay are anticipated under the proposed Project. Therefore, the proposed Project would be consistent with the CBC.



**Stockton Municipal Code—Section 15.48.050, Construction and Application**

The Stockton Municipal Code—Section 15.48.050, Construction and Application, requires that construction activities be designed and conducted to minimize the runoff of sediment and all other pollutants onto public properties, other private properties, and into the waters of the United States. Section 15.48.110, Erosion Control Requirements, contains specific provisions for erosion control for those construction projects where a grading permit is not required. Section 15.48.070, Permit Requirements, includes requirements for a grading permit that apply to most construction projects. Such permits require implementation of erosion control measures, often referred to as BMPs.

**Consistent.** The proposed Project will incorporate the City of Stockton’s Municipal Code Section 15.48.050, *Construction and Application* to address potential adverse effects related to erosion. The proposed Project will also incorporate BMP GEO-1 (Geologic Hazards) identified in Table 3.11-2, and BMP HYD-3 (Construction SWPPP), identified in Table 3.10-2 in Section 3.10, *Hydrology, Floodplain, and Water Quality*. With the incorporation of BMP GEO-3 and BMP HYD-3, no direct or indirect short-term or long-term adverse effects on geology, soils, and seismicity as it relates to erosion is anticipated under the proposed Project. Therefore, the proposed Project is consistent with the Stockton Municipal Code – Section 14.48.050.

**City of Stockton General Plan**

**Action LU-5.2D.** Require the following tasks by a qualified archaeologist or paleontologist prior to project approval:

- Conduct a record search at the Central California Information Center located at California State University Stanislaus, the University of California Museum of Paleontology at Berkeley, and other appropriate historical or archaeological repositories.
- Conduct field surveys where appropriate.
- Prepare technical reports, where appropriate, meeting California Office of Historic Preservation or other appropriate standards.
- Where development cannot avoid an archaeological or paleontological deposit, prepare a treatment plan in accordance with appropriate standards, such as the Secretary of the Interior’s Standards for Treatment of Archaeological Sites.

**Consistent.** Based on the review of literature and available databases for paleontological resources were conducted, as discussed in Section 3.11 *Geology, Soils, Seismicity, and Paleontology*, the proposed Project will incorporate BMP GEO-4 (Preparation and Implementation of a Paleontological Resources Management Plan). With the incorporation of BMP GEO-4, no direct or indirect short-term or long-term adverse effects on paleontological resources would be anticipated under the proposed Project. Therefore, the proposed Project is consistent with this general plan action.

For the proposed Project’s consistency with the archaeological resource elements of this action, please refer to the previous discussion under *Cultural Resources*.



## Hazardous Waste and Materials

### FCAA

The FCAA is intended to protect the public from hazardous airborne contaminants that can affect human health. The National Emissions Standards for hazardous air pollutants were established under the FCAA. These emissions standards include the regulation of asbestos.

**Consistent.** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project will incorporate BMP HAZ-8 (Pre-Demolition Investigation), which will require surveys of hazardous building materials, such as asbestos, prior to demolition of any structures. If such materials are discovered, a plan for proper removal shall be prepared in accordance with applicable OSHA and San Joaquin County Environmental Health Department requirements. Therefore, the proposed Project is consistent with the FCAA.

### CWA

The CWA regulates discharges and spills of pollutants, including hazardous materials, to surface waters and groundwater.

**Consistent:** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project will incorporate BMP HAZ-1 (Prepare a Construction HMMP), BMP HAZ-2 (Property Acquisition Phase I and Phase II ESAs), BMP HAZ-3 (Prepare a General Construction Soil Management Plan), BMP HAZ-4 (Prepare Parcel-Specific Soil Management Plans and HASPs), BMP HAZ-5 (Prepare a Project Construction HASP), BMP HAZ-6 (LUST Sites and Coordination with DTSC), BMP HAZ-7 (Halt Construction Work if Potentially Hazardous Materials/Abandoned Oil Wells are Encountered), and BMP HAZ-8 (Pre-Demolition Investigation). Implementation of these measures would aim to protect the environment, including surface waters and groundwater resources, from spills and release incidents. The handling, storage, transport, and disposal of any hazardous waste or materials would be subject to federal and state regulations and local health and safety requirements (those specified by SJRRC, railroad operators, or property owners on a case-by-case basis). Therefore, the proposed Project is consistent with the CWA.



***Safe Drinking Water Act (42 U.S.C. 300(f) et seq.)***

The Safe Drinking Water Act regulates discharges of pollutants to underground aquifers and establishes standards for drinking water quality.

**Consistent:** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project will incorporate BMP HAZ-1 (Prepare a Construction HMMP), BMP HAZ-2 (Property Acquisition Phase I and Phase II ESAs), BMP HAZ-3 (Prepare a General Construction Soil Management Plan), BMP HAZ-4 (Prepare Parcel-Specific Soil Management Plans and HASPs), BMP HAZ-5 (Prepare a Project Construction HASP), BMP HAZ-6 (LUST Sites and Coordination with DTSC), BMP HAZ-7 (Halt Construction Work if Potentially Hazardous Materials/Abandoned Oil Wells are Encountered), and BMP HAZ-8 (Pre-Demolition Investigation). Implementation of these measures would aim to protect the environment, including underground aquifers, from spills and release incidents. The handling, storage, transport, and disposal of any hazardous waste or materials would be subject to federal and state regulations and local health and safety requirements (those specified by SJRRC, railroad operators, or property owners on a case-by-case basis). Therefore, the proposed Project is consistent with the Safe Drinking Water Act.

***Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 and 40 C.F.R. Parts 152 to 171)***

The Federal Insecticide, Fungicide and Rodenticide Act regulates the manufacturing, distribution, sale, and use of pesticides.

**Consistent:** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project would require the use of routine hazardous materials and substances, including pesticides. The handling, storage, transport, and disposal of any hazardous waste or materials would be subject to federal and state regulations and local health and safety requirements (those specified by SJRRC, railroad operators, or property owners on a case-by-case basis). Therefore, the proposed Project is consistent with the Federal Insecticide, Fungicide and Rodenticide Act.



***Emergency Planning and Community Right to Know Act (42 U.S.C. 11001 et seq. and 40 C.F.R. Parts 350.1 et seq.)***

The Emergency Planning and Community Right to Know Act regulates facilities that use hazardous materials in quantities that require reporting to emergency response officials.

**Consistent:** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project would require the use of routine hazardous materials and substances. The handling, storage, transport, and disposal of any hazardous waste or materials would be subject to federal and state regulations and local health and safety requirements (those specified by SJRRC, railroad operators, or property owners on a case-by-case basis). Therefore, the proposed Project is consistent with the Emergency Planning and Community Right to Know Act.

***EO 12088, Federal Compliance with Pollution Control***

U.S. Presidential EO 12088 requires federal agencies to take necessary actions to prevent, control, and abate environmental pollution from facilities and activities under the control of federal agencies.

**Consistent:** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project will incorporate BMP HAZ-1 (Prepare a Construction HMMP), BMP HAZ-2 (Property Acquisition Phase I and Phase II ESAs), BMP HAZ-3 (Prepare a General Construction Soil Management Plan), BMP HAZ-4 (Prepare Parcel-Specific Soil Management Plans and HASPs), BMP HAZ-5 (Prepare a Project Construction HASP), BMP HAZ-6 (LUST Sites and Coordination with DTSC), BMP HAZ-7 (Halt Construction Work if Potentially Hazardous Materials/Abandoned Oil Wells are Encountered), and BMP HAZ-8 (Pre-Demolition Investigation). Implementation of these measures would aim to protect the health and safety of construction employees, the public, and the environment from spills and release incidents. In addition, BMP HAZ-2 and BMP HAZ-8 entails conducting environmental site assessments and hazardous materials surveys, which will help determine if any abatement of site contamination is needed. Therefore, the proposed Project is consistent with EO 12088.



### **CERCLA (Superfund)**

CERCLA of 1980, commonly known as Superfund, provides broad federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. CERCLA establishes requirements concerning closed and abandoned hazardous waste sites, provides for the liability of persons responsible for releases of hazardous waste at these sites, and establishes a trust fund to provide for cleanup when no responsible party can be identified.

EPA compiles a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the US and its territories, known as the NPL.

### **The Hazardous Materials Transportation Act**

The Hazardous Materials Transportation Act in Chapter 51 of Title 49 of the United States Code was enacted in 1975 with the purpose of providing adequate protection against the risks to life and property in the commercial transportation of hazardous material by improving the Secretary of Transportation's regulatory and enforcement authority.

USDOT, along with the CHP and Caltrans, regulates hazardous materials transportation between states. FRA enforces the Hazardous Materials Regulations, which include requirements that railroads and other hazardous materials transporters, as well as shippers, have and adhere to security plans and also train their employees on both the safety and security matters involved in offering, accepting, or transporting hazardous materials.

### **NCP**

The NCP is the federal plan for responding to oil spills and hazardous substances releases.

**Consistent.** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project will incorporate BMP HAZ-2 (Property Acquisition Phase I and Phase II Environmental Site Assessments), which would require the preparation of Phase I ESAs for all acquisition parcels in accordance with standard ASTM methodologies that would meet "innocent landowner" provisions under CERCLA, which establish a defense for the purchase of real property. In addition, a Phase II ESA (subsurface investigations) would also be prepared for parcels recommended by the Phase I ESAs. Therefore, the proposed Project is consistent with CERCLA.

**Consistent.** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project would be subject to federal and state regulations and local health and safety requirements (those specified by SJRRC, railroad operators, or property owners on a case-by-case basis) for the transportation of any hazardous waste and materials. Therefore, the proposed Project is consistent with the Hazardous Materials Transportation Act.

**Consistent:** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project will incorporate BMP HAZ-1 (Prepare a Construction HMMP), BMP HAZ-4 (Prepare Parcel-Specific Soil Management Plans and HASPs), and BMP HAZ-5 (Prepare a Project Construction HASP). These plans would include emergency response procedures and contact information for spill/release incidents that is consistent with the *NCP*. Therefore, the proposed Project is consistent with the *NCP*.



### ***Oil Pollution and Prevention Regulation***

EPA's oil spill prevention program includes the SPCC and the Facility Response Plan rules. The SPCC rule helps facilities prevent an oil discharge into navigable waters or adjoining shorelines. The Facility Response Plan rule requires certain facilities to submit a response plan and prepare to respond to a worst-case oil discharge.

**Consistent:** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project will incorporate BMP HAZ-1 (Prepare a Construction HMMP), BMP HAZ-4 (Prepare Parcel-Specific Soil Management Plans and HASPs), and BMP HAZ-5 (Prepare a Project Construction HASP), which will all include emergency response procedures for spill and release incidents. In addition, BMP HAZ-7 (Halt Construction Work if Potentially Hazardous Materials/Abandoned Oil Wells are Encountered.) will ensure that contractors will follow all applicable local, state, and federal regulations regarding discovery, notification, response, disposal, and remediation for hazardous materials and/or abandoned oil wells encountered during the construction process. Therefore, the proposed Project is consistent with the Oil Pollution and Prevention Regulation.

### ***Occupational Safety and Health Act***

The Occupational Safety and Health Act of 1970, which is implemented by the OSHA, contains requirements, as set forth in Title 29 of the CFR Section 1910, that are designed to promote worker safety, worker training, and a worker's right-to-know.

**Consistent:** OSHA requirements would be in effect during the proposed Project's construction and operation to ensure worker safety. Therefore, the proposed Project is consistent with the Occupational Safety and Health Act.

### ***RCRA***

RCRA provides EPA the authority to control hazardous waste including its generation, transportation, treatment, storage, and disposal. Under RCRA, EPA has the authority to control the generation, transportation, treatment, storage, and disposal of hazardous waste by large-quantity generators (1,000 kilograms/month or more). Under the RCRA regulations, hazardous wastes must be tracked from the time of generation to the point of disposal. In California, EPA has delegated RCRA enforcement to Cal/EPA DTSC.

**Consistent:** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project would require the handling, storage, transport, and disposal of hazardous waste or materials, which would be subject to federal and state regulations and local health and safety requirements (those specified by SJRRC, railroad operators, or property owners on a case-by-case basis). Therefore, the proposed Project is consistent with RCRA.



**TSCA**

TSCA of 1976 provides EPA with authority to require reporting, record-keeping, and testing requirements and restrictions related to chemical substances and/or mixtures.

**Consistent:** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project would require the handling, storage, transport, and disposal of hazardous waste or materials, which would be subject to federal and state regulations and local health and safety requirements (those specified by SJRRC, railroad operators, or property owners on a case-by-case basis). Adherence to such regulations and requirements would require proper reporting, record-keeping, and testing requirements, from cradle to grave (from generation to disposal). Therefore, the proposed Project is consistent with TSCA.

**Atomic Energy Act**

In addition to the acts listed above, EO 12088, Federal Compliance with Pollution Control Standards, mandates that necessary actions be taken to prevent and control environmental pollution when federal activities or federal facilities are involved.

**Consistent:** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project will incorporate BMP HAZ-1 (Prepare a Construction HMMP), BMP HAZ-2 (Property Acquisition Phase I and Phase II ESAs), BMP HAZ-3 (Prepare a General Construction Soil Management Plan), BMP HAZ-4 (Prepare Parcel-Specific Soil Management Plans and HASPs), BMP HAZ-5 (Prepare a Project Construction HASP), BMP HAZ-6 (LUST Sites and Coordination with DTSC), BMP HAZ-7 (Halt Construction Work if Potentially Hazardous Materials/Abandoned Oil Wells are Encountered), and BMP HAZ-8 (Pre-Demolition Investigation). Implementation of these measures would aim to protect the health and safety of construction employees, the public, and the environment from spills and release incidents. The handling, storage, transport, and disposal of any hazardous waste or materials would be subject to federal and state regulations and local health and safety requirements (those specified by SJRRC, railroad operators, or property owners on a case-by-case basis). Therefore, the proposed Project is consistent with the Atomic Energy Act.



### ***Cal/EPA Plans, Policies, and Regulations***

Cal/EPA and the SWRCB establish rules governing hazardous materials use and hazardous waste management. Within Cal/EPA, DTSC has primary regulatory responsibility, with delegation of enforcement to local jurisdictions that enter into agreements with the state agency, for hazardous materials management and hazardous waste generation, transport, and disposal under the authority of the Hazardous Waste Control Law

**Consistent:** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project would require the handling, storage, transport, and disposal of hazardous waste or materials, which would be subject to federal and state regulations, including rules established by Cal/EPA, SWRCB, and DTSC. The proposed Project would also be subject to local health and safety requirements (those specified by SJRRC, railroad operators, or property owners on a case-by-case basis). Therefore, the proposed Project is consistent with Cal/EPA plans, policies, and regulations.

### ***Hazardous Materials Transportation, CCR Title 26***

The State of California has adopted DOT regulations for the intrastate movement of hazardous materials. State regulations are contained in CCR Title 26. In addition, the State of California regulates the transportation of hazardous waste originating in the state and passing through the state (26 CCR).

**Consistent.** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project would be subject to federal and state regulations and local health and safety requirements (those specified by SJRRC, railroad operators, or property owners on a case-by-case basis) for the transportation of any hazardous waste and materials. Therefore, the proposed Project is consistent with the Hazardous Materials Transportation (CCR Title 26) regulations.



**CEQA (PRC Section 21000 et seq.) and CEQA Guidelines (Section 15000 et seq.)**

CEQA requires state and local agencies to identify the significant environmental effects of their actions, including potential significant hazardous materials and wastes effects, and to avoid or mitigate those effects, when feasible.

**Consistent:** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project would involve the use of hazardous materials and the generation of waste during the construction and operation phase of the proposed Project. The proposed Project will incorporate the following avoidance and minimization measures: BMP HAZ-1 (Prepare a Construction HMMP), BMP HAZ-2 (Property Acquisition Phase I and Phase II ESAs), BMP HAZ-3 (Prepare a General Construction Soil Management Plan), BMP HAZ-4 (Prepare Parcel-Specific Soil Management Plans and HASPs), BMP HAZ-5 (Prepare a Project Construction HASP), BMP HAZ-6 (LUST Sites and Coordination with DTSC), BMP HAZ-7 (Halt Construction Work if Potentially Hazardous Materials/Abandoned Oil Wells are Encountered), and BMP HAZ-8 (Pre-Demolition Investigation). Implementation of these measures would aim to protect the health and safety of construction employees, the public, and the environment from spills and release incidents. The handling, storage, transport, and disposal of any hazardous waste or materials would be subject to federal and state regulations and local health and safety requirements (those specified by SJRRC, railroad operators, or property owners on a case-by-case basis). Therefore, the proposed Project under CEQA (PRC Section 2100 et seq.) and CEQA Guidelines (Section 15000 et seq.).

**California PRC Section 21151.4**

This code requires the lead agency to consult with a school district with jurisdiction over a school within 0.25 mile of the project about potential effects on the school if the project might reasonably be anticipated to emit hazardous air emissions or handle an extremely hazardous substance or a mixture containing an extremely hazardous substance.

**Consistent:** As discussed in Section 3.12, *Hazardous Waste and Materials*, there are seven schools located within 0.25 mile of the proposed Project Study Area. The proposed Project would involve the use of hazardous materials and the generation of waste during the construction and operation phase of the proposed Project. The handling, storage, transport, and disposal of any hazardous waste or materials would be subject to federal and state regulations and local health and safety requirements (those specified by SJRRC, railroad operators, or property owners on a case-by-case basis). Therefore, the proposed Project is consistent with California PRC Section 21151.4.



***Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.)***

The Porter-Cologne Water Quality Control Act regulates water quality through SWRCB and RWQCBs, including oversight of water monitoring and contamination cleanup and abatement.

**Consistent:** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project will incorporate BMP HAZ-1 (Prepare a Construction HMMP), BMP HAZ-2 (Property Acquisition Phase I and Phase II ESAs), BMP HAZ-3 (Prepare a General Construction Soil Management Plan), BMP HAZ-4 (Prepare Parcel-Specific Soil Management Plans and HASPs), BMP HAZ-5 (Prepare a Project Construction HASP), BMP HAZ-6 (LUST Sites and Coordination with DTSC), BMP HAZ-7 (Halt Construction Work if Potentially Hazardous Materials/Abandoned Oil Wells are Encountered), and BMP HAZ-8 (Pre-Demolition Investigation). Implementation of these measures would aim to protect the environment, including water quality, from spills and release incidents. The handling, storage, transport, and disposal of any hazardous waste or materials would be subject to federal and state regulations and local health and safety requirements (those specified by SJRRC, railroad operators, or property owners on a case-by-case basis). Therefore, the proposed Project is consistent the Porter-Cologne Water Quality Control Act.

***Hazardous Waste Control Act (California Health and Safety Code, Section 25100 et seq.)***

This act is similar to RCRA on the federal level in regulating the identification, generation, transportation, storage, and disposal of materials deemed hazardous by the State of California.

**Consistent:** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project would involve the use of hazardous materials and the generation of waste during the construction and operation phase of the proposed Project. The handling, storage, transport, and disposal of any hazardous waste or materials would be subject to federal and state regulations, including the Hazardous Waste Control Act. In addition, the proposed Project would be subject to local health and safety requirements (those specified by SJRRC, railroad operators, or property owners on a case-by-case basis). Therefore, the proposed Project is consistent with the Hazardous Waste Control Act.



***Safe Drinking Water and Toxic Enforcement Act (Proposition 65, California Health and Safety Code, Section 25249.5 et seq.)***

The Safe Drinking Water and Toxic Enforcement Act is similar to the Safe Drinking Water Act and CWA on the federal level in regulating the discharge of contaminants to groundwater.

**Consistent:** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project will incorporate BMP HAZ-1 (Prepare a Construction HMMP), BMP HAZ-2 (Property Acquisition Phase I and Phase II ESAs), BMP HAZ-3 (Prepare a General Construction Soil Management Plan), BMP HAZ-4 (Prepare Parcel-Specific Soil Management Plans and HASPs), BMP HAZ-5 (Prepare a Project Construction HASP), BMP HAZ-6 (LUST Sites and Coordination with DTSC), BMP HAZ-7 (Halt Construction Work if Potentially Hazardous Materials/Abandoned Oil Wells are Encountered), and BMP HAZ-8 (Pre-Demolition Investigation). Implementation of these measures would aim to protect the environment, including groundwater resources, from spills and release incidents. The handling, storage, transport, and disposal of any hazardous waste or materials would be subject to federal and state regulations and local health and safety requirements (those specified by SJRRC, railroad operators, or property owners on a case-by-case basis). Therefore, the proposed Project is consistent with the Safe Drinking Water and Toxic Enforcement Act.

***Cortese List Statute (California Government Code Section 65962.5)***

This regulation requires the DTSC to compile and maintain lists of potentially contaminated sites throughout the state of California (includes the Hazardous Waste and Substances Sites List).

**Consistent.** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project will incorporate BMP HAZ-6 (LUST Sites and Coordination with DTSC), which would require coordination with DTSC prior to construction on LUST sites. LUST sites may also be listed on the Cortese list. Coordination with DTSC on such properties would help them maintain the latest information for contaminated sites. Therefore, the proposed Project is consistent with Cortese List Statute.



### **Unified Program**

The Unified Program consolidates the following hazardous materials and waste programs:

1. Aboveground Petroleum Storage Act Program
2. Area Plans for Hazardous Materials Emergencies
3. CalARP Program
4. Response Plans and Inventories (Business Plans)
5. HMMP and HMIS
6. Hazardous Waste Generator and Onsite Hazardous Waste Treatment (tired permitting) Programs
7. Underground Storage Tank Program

CalEPA oversees California's Unified Program. The Unified Program protects Californians from hazardous waste and hazardous materials by ensuring local regulatory agencies consistently apply statewide standards when they issue permits, conduct inspections and engage in enforcement activities. A CUPA is a local agency certified by CalEPA to implement the Unified Program elements in the CUPA's jurisdiction.

The Environmental Health Department is the CUPA for San Joaquin County and is responsible for implementing the aforementioned program elements in the county.

### **State of California Emergency Plan**

California has developed an emergency response plan to coordinate emergency services provided by federal, state, and local government and private agencies. Responding to hazardous materials incidents is one part of this plan. The plan is administered by the OES, which coordinates the responses of other agencies, including Cal/EPA, CHP, CDFW, the CVRWQCB, and SFD. SFD provides first response capabilities, if needed, for hazardous materials releases and environmental emergencies within the Project site vicinity. Additionally, SFD coordinates with state and local authorities to prepare for, prevent, respond to, mitigate, and determine the responsibility of a variety of hazardous materials releases.

**Consistent:** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project would involve the use of hazardous materials and the generation of waste during the construction and operation phase of the proposed Project. The handling, storage, transport, and disposal of any hazardous waste or materials would be subject to federal and state regulations, including the Unified Program. In addition, the proposed Project would be subject to local health and safety requirements (those specified by SJRRC, railroad operators, or property owners on a case-by-case basis). Therefore, the proposed Project is consistent with the Unified Program.

**Consistent.** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project will incorporate BMP HAZ-1 (Prepare a Construction HMMP), BMP HAZ-4 (Prepare Parcel-Specific Soil Management Plans and Health and Safety Plans [HASP]), and BMP HAZ-5 (Prepare Project Construction HASP). These plans would include emergency response procedures and contact information for spill/release incidents that is consistent with the *State of California Emergency Plan*. Therefore, the proposed Project is consistent with the State of California Emergency Plan.



**San Joaquin County Emergency Operations Plan – Hazardous Material Area Plan Annex**

The Hazardous Material Area outlines the areas of responsibility during a hazardous material incident and was developed using guidance and regulations from various local, state, and federal agencies and departments.

**Consistent.** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project will incorporate BMP HAZ-1 (Prepare a Construction HMMP), BMP HAZ-4 (Prepare Parcel-Specific Soil Management Plans and HASP), and BMP HAZ-5 (Prepare Project Construction HASP). These plans would include emergency response procedures and contact information for spill/release incidents that is consistent with the *San Joaquin County Emergency Operations Plan – Hazardous Material Area Plan Annex*. Therefore, the proposed Project is consistent with the San Joaquin County EOP.

**San Joaquin County General Plan – Public Health and Safety Element**

**Goal PHS-7:** To protect County residents, visitors, and property from hazardous materials and wastes.

**Consistent:** As discussed in Section 3.12, *Hazardous Waste and Materials*, the proposed Project will incorporate BMP HAZ-1 (Prepare a Construction HMMP), BMP HAZ-2 (Property Acquisition Phase I and Phase II ESAs), BMP HAZ-3 (Prepare a General Construction Soil Management Plan), BMP HAZ-4 (Prepare Parcel-Specific Soil Management Plans and HASPs), BMP HAZ-5 (Prepare a Project Construction HASP), BMP HAZ-6 (LUST Sites and Coordination with DTSC), BMP HAZ-7 (Halt Construction Work if Potentially Hazardous Materials/Abandoned Oil Wells are Encountered), and BMP HAZ-8 (Pre-Demolition Investigation). Implementation of these measures would aim to protect the health and safety of construction employees, the public, and the environment from spills and release incidents. The handling, storage, transport, and disposal of any hazardous waste or materials would be subject to federal and state regulations and local health and safety requirements (those specified by SJRRC, railroad operators, or property owners on a case-by-case basis). Therefore, the proposed Project is consistent with this general plan goal.



## Air Quality

### CAA and NAAQS

The FCAA, promulgated in 1963 and amended several times thereafter, including the 1990 FCAA amendments, establishes the framework for modern air pollution control in the U.S. The FCAA is regulated by EPA, which sets standards for the concentration of pollutants in the air. At the federal level, these standards are called NAAQS. NAAQS standards have been established for six transportation-related criteria air pollutants that have been linked to potential health concerns: carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), ozone (O<sub>3</sub>), particulate matter, which is broken down for regulatory purposes into particles of 10 micrometers or smaller (PM<sub>10</sub>) and particles of 2.5 micrometers or smaller (PM<sub>2.5</sub>), and sulfur dioxide (SO<sub>2</sub>). In addition, national standards exist for lead (Pb). The NAAQS standards are set at levels that protect public health with a margin of safety and are subject to periodic review and revision. TACs are covered, as well.

Federal air quality standards and regulations provide the basic requirements for Project-level air quality analysis under NEPA. In addition to this environmental analysis, a parallel Conformity requirement applies under FCAA.

The FCAA requires EPA to designate areas as attainment, nonattainment, or unclassified for each criteria air pollutant based on whether the NAAQS have been achieved. The federal standards are summarized in Table K-1 in Appendix K. EPA has designated the SJVAB as a nonattainment area for O<sub>3</sub> and PM<sub>2.5</sub> and as a maintenance area for PM<sub>10</sub>. A maintenance area is an area that was formerly in nonattainment and currently under a maintenance plan.

**Consistent.** As discussed in Section 3.13, *Air Quality*, the proposed Project is subject to the General Conformity rule which ensures that federal activities do not cause or contribute to new violations of NAAQS; actions do not worsen existing violations of the NAAQS; and attainment of the NAAQS is not delayed.

Based on the air quality analysis detailed under the Environmental Consequences discussion, maximum estimated emissions would be below conformity *de minimis* levels. Therefore, since emissions do not exceed the SJVAB's *de minimis* thresholds, the action is exempt from conformity determination and the proposed Project is consistent with the CAA and NAAQS.



### **General Conformity Rule**

The General Conformity Rule applies to all federal actions in areas that either: (1) do not meet NAAQS that are not exempt from the General Conformity Rule, covered by a Presumed-to-Conform approved list, or (2) do not meet the de minimis emission levels established in the General Conformity Rule (40 CFR 93.153). The General Conformity Rule applies only to direct and indirect emissions generated by a federal action that are subject to New Source Review for which a federal permitting agency has directly caused or initiated, has continued program responsibility for, or can practically control. The rule does not include stationary industrial sources requiring air quality permits from local air pollution control agencies. Because the proposed Project likely will require and/or receive one or more federal approvals, or future federal construction funding, the proposed Project is subject to the implementing regulations of Section 176 of the FCAA.

The evaluation of whether the total direct and indirect emissions exceed the requirements of 40 CFR Section 93.158(c) is performed by comparing the total annual emissions to the applicable de minimis emissions level listed in 40 CFR Section 93.153(b). If the evaluation indicates that emissions exceed General Conformity de minimis thresholds, FRA must perform a conformity determination. The method for determining conformity depends upon the pollutant and the circumstances surrounding the federal action. Most conformity demonstrations either mitigate the emission increases or demonstrate that the emissions have been or will be included in the SIP. If the evaluation indicates that the emissions do not exceed the de minimis thresholds, the action is exempt from a conformity determination and FRA must prepare a RONA.

**Consistent.** As discussed in Section 3.13, *Air Quality*, the proposed Project is a federally funded project. Thus, it is subject to the General Conformity rule established under the CAA (section 176(c)(4)).

Based on the air quality analysis detailed under the Environmental Consequences discussion, maximum estimated emissions would be below conformity de minimis levels. Therefore, since emissions do not exceed the SJVAB's *de minimis* thresholds, the action is exempt from conformity determination.

As such, a RONA was prepared for the proposed Project and will be approved by FRA after the circulation of the Draft EA. With the approval of the RONA by FRA after circulation, the proposed Project is consistent with the General Conformity Rule.



### CCAA and CAAQS

The CCAA is administered by CARB at the State level and by the air quality management districts and air pollution control districts at the regional and local levels. The CCAA requires all air districts in the State to endeavor to achieve and maintain the CAAQS. CAAQS are generally more stringent than the corresponding federal standards and incorporate additional standards for sulfates, hydrogen sulfide, vinyl chloride, and visibility-reducing particles.

CARB regulates mobile air pollution sources, such as motor vehicles. CARB oversees the functions of local air pollution control districts and air quality management districts, which, in turn, administer air quality activities at the regional and county levels.

The State standards are summarized in Table K-1 located in Appendix K. The CCAA requires CARB to designate areas within California as either attainment or nonattainment for each criteria air pollutant based on whether the CAAQS have been achieved. Under the CCAA, areas are designated as nonattainment for a pollutant if air quality data shows that a State standard for the pollutant was violated at least once during the previous three calendar years. Exceedances that are affected by highly irregular or infrequent events are not considered violations of a State standard and are not used as a basis for designating areas as nonattainment. Under the CCAA, the SJVAB is designated as a nonattainment area for O<sub>3</sub>, PM<sub>2.5</sub>, and PM<sub>10</sub>.

**Consistent.** As discussed in Section 3.13, *Air Quality*, proposed Project construction activities have the potential to generate emissions from equipment used during construction, as well as to generate dust. Likely air pollutants from construction include the following: PM dust and criteria air pollutants from fuel combustion. As stated earlier, the *de minimis* thresholds are applicable only in areas designated as nonattainment or maintenance for NAAQS.

Since ROG, PM<sub>2.5</sub>, and PM<sub>10</sub> will be subject to *de minimis* thresholds the proposed Project plans to incorporate BMP AQ-1 (Compliance with EPA's Tier 4 Exhaust Emission Standards), identified in Table 3.13-2, which requires that SJRRC, in coordination with CHSRA, to ensure that all off-road diesel-powered construction equipment greater than 50 horsepower shall comply with EPA's Tier 4 Final exhaust emission standards (40 CFR Part 1039), and if not already supplied with a factory equipped diesel particulate filter, all construction equipment will be outfitted with Best Available Control Technology devices certified by CARB. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by a Level 3 diesel emissions control strategy for a similarly sized engine as defined by CARB regulations.

The proposed Project will also plan on incorporating BMP AQ-2 (Fugitive Dust), identified in Table 3.13-2, which requires SJRRC, in coordination with CHSRA, to prepare a dust control plan that would be in compliance with SJVAPCD Regulation VIII (Fugitive PM<sub>10</sub> Prohibition) prior to issuance of a grading or building permit.

With the incorporation of BMP AQ-1 and BMP AQ-2, the annual construction emissions associated with the construction of the proposed Project would not exceed the SJVAB *de minimis* thresholds, identified in Table 3.13-1 for ROG, PM<sub>2.5</sub> and NO<sub>x</sub>; thus, no direct or indirect short-term adverse effects related to air quality during construction are anticipated under the proposed Project, and the proposed Project is consistent the CCAA and CAAQS.



### **California State Implementation Plan**

Federal clean air laws require areas with unhealthy levels of ozone, inhalable particulate matter, carbon monoxide, nitrogen dioxide, and sulfur dioxide to develop SIP. SIPs are comprehensive plans that describe how an area will attain the NAAQS. SIPs are not single documents, but rather a compilation of new and previously submitted plans, programs, district rules, State regulations, and federal controls. Many of California's SIPs rely on the same core set of control strategies, including emission standards for cars and heavy trucks, fuel regulations, and limits on emissions from consumer products. State law makes CARB the lead agency for all purposes related to the SIPs. Local air districts and other agencies prepare SIP elements and submit them to CARB for review and approval. CARB then forwards SIP revisions to EPA for approval and publication in the Federal Register.

#### **AB 617**

Stockton CERP identified a wide range of measures designed to reduce air pollution and exposure, including several partnership strategies to be implemented in between agencies and local organizations. To address disproportionate localized air quality impacts and a special consideration of sensitive receptors, community emissions reduction programs will focus on two objectives

- Maximizing progress on reducing exposure to TACs that contribute to cumulative exposure burdens within selected communities.
- Reducing exposure caused by localized PM2.5 sources to achieve healthful levels of PM2.5 within the community.

#### **SJVAPCD**

The proposed Project is located within the jurisdiction of SJVAPCD. SJVAPCD has adopted several air quality attainment plans over the years that identify measures needed in the SJVAB to attain EPA's increasingly stringent NAAQS. All the plans include federal, State, and local measures that would be implemented through rule making or program funding to reduce air pollutant emissions in SJVAB

**Consistent.** As discussed in Section 3.13, *Air Quality*, proposed Project's maximum estimated emissions would be below conformity de minimis levels. Therefore, since emissions do not exceed the SJVAB's *de minimis* thresholds, the action is exempt from conformity determination. As a result, the proposed Project is in compliance and consistent with the California SIP.

**Consistent.** As discussed in Section 3.13, *Air Quality*, the proposed Project will incorporate BMP AQ-3 (Compliance with Stockton Community Emissions Reductions Program), which requires SJRRC in coordination with CHSRA, to review the Stockton CERP and incorporate feasible emission reduction strategies such as enhancing community participation in land use processes, the deployment of zero and near-zero emission HHD trucks, HHD truck rerouting analyses, reducing HHD truck idling, and incorporating vegetative barriers and urban greening. With the incorporation of BMP AQ-3, the proposed Project would be consistent with AB 617.

**Consistent.** As discussed in Section 3.13, *Air Quality*, proposed Project's maximum estimated emissions would be below conformity de minimis levels. Therefore, since emissions do not exceed the SJVAB's *de minimis* thresholds, the action is exempt from conformity determination. Therefore, the proposed Project is consistent with the SJVAPCD air quality attainment plan.



**City of Stockton General Plan**

**Goal SAF-4.** Improve local air quality.

**Consistent.** The current rail activity through the Stockton Diamond results in substantial delays and inefficiencies in operations. The proposed Project's goal is to improve regional passenger and freight rail efficiency by reducing conflicting train movements. The proposed Project would improve freight and passenger movements leading to reduced passenger and freight rail delays and associated congestion. The proposed Project would improve air quality through reduction of criteria air pollutant emissions caused by existing congestion and delays.

The improved freight mobility would reduce the total daily occupancy of the roadway crossings by approximately 30 percent in 2045. As a result, the proposed Project would improve air quality in the study area. Therefore, the proposed Project is consistent with this general plan goal.

**Policy SAF-4.1.** Reduce air impacts from mobile and stationary sources of air pollution.

**Consistent.** The proposed Project will replace at-grade crossing with a grade separated crossing at East Hazelton Avenue and East Scotts Avenue. The improved freight mobility would reduce the total daily occupancy of the roadway crossings by approximately 30 percent in 2045. The reduction in crossing occupancy would improve on-road traffic flow and reduce vehicle idling in the proposed Project Study Area. Therefore, the proposed Project would result in long-term reductions in criteria pollutant emissions and the proposed Project is consistent with this general plan policy.

**Action SAF-4.1A.** Require the construction and operation of new development to implement best practices that reduce air pollutant emissions, including:

- Use of low-emission and well-maintained construction equipment, with idling time limits.
- Development and implementation of a dust control plan during construction.
- Installation of electrical service connections at loading docks, where appropriate.
- Installation of Energy Star-certified appliances.
- Entering into Voluntary Emissions Reduction Agreements with the SJVAPCD

**Consistent.** The proposed Project would incorporate all BMPs identified in Table 3.13-2, in Section 3.13, *Air Quality*, which includes Measures BMP AQ-1 (Compliance with EPA's Tier 4 Exhaust Emission Standards), BMP AQ-2 (Fugitive Dust), BMP AQ-3 (Compliance with Stockton Community Emissions Reduction Program), and BMP AQ-4 (Vegetative Barriers and Urban Greening). Therefore, no direct or indirect short-term or long-term effects to air quality would result from the proposed Project, and the proposed Project is consistent with this general plan action.



**Action SAF-4.1C.** Require the use of electric-powered construction and landscaping equipment as conditions of project approval when appropriate.

**Action SAF-4.1D.** Limit heavy-duty off-road equipment idling time to meet the ARB's idling regulations for on-road trucks.

**Policy SAF-4.3.** Coordinate with the SJVAPCD to promote public awareness on air quality issues and consistency in air quality impacts analyses.

**Action SAF-4.3B.** Coordinate review of development project applications with the SJVAPCD to ensure that air quality impacts are consistently identified and mitigated during CEQA review.

**Consistent.** The proposed Project will incorporate BMP AQ-3 (Compliance with Stockton Community Emissions) identified in Table 3.13-2, in Section 3.13, *Air Quality*, which requires feasible emissions reduction strategies from the Stockton CERP into the proposed Project, including the deployment of zero and near-zero emission HHD trucks. Therefore, the proposed Project is consistent with these general plan actions.

**Consistent.** The proposed Project will incorporate BMP AQ-2 (Fugitive Dust) in Table 3.13-2, in Section 3.13, *Air Quality*, which requires a dust control plan to be reviewed and approved by the SJVAPCD. Therefore, the proposed Project is consistent with this general plan policy.

**Consistent.** The proposed Project is anticipated to receive grading or building permits from the SJVAPCD. SJRCC will coordinate review of the proposed Project with the SJVAPCD to ensure air quality effects are minimized. In addition, the proposed Project will incorporate BMP AQ-2 (Fugitive Dust) in Table 3.13-2, in Section 3.13, *Air Quality*, which requires a dust control plan, to be reviewed and approved by SJVAPCD, prior to issuance of grading or building permits. Therefore, the proposed Project is consistent with this general plan action.



## Noise and Ground-borne Vibration

### ***Occupational Noise Exposure Standard***

The Occupational Noise Exposure Standard is noise standards set by OSHA. The standards set noise exposure protection for when the sound levels exceed the measurements set by OSHA.

**Consistent.** As discussed in Section 3.14, *Noise and Ground-borne Vibration*, the proposed Project will incorporate BMP NV-1 (Noise Control Plan), identified in Table 3.14-4, which requires that a noise control plan be prepared that will incorporate best practices into the construction scope of work and specifications to reduce the effects of temporary construction-related noise on nearby noise-sensitive receptors.

The Noise Control Plan will be developed in coordination with the City of Stockton in compliance with City standards, which are developed based on OSHA standards. Therefore, with the incorporation of BMP NV-1, identified in Table 3.14-4, no direct or indirect short-term adverse effects related to noise would occur under the proposed Project, and the proposed Project would be consistent with the Occupational Noise Exposure Standard.

### ***U.S. EPA Railroad Noise Emission Standards***

Interstate rail carriers (such as freight railroads) must comply with EPA noise emission standards which are expressed as maximum measured noise levels and applicable to locomotives manufactured after 1979.

**Consistent.** The proposed Project would not preclude interstate rail carriers, such as UP, to comply with EPA noise emission standards. Therefore, the proposed Project is consistent with the US EPA Railroad Noise Emission Standards.

### ***FRA Guidelines and Noise Emission Compliance***

FRA has regulations governing compliance with noise emissions from interstate railroads. FRA's Railroad Noise Emission Compliance Regulation (49 CFR 210) prescribes compliance requirements for enforcing railroad noise emission standards adopted by USEPA (40 CFR 201).

**Consistent.** The proposed Project would not preclude interstate rail carriers, such as UP, to comply with FRA guidelines for noise emission compliance. Therefore, the proposed Project is consistent with the FRA Guidelines and Noise Emission Compliance.



### **FTA Guidelines**

Similar to FRA, FTA developed a guidance manual in September 2018 entitled Transit Noise and Vibration Impact Assessment Manual (guidance manual) for assessing noise and ground-borne vibration effects from major rail projects intended to satisfy environmental review requirements and assist Project sponsors in addressing predicted construction and operation noise and ground-borne vibration during the design process. The FTA guidance manual noise and ground-borne vibration impact criteria for rail projects and their associated fixed facilities, such as storage and maintenance yards, passenger stations and terminals, parking facilities, and substations are described in Section 3.14, *Noise and Ground-borne Vibration*, and are the primary noise criteria used for the proposed Project. FTA guidance is accepted by FRA.

### **California Noise Control Act**

At the state level, the California Noise Control Act, enacted in 1973 (Health and Safety Code 46010 et seq.), requires the Office of Noise Control in the Department of Health Services to provide assistance to local communities developing local noise control programs.

The Office of Noise Control also works with the Office of Planning and Research to provide guidance for preparing required noise elements in city and county general plans, pursuant to Government Code Section 65302(f). In preparing the noise element, a city or county must identify local noise sources and analyze and quantify, to the extent practicable, current and projected noise levels for various sources, such as passenger and freight railroad operations, including commuter rail alignments.

The California Noise Control Act stipulates the mapping of noise-level contours for these sources, using community noise metrics appropriate for environmental impact assessment as defined in Section 3.14.3. Cities and counties use these as guides to making land use decisions to minimize the community residents' exposure to excessive noise

**Consistent.** As discussed in Section 3.14, *Noise and Ground-borne Vibration*, the basis for noise and ground-borne vibration RSA is the FTA Transit Noise and Vibration Impact Assessment Manual dated September 2018, with consideration of intervening structures, topography, and the location and number of sensitive noise receptors in Project vicinity. Therefore, the proposed Project is consistent with these FTA guidelines.

**Consistent.** As discussed in Section 3.14, *Noise and Ground-borne Vibration*, the proposed Project will incorporate BMP NV-1 (Noise Control Plan), identified in Table 3.14-4, which requires that a noise control plan be prepared that will incorporate best practices into the construction scope of work and specifications to reduce the effects of temporary construction-related noise on nearby noise-sensitive receptors.

The Noise Control Plan will be developed in coordination with the City of Stockton in compliance with City standards. Therefore, with the incorporation of BMP NV-1, identified in Table 3.14-4, no direct or indirect short-term adverse effects related to noise would occur under the proposed Project, and the proposed Project would be consistent with the California Noise Control Act.



***City of Stockton General Plan***

**Policy SAF-2.5:** Protect the community from health hazards and annoyance associated with excessive noise levels.

**Consistent.** As discussed in Section 3.14 *Noise and Ground Borne Vibration*, the majority of the necessary construction along the railroad and structures to will be completed during daytime hours and no noise-intensive pile driving would occur at night. Further, the proposed Project would protect the community from excessive noise and vibration levels by incorporating Measures BMP NV-1 (Noise Control Plan) and BMP NV-2 (Vibration Control Plan) during construction.

Additionally, the proposed Project will implement Measure MM NV-1 (Reductions for Severe Noise Effects), which would mitigate any long-term effects from noise during operation. Therefore, the proposed Project is consistent with this general plan policy.

***City of Stockton General Plan EIR***

**NOISE-1:** The proposed project would not expose people to or generate noise levels in excess of standards established in the General Plan, the Municipal Code, or the applicable standards of other agencies.

**Consistent.** Please see response above for Policy SAF-2.5. Therefore, the proposed Project would be consistent with Noise-1 and Noise-2 in the City of Stockton's General Plan EIR.

**NOISE-2:** The proposed project would not expose people to or generate excessive groundborne vibration or groundborne noise levels.



## Biological Resources

### ESA

The ESA of 1973 provides protective measures for federally listed endangered or threatened species and their habitats, from unlawful take. The ESA defines “take” to mean to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” In 50 CFR Part 222, harm is further defined as an act that actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including feeding, spawning, rearing, migrating, feeding, or sheltering.

ESA Section 7(a)(1) requires federal agencies to use their authority to further the conservation of listed species. ESA Section 7(a)(2) requires consultation with USFWS or NMFS if a federal agency undertakes, funds, permits, or authorizes any action that may affect endangered or threatened species or designated critical habitat (referred to as a federal nexus).

**Consistent.** As discussed in Section 3.15, *Biological Resources*, the proposed Project would result in potential direct short-term moderate adverse effects on up to 0.39 acre of Central Valley steelhead critical habitat and Chinook salmon EFH as a result of construction access during construction of the Mormon Slough flyover structure.

However, with implementation of Measure MM BIO-2 (National Oceanic and Atmospheric Administration Consultation), which requires implementation of all commitments and avoidance and minimization measures identified during Section 7 consultation, these direct short-term moderate effects would be mitigated. Therefore, the proposed Project is consistent with the ESA.



### ***Magnuson-Stevens Fishery Conservation and Management Act***

Magnuson-Stevens Fishery Conservation and Management Act of 1976 (revised in 1996 and reauthorized 2007) is the primary law governing marine fisheries management in US federal waters.

Among other items, the Sustainable Fisheries Act revision in 1996 specifically outlined the responsibility of the US to conserve and facilitate long-term protection of EFH, defined as “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity” (16 USC 1801). The 1996 revision also designated HAPC, which are subsets of EFH for more focused consideration.

Under the act, federal agencies that fund, permit, or carry out activities that may adversely affect EFH or HAPCs are required to consult with NMFS regarding the potential adverse effects of proposed project activities, as well as to respond in writing to NMFS project-specific recommendations.

### ***CWA Section 404***

The basis of the CWA was enacted in 1948 and was called the Federal Water Pollution Control Act, but the Act was significantly reorganized and expanded in 1972. “Clean Water Act” became the Act’s common name with amendments in 1972. CWA Section 404 established the program to regulate the discharge of dredged or fill material into waters of the US, including wetlands. Under this regulation, certain activities proposed in waters of the US, such as the placement of fill for the purposes of development, require a permit prior to initiation. The primary objective of this program is to stipulate that the discharge of dredged or fill material is not permitted if a practicable alternative to the proposed activities exists that would result in less effects on waters of the US, or if the proposed activity would result in significant adverse effects on these waters. To comply with these objectives, a permittee must document the measures taken to avoid and minimize effects on waters of the US and provide compensatory mitigation for any unavoidable effects.

**Consistent.** As discussed above, the proposed Project would result in potential direct short-term moderate adverse effects on up to 0.39 acre of Central Valley steelhead critical habitat and Chinook salmon EFH as a result of construction access during construction of the Mormon Slough flyover structure.

However, with implementation of Measure MM BIO-2 (National Oceanic and Atmospheric Administration Consultation), which requires implementation of all commitments and avoidance and minimization measures identified during Section 7 consultation, these direct short-term moderate effects would be mitigated. Therefore, the proposed Project is consistent with the Magnuson-Stevens Fishery Conservation and Management Act.

**Consistent.** As discussed in Section 3.15, *Biological Resources*, the proposed Project would result in direct long-term moderate adverse effects on potential jurisdictional non-wetland waters of the U.S. However, with the implementation of Measures MM BIO-3 (Mitigation for Aquatic Resources), which requires mitigation for Project effects on aquatic resources, MM BIO-4 (Compliance with Permitted Mitigation Measures), which requires that SJRRC, in coordination with CHSRA, obtains all required permits and authorization for Project effects on waters of the U.S., and MM-BIO-5 (Preparation of Formal Jurisdictional Delineation), which requires that a formal field-delineation is conducted during final design, would mitigate these direct or indirect moderate adverse effects.

Therefore, with the implementation of Measures MM BIO-3 through MM BIO-5, no direct or indirect long-term moderate adverse effects on federal jurisdictional waters would result under the proposed Project, and the proposed Project would be consistent with CWA Section 404 requirements.



**CWA Section 401**

Under CWA Section 401, federal agencies are not authorized to issue a permit or license for any activity that may result in discharges to waters of the US unless a state or tribe where the discharge originates either grants or waives CWA Section 401 certification. Decisions made by states or tribes are based on the proposed Project's compliance with EPA water quality standards as well as applicable effluent limitations guidelines, new source performance standards, toxic pollutant restrictions, and any other appropriate requirements of state or tribal law. In California, SWRCB is the primary regulatory authority for CWA Section 401 requirements.

**Consistent.** As discussed above, the proposed Project would result in direct long-term moderate adverse effects on potential jurisdictional non-wetland waters of the U.S. However, with the implementation of Measures MM BIO-3 (Mitigation for Aquatic Resources), MM BIO-4 (Compliance with Permitted Mitigation Measures), and MM-BIO-5 (Preparation of Formal Jurisdictional Delineation).

Therefore, with the implementation of Measures MM BIO-3 through MM BIO-5, no direct or indirect long-term moderate adverse effects on federal jurisdictional waters would result under the proposed Project, and the proposed Project would be consistent with CWA Section 401 requirements.



### ***Migratory Bird Treaty Act***

Migratory birds are protected under the MBTA of 1918. A list of species protected by the MBTA is currently codified in 50 CFR 10.13. In its current form, section 2(a) of the MBTA provides in relevant part that, unless permitted by regulations, it is unlawful:

At any time, by any means of in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof.

**Consistent.** As discussed in Section 3.15, *Biological Resources*, the BSA and immediate surroundings provide potential habitat for nesting, wintering, and/or foraging habitat for migratory birds and raptors. All native breeding birds (except game birds during the hunting season), regardless of their listing status, are protected under the MBTA. The SJMSCP identifies Incidental Take Avoidance Measures for various classifications of nesting birds of which the BSA has potential to support the following classes: *Ground Nesting or Streamside/Lakeside Nesting Birds* and *Birds Nesting in Isolated Trees or Shrubs Outside of Riparian Areas*.

With the incorporation of BMP BIO-1 (Biological Monitoring and Environmental Awareness Training) and BMP BIO-2 (Migratory Bird and Raptor Surveys and Nest Avoidance), identified in Table 3.15-2, and the implementation of Measure MM BIO-1 (Compliance with SJMSCP), which requires SJRRC, in coordination with CHSRA, to ensure compliance with applicable Incidental Take Avoidance Measures identified in the SJMSCP, no direct short-term moderate adverse effects on special-status species, such as migratory birds and raptors would occur under the proposed Project

Additionally, in the event that active migratory bird or raptor nests are present within the BSA during operation of the proposed Project, BMP BIO-2, identified in Table 3.15-2, would be incorporated to minimize these potential direct long-term effects. Further, the proposed Project would result in habitat loss for migratory nesting birds and raptors. However, these direct and indirect long-term moderated adverse effects would be mitigated with the implementation of Measure MM BIO-1.

Based on the discussion above, with the incorporation of BMP BIO-2, identified in Table 3.15-2, and the implementation of Measure MM BIO-1, no direct or indirect long-term moderate adverse effects on special-status species, including migratory birds, would result under the proposed Project and the proposed Project is consistent with the MBTA.



***Bald and Golden Eagle Protection Act***

The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c), enacted in 1940, and amended several times since, prohibits anyone, without a permit issued by the Secretary of the Interior, from "taking" bald or golden eagles, including their parts\*, nests, or eggs. The Act provides criminal penalties for persons who "take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald eagle ... [or any golden eagle], alive or dead, or any part\*, nest, or egg thereof." The Act defines "take" as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb."

**Consistent.** As discussed above under the MBTA, with the incorporation of BMP BIO-1 (Biological Monitoring and Environmental Awareness Training) and BMP BIO-2 (Migratory Bird and Raptor Surveys and Nest Avoidance), identified in Table 3.15-2, and the implementation of Measure MM BIO-1 (Compliance with SJMSCP), no direct short-term moderate adverse effects on special-status species, such as migratory birds and raptors, including bald and golden eagles, would occur under the proposed Project

Additionally, in the event that active migratory bird or raptor nests are present within the BSA during operation of the proposed Project, BMP BIO-2, identified in Table 3.15-2, would be incorporated to minimize these potential direct long-term effects. Further, the proposed Project would result in habitat loss for migratory nesting birds and raptors. However, these direct and indirect long-term moderated adverse effects would be mitigated with the implementation of Measure MM BIO-1.

Based on the discussion above, with the incorporation of BMP BIO-2, identified in Table 3.15-2, and the implementation of Measure MM BIO-1, no direct or indirect long-term moderate adverse effects on special-status species, including migratory birds (and more specifically bald and/or golden eagles), would result under the proposed Project and the proposed Project is consistent with Bald and Golden Eagle Protection Act.



### ***Fish and Wildlife Coordination Act***

The Fish and Wildlife Coordination Act of 1958 requires that whenever any body of water is proposed or authorized to be impounded, diverted, or otherwise controlled or modified, the lead federal agency must consult with USFWS, the state agency responsible for fish and wildlife management, and NMFS. Section 662(b) of the act requires the lead federal agency to consider the recommendations of USFWS and other agencies.

**Consistent.** As discussed in Section 3.15, *Biological Resources*, NMFS designated Mormon Slough as critical habitat for Central Valley steelhead in 2000 (NMFS 2014), including the portion of the Mormon Slough within the BSA. EFH for Chinook salmon also occurs in the portion of the Mormon Slough within the BSA. In addition, there is critical habitat for green sturgeon and EFH for groundfish downstream of the BSA. While none of these species are present within the BSA at this time, preservation of fish passage and important habitat characteristics would be important to future restoration efforts of Mormon Slough as fish habitat.

NMFS issued a “not likely to adversely affect” determination for the proposed Project on May 17, 2021, with regard to Central Valley steelhead and its critical habitat and the southern distinct population segment of North American green sturgeon and its critical habitat. It also determined that the proposed Project would have “no adverse effect” on EFH for chinook salmon or groundfish. The NMFS Concurrence Letter is provided in Appendix N. Therefore, the proposed Project is consistent with the Fish and Wildlife Coordination Act.

### ***EO 13112 – Invasive Species***

EO 13112 was signed on Feb 3, 1999, directing all federal agencies to refrain from authorizing, funding, or carrying out actions or projects that may spread invasive species.

**Consistent.** The proposed Project will incorporate BMP BIO-8 (Prevention of Invasive Species During Construction) in Table 3.15-2, Section 3.15, *Biological Resources* to address potential invasive plant species. BMP BIO-8 will include the inspection of the proposed Project Study Area immediately prior to and during construction to identify the presence of invasive weeds, and recommending measures, as needed, to avoid the inadvertent spread of invasive weeds in association with the proposed Project. BMP BIO-8 will incorporate invasive species control measures, such as inspection and cleaning of construction equipment and use of eradication strategies. Therefore, the proposed Project is consistent with EO 13112.



### ***National Invasive Species Act***

The National Invasive Species Act of 1996 reauthorized and amended the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 with a number of findings that highlighted a need for additional management measures to prevent further introduction and infestation of destructive species.

### ***EO 11990 – Protection of Wetlands***

EO 11990 of May 24, 1977, requires federal agencies to provide leadership and take action to minimize destruction, loss, or degradation of wetlands and to preserve and enhance the natural qualities of these lands.

### ***SJMSCP***

The SJMSCP was developed in 2000 to offer an approach for balancing the conservation of open space and the need to convert open space as a result of development while simultaneously protecting the region's economy; preserving property rights; providing for the long-term management of plant, fish, and wildlife species, especially special status species; and providing and maintaining multiple-use areas.

Project applicants are given the option of participating in the SJMSCP as a way to streamline compliance with required local, state, and federal laws regarding biological resources, and typically avoid having to approach each agency independently. Participating applicants pay mitigation fees or provide land in-lieu of fees on a per-acre basis according to the measures needed to mitigate adverse effects to the various habitat and biological resources. Development occurring on land that has been classified under the SJMSCP as "no-pay" would not be required to pay a fee but fulfill the biological requirements of the plan to minimize adverse effects to species.

**Consistent.** As discussed above, the proposed Project will incorporate BMP BIO-8 (Prevention of Invasive Species During Construction) in Table 3.15-2, Section 3.15, *Biological Resources* to address potential invasive plant species. Therefore, the proposed Project is consistent with the National Invasive Species Act.

**Consistent.** As discussed above, the proposed Project would result in direct long-term moderate adverse effects on potential jurisdictional non-wetland waters of the U.S. However, with the implementation of Measures MM BIO-3 (Mitigation for Aquatic Resources), MM BIO-4 (Compliance with Permitted Mitigation Measures), and MM-BIO-5 (Preparation of Formal Jurisdictional Delineation).

Therefore, with the implementation of Measures MM BIO-3 through MM BIO-5, no direct or indirect long-term moderate adverse effects on federal jurisdictional waters would result under the proposed Project, and the proposed Project would be consistent with EO 11990.

**Consistent.** The proposed Project will incorporate BMP BIO-1 (Biological Monitor and Environmental Awareness Training), which specifies that all SJMSCP Incidental ITMMs are implemented, BMP BIO-2 (Migratory Bird and Raptor Surveys and Nest Avoidance), which specifies that if active nest sites are identified in the survey area, a no-disturbance buffer will be established based on requirements within the SJMSCP (as described in SJMSCP ITMM 5.2.4.17, 5.2.4.18, and 5.2.4.19), and the implementation of Measure MM BIO-1 (Compliance with SJMSCP), which requires SJRRC, in coordination with CHSRA, comply with all applicable standards and regulations set forth in the SJMSCP, as well as all applicable Incidental Take Avoidance Measures identified within the SJMSCP. Therefore, with these BMPs and mitigation measure incorporated, the proposed Project would be consistent with SJMSCP.



**City of Stockton General Plan**

**Goal LU-5:** Protected Resources – Protect, maintain, and restore natural and cultural resources.

**Action LU-5.1B:** Protect, preserve, and improve riparian corridors and incorporate them in the City's parks, trails, and open space system.

**Policy LU-5.2:** Protect natural resource areas, fish and wildlife habitat, scenic areas, and open space areas, agricultural lands, parks, and other cultural/historic resources from encroachment or destruction by incompatible development.

**Action LU-5.2A:** Coordinate with the SJCOG and comply with the terms of the SJMSCP.

**Consistent.** Please refer to the consistency discussion under the topic of *Cultural Resources*. Based on that discussion, the proposed Project is consistent with this general plan goal under this topic, *Biological Resources*.

**Consistent.** As discussed in Section 3.15 *Biological Resources*, no essential habitat connectivity areas, natural landscape blocks, wildlife movement barrier priorities, or missing linkages occur within or adjacent to the BSA. However, the Mormon Slough may provide a corridor for common terrestrial wildlife movement through the BSA. Therefore, the proposed Project will incorporate appropriate BMP measures identified in Table 3.15-2, which include Measure BIO-1 (Biological Monitor and Environmental Awareness Training), BMP BIO-3 (Construction BMPs at Mormon Slough), BMP BIO-4 (Environmentally Sensitive Area Fencing at Mormon Slough), BMP BIO-5 (Restoration of Temporarily Affected Areas), and BMP BIO-6 (Vehicle Access and Speed Limits).

Further, the proposed Project will implement mitigation in the form of Measures MM BIO-1 (Compliance with SJMSCP), MM BIO-2 (National Oceanic and Atmospheric Administration Consultation), MM BIO-3 (Mitigation for Aquatic Resources), MM BIO-4 (Compliance with Permitted Mitigation Measures), and MM BIO-5 (Preparation of Formal Jurisdictional Delineation). Therefore, no direct or indirect short-term or long-term adverse effects would result, and the proposed Project is consistent with this general plan action.

**Consistent.** Please refer to the consistency discussion under the topic of *Parks, Recreation, and Section 4(f) Resources*. Based on that discussion, the proposed Project is consistent with this general plan goal under this topic, *Biological Resources*.

**Consistent.** As discussed in Section 3.15 *Biological Resources*, Measure MM BIO-1 (Compliance with SJMSCP), will require Project compliance with all applicable standards and regulations set forth in the SJMSCP; as well as all applicable Incidental Take Avoidance Measures identified within the SJMSCP. Therefore, the proposed Project is consistent with this general plan action.



**Action LU-5.2B:** For projects on or within 100 feet of sites that have the potential to contain special-status species or critical or sensitive habitats, including wetlands, require preparation of a baseline assessment by a qualified biologist following appropriate protocols, such as wetland delineation protocol defined by USACE. Impacts shall be minimized through project design or compensation identified in consultation with a qualified biologist.

**Action LU-5.2C:** Require new development to implement best practices to protect biological resources, including incidental take minimization measures and other federal and State requirements and recommendations that are consistent with the SJMSCP.

### Cumulative Effects

#### NEPA

Until 2020, CEQ's NEPA Regulations defined cumulative effects as "the effect on the environment which results from the incremental effect of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time (40 CFR 1508.7, 1978)." In 2020 CEQ revised its NEPA implementing regulations, which included repealing the definition of cumulative effect. Under a Notice of Proposed Rulemaking dated October 7, 2021, CEQ proposes to restore the definition of cumulative effect and the requirement for a cumulative effect analysis

**Consistent.** As discussed in Section 3.15 *Biological Resources*, the proposed Project would result in short-term effects to up to 0.39 acre of potential non-wetland waters of the State and cause long-term effects on approximately 0.04 acre of potential jurisdictional waters of the State.

However, the proposed Project will incorporate BMP BIO-4 (Environmentally Sensitive Area Fencing at Mormon Slough); as well as implement mitigation through Measures MM BIO-3 (Mitigation for Aquatic Resources), MM BIO-4 (Compliance with Permitted Mitigation Measures), and MM BIO-5 (Preparation of Formal Jurisdictional Delineation). Thus, no direct or indirect short-term or long-term adverse effects on aquatic resources or jurisdictional waters would result from the proposed Project. Therefore, the proposed Project is consistent with this general plan action.

**Consistent.** The proposed Project will implement mitigation through the form of Measure MM BIO-1 (Compliance with SJMSCP), which requires Project compliance with all applicable standards and regulations set forth in the SJMSCP; as well as all applicable Incidental Take Avoidance Measures identified within the SJMSCP. Therefore, the proposed Project is consistent with this general plan action.

**Consistent.** As discussed in Section 3.16, *Cumulative Effects*, a list of projects presented in Table 3.16-1 represents current and reasonably foreseeable planned or programmed future projects used for this cumulative analysis. The projects considered affect the same general geographic area and consist of major transportation and infrastructure projects. Effects from these projects are considered reasonably foreseeable and have a reasonably close causal relationship with the proposed Project, factors which form the basis of cumulative effects analysis under the 2020 CEQ NEPA regulatory changes. No formally planned or approved private development projects exist within this area. Therefore, the cumulative analysis was prepared in accordance with NEPA requirements.