

APPENDIX A: NOTICE OF PREPARATION



NOTICE OF PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT

Date: September 13, 2018

To: Agencies and Interested Parties

Lead Agency: Sacramento Municipal Utility District
6201 S Street, MS H201
Sacramento, CA 95817
Contact: Emily Bacchini at (916) 732-6334

Subject: Notice of Preparation of a Draft Environmental Impact Report for the SMUD Operations, Maintenance, and New Construction Habitat Conservation Plan

Review Period: September 13, 2018 to October 15, 2018

Sacramento Municipal Utility District (SMUD) is proposing an Operations, Maintenance, and New Construction Habitat Conservation Plan (HCP, or Plan) that will provide the basis for permits by California Department of Fish and Wildlife (CDFW) (2081) and U.S. Fish and Wildlife Service (USFWS) (10(a)(1)(B)) for 30 years of coverage for 15 plant and animal species. SMUD plans to prepare an environmental impact report (EIR) for the project to satisfy the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code [PRC] Section 21000 et seq.), and will serve as the lead agency for CEQA compliance.

Purpose of Notice: In accordance with the State CEQA Guidelines (14 California Code of Regulations [CCR] Section 15082), SMUD has prepared this notice of preparation (NOP) to inform agencies and interested parties that an EIR will be prepared for the above-referenced project. The purpose of an NOP is to provide sufficient information about the project and its potential environmental impacts to allow agencies and interested parties the opportunity to provide a meaningful response related to the scope and content of the EIR, including mitigation measures that should be considered and alternatives that should be addressed (State CEQA Guidelines 14 CCR Section 15082[b]).

Introduction: The purpose of an EIR is to inform decision-makers and the general public of the environmental effects of a proposed project. The EIR process is intended to provide environmental information sufficient to evaluate a proposed project and its potential to cause significant effects on the environment; examine methods of reducing adverse environmental impacts; and consider alternatives to

the proposed project. The SMUD HCP EIR will be prepared and processed in accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines. The EIR will generally include the following:

- Description of the project;
- Description of the existing environmental setting for each topic, potential environmental impacts of the project, and mitigation measures;
- Cumulative impacts; and
- Alternatives to the project.

Project Location: The SMUD HCP Permit Area corresponds to SMUD's Service Territory, which is primarily Sacramento County, with small portions of Placer, Amador, El Dorado, San Joaquin and Yolo counties in California. The Permit Area also includes a swath of land centered on SMUD's gas pipeline in Yolo County and a swath centered on SMUD's transmission line in Placer County. The total size of the Permit Area is approximately 578,000 acres (Figure 1). The Permit Area is the area in which SMUD is requesting authorization from USFWS and CDFW for incidental take of covered species under the Federal and California Endangered Species Acts resulting from covered activities, which include all activities and projects that may result in the take¹ of species covered by the Plan. The Permit Area encompasses a diversity of existing land cover types, including urban landcovers, grasses and forbs, cropland, woodlands, and different aquatic features.

Covered activities and species are discussed in further detail below. Figure 1 shows the proposed project's regional location and the boundaries of the permit area.

Project Site Characteristics: The Permit Area is in the lower Sacramento Valley of California in the Great Valley geomorphic province and totals approximately 578,000 acres (Figure 1). Elevation ranges from just below sea level to over 800 feet above sea level. There are two physiographic regions in the Permit Area: the Sierra Nevada foothills and the lower Sacramento Valley. The Sierra Nevada foothills are undulating to hilly, from 140 to 830 feet in elevation. This region is located along the northeast edge of the Permit Area. The remainder consists of the lower Sacramento Valley and is nearly level to gently rolling, with some areas in the eastern part rolling to hilly.

The major rivers in the Permit Area include the Sacramento, American, Mokelumne, and Cosumnes rivers, which are generally perennial. The Sacramento Valley in the northern part is drained by the Sacramento River, while the southern part, the San Joaquin Valley, is drained by the San Joaquin River. There are approximately 1,150 miles of intermittent streams and approximately 122.4 miles of perennial streams in the Permit Area. The climate in the Permit Area consists of hot, dry summers and cool, wet winters.

1. California Fish and Game Code (86) defines "take" as to "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."

Seventeen HCP land cover types were identified by SMUD in the Permit Area. Six of those are considered woodland dominated and include Eucalyptus Woodland (54 acres), Valley Foothill Riparian (10,357 acres,) Blue Oak Foothill Pine (104 acres,) Blue Oak Woodland (17,715 acres,) Valley Oak Woodland (1,089 acres,) and Mine Tailing Riparian Woodland (3,186 acres).

Three are considered agricultural dominated and include Orchard/Vineyard (31,418 acres,) Cropland (69,173 acres), and Rice (5,313 acres. Two land cover types, Pasture (21,240 acres) and Grasses and Forbs (168,230 acres) are considered herbaceous dominated. Two land cover types, Urban (197,265 acres) and Barren/Disturbed (17,893 acres) are generally non-vegetated and are characterized by anthropogenic features. The remaining four land cover types are considered aquatic dominated and include Riverine (10,793.52 acres) Open Water/Fringe (6,502 acres), Other Depressional Wetlands (9,437 acres), and Vernal Pool, Seasonal Wetland, and Swale (7,784 acres).

Project Description: The California Endangered Species Act (CESA) prohibits the “take” of wildlife species listed as endangered or threatened by the California Fish and Game Commission (California Fish and Game Code, Section 2080). Under Fish and Game Code Section 2080, and Sections 1900-1913 (the Native Plant Protection Act [NPPA]), the take of listed species is prohibited except as otherwise provided under CESA and NPPA. The CESA defines take as “hunt, pursue, catch, capture or kill, or attempt to engage in such conduct” (California Fish and Game Code, Section 86).

Under Section 2081(b), the CDFW may authorize, by permit, the taking of state-listed endangered, threatened, and candidate species (but not for fully protected species, except for scientific research) if all of the following conditions are met:

- The take is incidental to an otherwise lawful activity.
- The impacts of the authorized take are minimized and fully mitigated.
- The measures required to meet this obligation must be roughly proportional in extent to the impact of the authorized take of the species. Where various measures are available to meet this obligation, the measures required shall maintain the applicant’s objectives to the greatest extent possible. All required measures shall be capable of successful implementation.
- The applicant must ensure adequate funding to implement the minimization and mitigation measures, and for monitoring compliance with, and effectiveness of, those measures.
- The permit will not jeopardize the continued existence of a state-listed species.

The Plan is designed to streamline and coordinate existing processes for review and permitting of SMUD’s activities (“covered activities”) under the CESA that potentially

affect protected plant and animal species (“covered species”) and to provide greater certainty on mitigation requirements.

The Plan is also intended to support incidental take authorization under section 10(a)(1)(B) of the federal Endangered Species Act (FESA) for impacts to federal listed species, as well as species expected to become listed in the near future. The permit area is the area in which SMUD will be requesting incidental take authorization from the USFWS for take of species covered by the Plan resulting from covered activities. Under the FESA, “...the term ‘take’ means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct” (Section 3(18) Federal Endangered Species Act).

To meet this goal, the HCP sets out a conservation strategy that includes measures to ensure that impacts to covered species and habitats related to covered activities are avoided, minimized, and mitigated to the maximum extent practicable. These covered activities encompass the range of existing and future activities that SMUD will implement within the permit area and are described below (see Covered Activities).

Covered Species

Covered species are those species addressed in the Plan for which conservation actions will be implemented and for which SMUD seeks incidental take authorization during the 30-year permit term.

The permit issued by CDFW must name specific species that are currently listed as threatened or endangered and for which take from the impacts of covered activities is authorized. Although the primary intent of this Plan is to provide mitigation for impacts on covered species, it will also contribute to the conservation of native biological diversity, habitat for native species, natural communities, and local ecosystems. This broad scope will conserve a wide range of natural resources including native species that are common and those that are rare.

As listed in Table 1 below, the Plan proposes coverage for 15 listed and non-listed species, which include four (4) plant species and eleven (11) animal species. Species listed as State threatened or endangered and for which take from the impacts of covered activities is anticipated, are expected to be named on the CESA Section 2081 Incidental Take Permit. All 15 species are expected to be named on the FESA Incidental Take Permit. In exchange, the Plan will provide long-term conservation and management of these species. The Plan includes conservation measures to protect all 15 covered species, whether or not they are currently listed. Under both Federal and State incidental take permits, any non-listed species addressed by the Plan’s conservation strategy will not require additional conservation within the permit area should that species become listed during the permit term.

Table 1. Covered Species

Common and Scientific Name	Federal/State/CNPS Listing Status ²
Boggs Lake hedge-hyssop <i>Gratiola heterosepala</i>	--/SE/1B.2
Legenere <i>Legenere limosa</i>	--/--/1B.1
Slender Orcutt grass <i>Orcuttia tenuis</i>	FT/SE/1B.1
Sacramento Orcutt grass <i>Orcuttia viscida</i>	FE/SE/1B.1
Vernal pool fairy shrimp <i>Branchinecta lynchi</i>	FT/--/--
Valley elderberry longhorn beetle <i>Desmocerus californicus dimorphus</i>	FT/--/--
Vernal pool tadpole shrimp <i>Lepidurus packardii</i>	FE/--/--
California tiger salamander <i>Ambystoma californiense</i>	FT/ST/--
Western spadefoot <i>Spea hammondi</i>	--/SSC/--
Western pond turtle <i>Actinemys (=Emys) marmorata</i>	--/SSC/--
Giant garter snake <i>Thamnophis gigas</i>	FT/ST/--
Tricolored blackbird <i>Agelaius tricolor</i>	--/SC/--
Burrowing owl <i>Athene cunicularia</i>	--/SSC/--
Swainson's hawk <i>Buteo swainsoni</i>	--/ST/--
Least Bell's vireo <i>Vireo bellii pusillus</i>	FE/SE/--

² Federally-designated Endangered (FE), Federally-designated Threatened (FT), State-designated Endangered (SE), State-designated Threatened (ST), State Species of Special Concern (SSC), State Candidate (SC), Plants rare, threatened, or endangered in California and elsewhere; seriously threatened in California (1B.1), Plants rare, threatened, or endangered in California and elsewhere; fairly threatened in California (1B.2)

Covered Activities

A primary goal of this Plan is to protect species and their habitats in order to obtain authorization for incidental take of covered species under the CESA and NPPA for certain types of activities in the Plan area. Covered activities are those that SMUD would implement in the permit area. Covered activities consist of operation and maintenance (O&M) and construction activities including projects or ongoing activities that will receive incidental take authorization by the CESA permit. Covered activities in the Plan fall into six general categories:

1. Electrical facilities
2. Natural gas transmission facilities
3. Vegetation management
4. Telecommunications
5. Conservation strategy
6. Miscellaneous activities

These activities broadly define the types of activities covered by the Plan. In some cases, specific projects are identified as examples to illustrate the general category. However, if a given project meets the guidelines for covered activities as described in the Plan, then that project is a covered activity. Conservation strategy implementation involves the activities within the lands managed, enhanced, restored, and monitored to conserve the natural resources targeted by this Plan. All conservation actions will take place within the Permit area.

Activities or projects that do not fall clearly within the criteria provided in the Plan will be evaluated on a case-by-case basis by SMUD. If a specific type of project or activity is not included within the descriptions in the Plan, then it will not receive coverage under the Plan.

Probable Environmental Effects: SMUD has determined that an EIR should be prepared for the proposed project because it may have a significant effect on the environment. SMUD has concluded that the EIR should address potential project-related impacts to the resources identified below. Each of the following resource area chapters will include a discussion of the existing setting, thresholds of significance, evaluation of potential impacts, and if necessary, feasible mitigation measures to reduce or eliminate potentially significant impacts to the applicable resource. In addition, as described above, the EIR will present assessment of the impacts of alternatives, and provide other required analyses, including cumulative impacts.

- Aesthetics
- Agricultural Resources
- Air Quality and Greenhouse Gas Emissions
- Biological Resources
- Cultural Resources (including Tribal Cultural Resources)
- Geology and Soils / Mineral Resources / Paleontological Resources

- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning / Population and Housing
- Noise and Vibration
- Public Services, Recreation, and Utilities
- Transportation and Circulation

Project Entitlements and Approvals: Requested approvals for the SMUD HCP are anticipated to include the following:

Federal

- U.S. Fish and Wildlife Service (USFWS)
 - Section 10(a)(1)(B) Incidental Take Permit

State

- California Department of Fish and Wildlife (CDFW)
 - Section 2081 Incidental Take Permit

Local

- SMUD will be the permit holder for the Permits. As the permittee, SMUD is responsible for preparing the HCP, implementing the HCP, and complying with all HCP requirements and any terms and conditions of the Permits
- SMUD will also take these actions:
 - Approve implementation of the Habitat Conservation Plan
 - Certify the Environmental Impact Report
 - Adopt a Mitigation Monitoring and Reporting Program

Document Availability: The NOP is available for public review on SMUD's website: <https://www.smud.org/en/about-smud/company-information/document-library/CEQA-reports.htm>. Printed copies of the NOP are also available for public review at the following locations:

Sacramento Municipal Utility District
Customer Service Center
6301 S Street
Sacramento, CA 95817

Sacramento Municipal Utility District
East Campus Operations Center
4401 Bradshaw Road
Sacramento, CA 95827

Scoping Meetings: SMUD will hold two scoping meetings to inform agencies and other interested parties about the project, and to provide an opportunity to provide comments on the scope and content of the EIR. The meeting times and location are as follows:

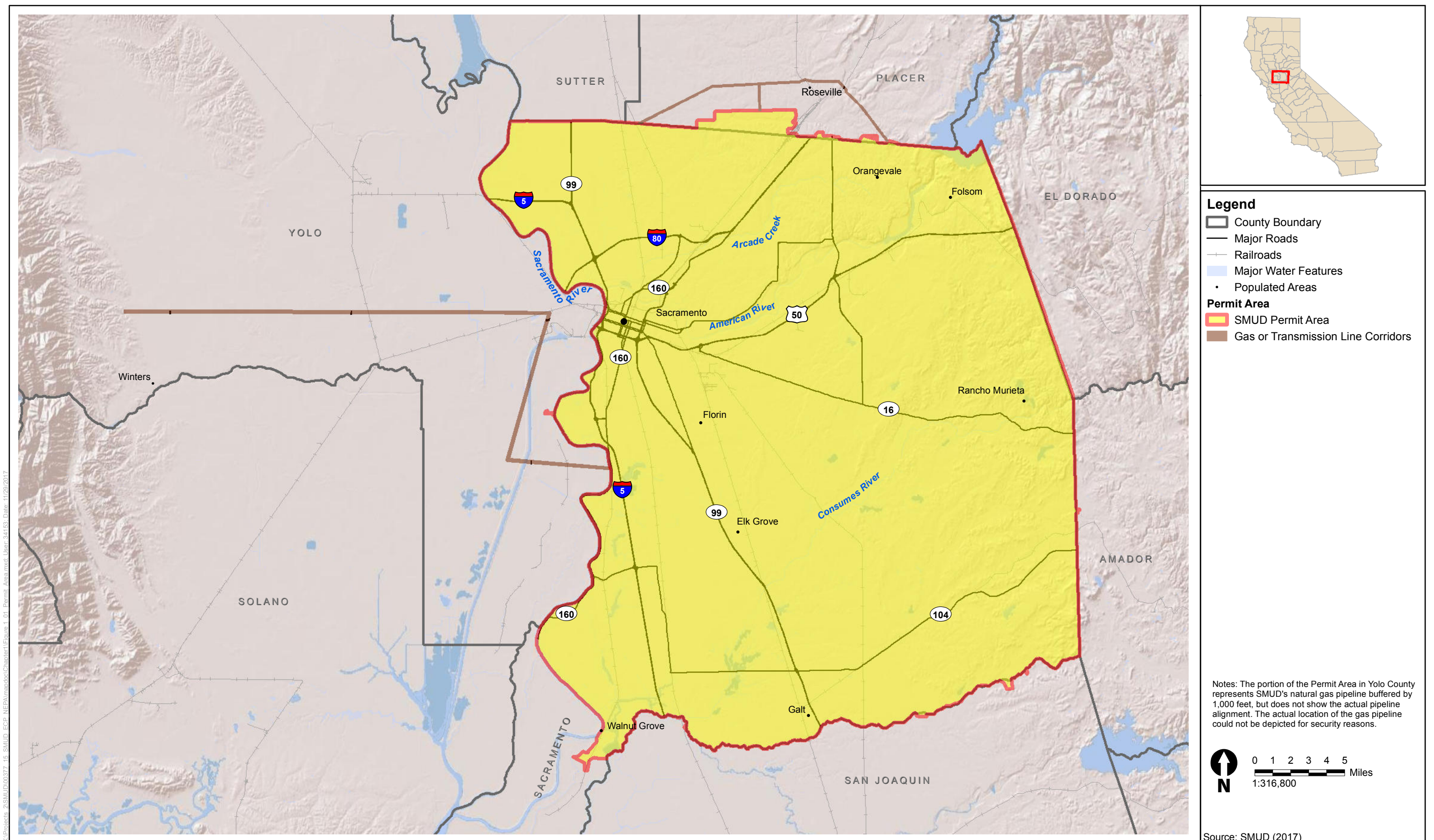
Agency Scoping Meeting
September 27, 2018
Time: 4:00- 5:00
Location: Rubicon Room, Customer Service Center
Address: 6301 S Street, Sacramento, 95817

Public Scoping Meeting
September 27, 2018
Time: 6:00- 7:00
Location: Rubicon Room, Customer Service Center
Address: 6301 S Street, Sacramento, 95817

Comment Period: Agencies and interested parties may provide SMUD with written comments on topics to be addressed in the EIR for the project. Comments can be provided anytime during the NOP review period, but must be received by 5:00 p.m. on October 15, 2018. Please send all comments, with appropriate contact information, to the following address:

Emily Bacchini
Sacramento Municipal Utility District
Environmental Services
6201 S Street, MS H201
Sacramento, CA 95817
emily.bacchini@smud.org

All comments on environmental issues received during the public comment period will be considered and addressed in the Draft EIR, which is anticipated to be available for public review in early 2020.



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Figure 1
Permit Area SMUD HCP



Scoping Meeting #1
Location: SMUD, Rubicon Room, Customer Service Center
6301 S Street, Sacramento, 95817
Date: September 27, 2018, 4:00 - 5:00 PM

SIGN IN SHEET

Name	Organization (If applicable)	Address, City, Zip	Phone	Email
Megumi Brooks	DSC	980 9th Street, Sacramento, CA		Megumi.Brooks@delta-council.ca.gov



Scoping Meeting #2
Location: SMUD, Rubicon Room, Customer Service Center
6301 S Street, Sacramento, 95817
Date: September 27, 2018, 6:00 - 7:00 PM

SIGN IN SHEET

Name	Organization (If applicable)	Address, City, Zip	Phone	Email
Del Batsarkhan	CSUS	10136 Ellinwood Ave	916-220-1773	DBatsarkhan@csus.edu
Rena Hourmani	CSUS	8638 Dorsey Way	916-208-3712	RenaHourmani@csus.edu
Chad Cabristante	CSUS	920 Cranbrook Ct, Davis, 95616	530-208-8971	cjcabristante@gmail.com
JASON AQUINO	CSUS	6000 J ST, SAC, CA	707-704-6629	
Michael Bustamante	CSUS	1136 Kirkhill Dr. Roseville, CA	916-220-7265	bstmntmb@gmail.com
Will Kanz	CSUS	2314 Isle Royale Lane	530-574-4564	WJKanz@gmail.com
Elizabeth Pfand	CSUS	2651 26th Street Sacramento CA 95818	(916) 757-7727	epfand@yahoo.com
Haley Blaylock	CSUS	600 J St. Sac, CA.	(916) 207-2518	haleyblaylock@csus.edu
Zaid Ortiz	CSUS		(408) 679-5307	Zaid.S.Ortiz@gmail.com
Kelsea Edwards	CSUS	2214 V St.	209 743 2069	kelseaelizabeth@csus.edu
Rose Sanchez	CSUS	4741 Pasadena Ave, Sacramento, CA	916-833-4272	rosesanchez@csus.edu
Adriana Andrade	CSUS	7729 College Town Dr. Sacramento, CA	831-706-0689	adrianaandrade@csus.edu
Joshua Muddox	CSUS	411 11th Street Sacramento, CA 95814	559-410-4351	jpmuddox@gmail.com



Scoping Meeting #2
 Location: SMUD, Rubicon Room, Customer Service Center
 6301 S Street, Sacramento, 95817
 Date: September 27, 2018, 6:00 - 7:00 PM

SIGN IN SHEET

Name	Organization (If applicable)	Address, City, Zip	Phone	Email
Marjorie Minor	CSUS	2441 Magginto Cutoff Rd Placerville 95667	530 621 3533	marjiminor17@gmail.com
Katelyn Rosenbauer	CSUS	6935 Woodside Dr. Sacramento CA 95842	(916) 847-1886	rosenbauerkatelyn@gmail.com
Kaitlin Evans	CSUS	5123 Rolling Field CT, Antelope CA	916 945 7894	kaitlinevans16@gmail.com
Jacob Lummen	CSUS	1314 Len Way Roseville, CA	916 960 3946	lummen28@gmail.com
Nick Haskins	CSUS	3585 Mountain view Dr, Rocklin, CA, 95677	916-847-1228	nhaskins1993@gmail.com
JAMES W. REEDE, JR	CSUS	6008 WYNNEWOOD WAY SAETO 95823	916 769-3037	JWREEDE@CSUS.EDU
Kyle Sharlette	CSUS	5929 casa alegre, Carmichael	-	KyleS@Gmai.com
Chelsea Tanner	CSUS	PO Box 731 Lotus CA 95651	530 457 5220	chelsatanner@csus.edu
Chelsea Quintero	CSUS	2512 Fair Oaks Blvd #155 95825	(916) 682-3518	quinteroChelsea@gmail.com
Quintin Levesque	CSUS	5979 Devecchi Avenue. APT 24 Citrus Heights CA, 95621	209-386-2009	quintinLevesque@me.com
Jonathan Schliessmann	CSUS	7325 Sylmar Lane, CA, Sacramento 95842	916-384-5565	jschliessmann@hotmail.com
KARIN PHAN	CSUS	7912 7th WOLF DR, SACRAMENTO, CA 95821	916-862-1463	PHAN.KARIN@YAHOO.COM
RACHEL BRAUN	CSUS	6380 Folsom Blvd	925-667-6346	rbraun@csus.edu



Scoping Meeting #2
Location: SMUD, Rubicon Room, Customer Service Center
6301 S Street, Sacramento, 95817
Date: September 27, 2018, 6:00 - 7:00 PM

SIGN IN SHEET

Name	Organization (If applicable)	Address, City, Zip	Phone	Email
Fahima Mashriqi	CSUS		(916) 834-1702	fahimamashriqi@csus.edu
Darian Realmuto	CSUS	5644 24 th St. Sac. 95822	(916) 803-1247	darian.realmuto@gmail.com
Jeremiah Romero	CSUS	2324 V street Apt #6 ^{Sacramento} 95818	(530) 919-8698	Jeremiah.Romero30@gmail.com
Pat Vanek	CSUS	6817 Auburn Blvd	916-721-7750	PatVanek90@gmail.com
Mohamed Khan	-	-	-	-



Scoping Meeting #2
 Location: SMUD, Rubicon Room, Customer Service Center
 6301 S Street, Sacramento, 95817
 Date: September 27, 2018, 6:00 - 7:00 PM

SIGN IN SHEET

Name	Organization (If applicable)	Address, City, Zip	Phone	Email
Zour Xiong		200 Silver Eagle Road, Sacramento	(916) 842-9822	zour-xiong@zour-x zour-x@yaho.com
Cynthia Spitaleri		6016 Georgia Dr. N Highlands CA 95660	(916) 912-8896	CS.vanesssa@gmail.com
Timothy Katkanov		3399 Night Star Ct Antelope CA 95843	(916) 476-380	tim.katkanov@gmail.com
Nicole Owens		8066 Targa and #89 CH 95610	670-908-0346	nikki0717@yahoo
Harrison Reynolds	CSUS	9825 Oakplac West Folsom CA 95630	916-337-6889	hcr68@hotmail.com
Andrea Levinson		11955 Colony Rd Galt CA 95632	916-690-2401	andrealevinson94@gmail.com
Rahena Khan	CSUS	# 5608 TATES CIR EIK GROVE CH 95751	916-397-9716	rahenaali@csus.edu

Sorvari, Tina

From: Emily Bacchini <Emily.Bacchini@smud.org>
Sent: Wednesday, September 19, 2018 2:03 PM
To: Zeff, Sally; Sorvari, Tina
Subject: FW: Notice of Preparation of an Environmental Impact Report for SMUD Operations, Maintenance, and New Construction Habitat Conservation Plan

FYI

From: King Tunson [mailto:ktunson@sfd.cityofsacramento.org]
Sent: Wednesday, September 19, 2018 2:01 PM
To: Emily Bacchini
Subject: Notice of Preparation of an Environmental Impact Report for SMUD Operations, Maintenance, and New Construction Habitat Conservation Plan

.....**CAUTION: External email:** To report suspicious emails, click "Report Email" icon in Outlook. Mobile users should email phishing@smud.org

Hi Emily,

I don't have any comments for the above-referenced document.

King Tunson
Program Analyst
Entitlement Plan Review Supervisor
Sacramento Fire Department
5770 Freeport Blvd, Ste 200
Sacramento, CA 95822
Office (916) 808-1358
Fax (916) 808-1677
ktunson@sfd.cityofsacramento.org

From: [Emily Bacchini](#)
To: [Zeff, Sally](#); [Sorvari, Tina](#)
Subject: Fwd: RE: SMUD Habitat Conservation Plan EIR Notice of Preparation
Date: Wednesday, September 19, 2018 2:50:56 PM

FYI

----- Forwarded message -----

From: Glen Holstein <holstein@cal.net>
Date: September 19, 2018 at 2:47:04 PM PDT
Subject: RE: SMUD Habitat Conservation Plan EIR Notice of Preparation
To: Emily Bacchini <Emily.Bacchini@smud.org>
Cc: Sean Wirth <wirthsoscranes@yahoo.com>

.....CAUTION: External email: To report suspicious emails, click "Report Email" icon in Outlook. Mobile users should email phishing@smud.org

Hello Emily,

I have carefully reviewed the SMUD NOP discussed below and find it an excellent example of such documents. SMUD is to be commended for its concision, completeness, choice of focal species, and description of its area of concern. Beyond that I have no negative comments, edits, or criticism to make. I look forward to reviewing future documents as SMUD's progress towards its HCP unfolds. This is a very good start.

Glen Holstein, PhD

Chapter Botanist and Chapter Council and Habitat 2020 delegate.

Sacramento Valley Chapter

California Native Plant Society

From: Emily Bacchini [<mailto:Emily.Bacchini@smud.org>]
Sent: Friday, September 14, 2018 2:47 PM
To: Emily Bacchini
Cc: Zeff, Sally; Sorvari, Tina
Subject: SMUD Habitat Conservation Plan EIR Notice of Preparation

The Sacramento Municipal Utility District (SMUD) is proposing an Operations, Maintenance, and New Construction Habitat Conservation Plan (HCP) that provides the basis for permits by California Department of Fish

and Wildlife (CDFW) (2081) and U.S. Fish and Wildlife Service (USFWS) (10(a)(1)(B)) for 30 years of coverage for 15 plant and animal species. SMUD is preparing an environmental impact report (EIR) for the project to satisfy the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code [PRC] Section 21000 et seq.) and will serve as the lead agency for CEQA compliance.

Purpose of Notice: This notice is to inform and allow agencies and interested parties the opportunity to respond to the scope of the EIR and include mitigation measures for consideration (State CEQA Guidelines 14 CCR Section 15082[b]).

Project Location: The SMUD HCP Permit Area corresponds to SMUD's Service Territory in Sacramento County and small areas in Placer, Amador, El Dorado, San Joaquin and Yolo counties in California. It also includes land centered on SMUD's gas pipeline in Yolo County and on SMUD's transmission line in Placer County. The total size of the Permit Area is approximately 578,000 acres.

Project Description: The SMUD HCP will support a take permit under Section 2081(b) of the California Fish and Game Code, for impacts on state listed species, and section 10(a)(1)(B) of the federal Endangered Species Act (FESA) for impacts to federal listed species, as well as species expected to become listed in the near future.

The HCP is designed to streamline and coordinate existing processes for review and permitting of SMUD's activities ("covered activities") under the CESA that potentially affect protected plant and animal species ("covered species"). To meet this goal, the HCP sets out a conservation strategy that includes measures to ensure that impacts to covered species and habitats related to covered activities are avoided, minimized, and mitigated to the maximum extent practicable.

Document Availability: The NOP is available for public review at: <https://www.smud.org/en/about-smud/company-information/document-library/CEQA-reports.htm>. If you'd like a copy or have questions, please contact Emily Bacchini. Printed copies of the NOP are available at the following SMUD locations:

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Sacramento, CA 95817

East Campus Operations Center
4401 Bradshaw Road
Sacramento, CA 95827

Public Scoping Meetings: SMUD will hold two scoping meetings at the following SMUD locations to inform agencies and other interested parties and allow for comment on the scope and content of the EIR.

Agency Scoping Meeting

Thurs., Sept. 27, 2018

Time: 4 p.m.- 5 p.m.

Customer Service Center, Rubicon Room

6301 S Street, Sacramento, 95817

Public Scoping Meeting

Thurs., Sept. 27, 2018

Time: 6 p.m.- 7 p.m.

Customer Service Center, Rubicon Room

6301 S Street, Sacramento, 95817

Accommodations are available for disabled individuals. If you need a hearing assistance device or other aid, or have questions, please contact Emily Bacchini.

Comment Period: Agencies and interested parties may provide SMUD with written comments on topics to be addressed in the EIR for the project. Comments must be received by 5 p.m. on October 15, 2018. Please send all comments, with appropriate contact information, to:

Emily Bacchini
SMUD, Environmental Management

P.O. Box 15380, MS H201

Sacramento, CA 95852-1830

Emily.Bacchini@smud.org<<mailto:Emily.Bacchini@smud.org>> 916-732-6334

All comments on environmental issues received during the public comment period will be considered and addressed in the Draft EIR, which is anticipated to be available for public review in early 2020

Sincerely,

Emily

Emily Bacchini

Environmental Services Supervisor, Environmental Services

w.916-732-6334 | c.916-524-8059 | emily.bacchini@smud.org<<mailto:emily.bacchini@smud.org>>

SMUD | Powering forward. Together.

6201 S Street, Mail Stop H201, Sacramento, CA 95817

P.O. Box 15830, Sacramento, CA 95852-0830

September 24, 2018

SENT VIA E-MAIL ONLY

Ms. Emily Bacchini
Sacramento Municipal Utility District
Environmental Services
6201 S Street, MS H201
Sacramento, CA 95817
emily.bacchini@smud.org

Notice of Preparation of a Draft Environmental Impact Report for the Sacramento Municipal Utility District Operations, Maintenance, and New Construction Habitat Conservation Plan (SAC201802067)

Dear Ms. Bacchini:

The Sacramento Metropolitan Air Quality Management District (Sac Metro Air District) appreciates receiving the Notice of Preparation of a Draft Environmental Impact Report (DEIR) for the Sacramento Municipal Utility District (SMUD) Operations, Maintenance, and New Construction Habitat Conservation Plan (HCP). The HCP would encompass approximately 578,000 acres, mainly in Sacramento County. Sac Metro Air District staff review and provide comments through the lead agency planning and environmental processes with the goal of reducing adverse air quality impacts and ensuring compliance with the California Environmental Quality Act. Sac Metro Air District staff comments follow.

Analyze emissions resulting from construction, maintenance, and operational activities covered by the HCP. The Sac Metro Air District provides air quality, greenhouse gas, and toxic emissions analysis expectations, significance thresholds, and mitigation strategies in its *Guide to Air Quality Assessment in Sacramento County*, which is available on the Sac Metro Air District's website (<http://www.airquality.org/Businesses/CEQA-Land-Use-Planning/CEQA-Guidance-Tools>).

Include all emissions calculations, analysis assumptions, and modeling output in the DEIR.

Since the project requires federal agency involvement, discuss General Conformity applicability and analysis if deemed necessary (<https://www.epa.gov/general-conformity>).

Include a discussion of how the HCP will be consistent with all relevant and applicable air quality and greenhouse gas policies and plans in the HCP geographic area.

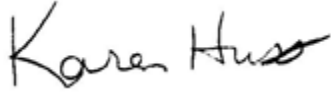
All projects are subject to Sac Metro Air District rules in effect at the time of construction and any construction project, regardless of the size, is required to implement Basic Construction Emission Control Practices. Attached are the Sac Metro Air District's Basic Construction Emission Control Practices and Rules & Regulations Statement.

Ms. Emily Bacchini

September 24, 2018

Please contact me at 916-874-4881 or khuss@airquality.org if you have any questions regarding the information in this letter.

Sincerely,

A handwritten signature in black ink that reads "Karen Huss". The signature is written in a cursive style with a large initial 'K' and a long horizontal stroke at the end.

Karen Huss
Associate Air Quality Planner/Analyst

Cc: Paul Philley, Sac Metro Air District

ATTACHMENT

**BASIC CONSTRUCTION EMISSION CONTROL PRACTICES
(BEST MANAGEMENT PRACTICES)**

The following Basic Construction Emissions Control Practices are considered feasible for controlling fugitive dust from a construction site. The practices also serve as best management practices (BMPs), allowing the use of the non-zero particulate matter significance thresholds.

Control of fugitive dust is required by District Rule 403 and enforced by Air District staff.

Water all exposed surfaces two times daily. Exposed surfaces include, but are not limited to soil piles, graded areas, unpaved parking areas, staging areas, and access roads.

Cover or maintain at least two feet of free board space on haul trucks transporting soil, sand, or other loose material on the site. Any haul trucks that would be traveling along freeways or major roadways should be covered.

Use wet power vacuum street sweepers to remove any visible trackout mud or dirt onto adjacent public roads at least once a day. Use of dry power sweeping is prohibited.

Limit vehicle speeds on unpaved roads to 15 miles per hour (mph).

All roadways, driveways, sidewalks, parking lots to be paved should be completed as soon as possible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.

The following practices describe exhaust emission control from diesel powered fleets working at a construction site. California regulations limit idling from both on-road and off-road diesel powered equipment. The California Air Resources Board enforces the idling limitations.

Minimize idling time either by shutting equipment off when not in use or reducing the time of idling to 5 minutes [required by California Code of Regulations, Title 13, sections 2449(d)(3) and 2485]. Provide clear signage that posts this requirement for workers at the entrances to the site.

Although not required by local or state regulation, many construction companies have equipment inspection and maintenance programs to ensure work and fuel efficiencies.

Maintain all construction equipment in proper working condition according to manufacturer's specifications. The equipment must be checked by a certified mechanic and determine to be running in proper condition before it is operated.

Lead agencies may add these emission control practices as Conditions of Approval (COA) or include in a Mitigation Monitoring and Reporting Program (MMRP).

Sac Metro Air District Rules & Regulations Statement (revised 6/2018)

*The following statement is recommended as standard condition of approval or construction document language for **all** development projects within the Sacramento Metropolitan Air Quality Management District (Sac Metro Air District):*

All projects are subject to Sac Metro Air District rules in effect at the time of construction. A complete listing of current rules is available at www.airquality.org or by calling 916.874.4800. Specific rules that may relate to construction activities or building design may include, but are not limited to:

Rule 201: General Permit Requirements. Any project that includes the use of equipment capable of releasing emissions to the atmosphere may require permit(s) from Sac Metro Air District prior to equipment operation. The applicant, developer, or operator of a project that includes an emergency generator, boiler, or heater should contact the Sac Metro Air District early to determine if a permit is required, and to begin the permit application process. Other general types of uses that require a permit include, but are not limited to, dry cleaners, gasoline stations, spray booths, and operations that generate airborne particulate emissions. Portable construction equipment (e.g. generators, compressors, pile drivers, lighting equipment, etc.) with an internal combustion engine over 50 horsepower is required to have a Sac Metro Air District permit or a California Air Resources Board portable equipment registration (PERP) (see Other Regulations below).

Rule 402: Nuisance. The developer or contractor is required to prevent dust or any emissions from onsite activities from causing injury, nuisance, or annoyance to the public.

Rule 403: Fugitive Dust. The developer or contractor is required to control dust emissions from earth moving activities, storage or any other construction activity to prevent airborne dust from leaving the project site.

Rule 414: Water Heaters, Boilers and Process Heaters Rated Less Than 1,000,000 BTU PER Hour. The developer or contractor is required to install water heaters (including residence water heaters), boilers or process heaters that comply with the emission limits specified in the rule.

Rule 417: Wood Burning Appliances. This rule prohibits the installation of any new, permanently installed, indoor or outdoor, uncontrolled fireplaces in new or existing developments.

Rule 442: Architectural Coatings. The developer or contractor is required to use coatings that comply with the volatile organic compound content limits specified in the rule.

Rule 453: Cutback and Emulsified Asphalt Paving Materials. This rule prohibits the use of certain types of cut back or emulsified asphalt for paving, road construction or road maintenance activities.

Rule 460: Adhesives and Sealants. The developer or contractor is required to use adhesives and sealants that comply with the volatile organic compound content limits specified in the rule.

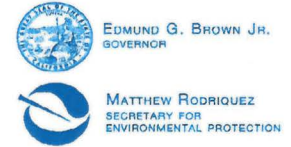
Rule 902: Asbestos. The developer or contractor is required to notify Sac Metro Air District of any regulated renovation or demolition activity. Rule 902 contains specific requirements for surveying, notification, removal, and disposal of asbestos containing material.

Other Regulations (California Code of Regulations (CCR))

17 CCR, Division 3, Chapter 1, Subchapter 7.5, §93105 Naturally Occurring Asbestos: The developer or contractor is required to notify Sac Metro Air District of earth moving projects, greater than 1 acre in size in areas “Moderately Likely to Contain Asbestos” within eastern Sacramento County. The developer or contractor is required to comply with specific requirements for surveying, notification, and handling soil that contains naturally occurring asbestos.

13 CCR, Division 3, Chapter 9, Article 5, Portable Equipment Registration Program: The developer or contractor is required to comply with all registration and operational requirements of the portable equipment registration program such as recordkeeping and notification.

13 CCR, Division 3, Chapter 9, Article 4.8, §2449(d)(2) and 13 CCR, Division 3, Chapter 10, Article 1, §2485 regarding Anti-Idling: Minimize idling time either by shutting equipment off when not in use or reducing the time of idling to 5 minutes. These apply to diesel powered off-road equipment and on-road vehicles, respectively.



Central Valley Regional Water Quality Control Board

8 October 2018

Sally Zeff
Sacramento Municipal Utility District
P.O. Box 15830, MS B203
Sacramento, CA 95852-1830

CERTIFIED MAIL
7014 3490 0001 3008 4712

COMMENTS TO REQUEST FOR REVIEW FOR THE NOTICE OF PREPARATION FOR THE DRAFT ENVIRONMENTAL IMPACT REPORT, SMUD OPERATIONS, MAINTENANCE, AND NEW CONSTRUCTION HABITAT CONSERVATION PLAN PROJECT, SCH# 2018092030, SACRAMENTO, AMADOR, EL DORADO, SAN JOAQUIN, AND YOLO COUNTIES

Pursuant to the State Clearinghouse's 13 September 2018 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Notice of Preparation for the Draft Environment Impact Report* for the SMUD Operations, Maintenance, and New Construction Habitat Conservation Plan Project, located in Sacramento, Amador, El Dorado, San Joaquin, and Yolo Counties.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.

I. Regulatory Setting

Basin Plan

The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38.

The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has adopted a Basin Plan

KARL E. LONGLEY ScD, P.E., CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER

11020 Sun Center Drive #200, Rancho Cordova, CA 95670 | www.waterboards.ca.gov/centralvalley

amendment in noticed public hearings, it must be approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law (OAL) and in some cases, the United States Environmental Protection Agency (USEPA). Basin Plan amendments only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues.

For more information on the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, please visit our website:

http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/.

Antidegradation Considerations

All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The Antidegradation Policy is available on page IV-15.01 at:

http://www.waterboards.ca.gov/centralvalleywater_issues/basin_plans/sacsjr.pdf

In part it states:

Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State.

This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives.

The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.

II. Permitting Requirements

Construction Storm Water General Permit

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction Activities (Construction General Permit), Construction General Permit Order No. 2009-009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to

restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP).

For more information on the Construction General Permit, visit the State Water Resources Control Board website at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml.

Phase I and II Municipal Separate Storm Sewer System (MS4) Permits¹

The Phase I and II MS4 permits require the Permittees reduce pollutants and runoff flows from new development and redevelopment using Best Management Practices (BMPs) to the maximum extent practicable (MEP). MS4 Permittees have their own development standards, also known as Low Impact Development (LID)/post-construction standards that include a hydromodification component. The MS4 permits also require specific design concepts for LID/post-construction BMPs in the early stages of a project during the entitlement and CEQA process and the development plan review process.

For more information on which Phase I MS4 Permit this project applies to, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/municipal_permits/.

For more information on the Phase II MS4 permit and who it applies to, visit the State Water Resources Control Board at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/phase_ii_municipal.shtml

Industrial Storm Water General Permit

Storm water discharges associated with industrial sites must comply with the regulations contained in the Industrial Storm Water General Permit Order No. 2014-0057-DWQ.

For more information on the Industrial Storm Water General Permit, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/industrial_general_permits/index.shtml.

Clean Water Act Section 404 Permit

If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the

¹ Municipal Permits = The Phase I Municipal Separate Storm Water System (MS4) Permit covers medium sized Municipalities (serving between 100,000 and 250,000 people) and large sized municipalities (serving over 250,000 people). The Phase II MS4 provides coverage for small municipalities, including non-traditional Small MS4s, which include military bases, public campuses, prisons and hospitals.

United States Army Corps of Engineers (USACOE). If a Section 404 permit is required by the USACOE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water drainage realignment, the applicant is advised to contact the Department of Fish and Wildlife for information on Streambed Alteration Permit requirements.

If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACOE at (916) 557-5250.

Clean Water Act Section 401 Permit – Water Quality Certification

If an USACOE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications.

Waste Discharge Requirements – Discharges to Waters of the State

If USACOE determines that only non-jurisdictional waters of the State (i.e., “non-federal” waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation.

For more information on the Water Quality Certification and WDR processes, visit the Central Valley Water Board website at:
http://www.waterboards.ca.gov/centralvalley/help/business_help/permit2.shtml.

Dewatering Permit

If the proposed project includes construction or groundwater dewatering to be discharged to land, the proponent may apply for coverage under State Water Board General Water Quality Order (Low Risk General Order) 2003-0003 or the Central Valley Water Board’s Waiver of Report of Waste Discharge and Waste Discharge Requirements (Low Risk Waiver) R5-2013-0145. Small temporary construction dewatering projects are projects that discharge groundwater to land from excavation activities or dewatering of underground utility vaults. Dischargers seeking coverage under the General Order or Waiver must file a Notice of Intent with the Central Valley Water Board prior to beginning discharge.

For more information regarding the Low Risk General Order and the application process, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0003.pdf

For more information regarding the Low Risk Waiver and the application process, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/waivers/r5-2013-0145_res.pdf

Regulatory Compliance for Commercially Irrigated Agriculture

If the property will be used for commercial irrigated agricultural, the discharger will be required to obtain regulatory coverage under the Irrigated Lands Regulatory Program. There are two options to comply:

1. **Obtain Coverage Under a Coalition Group.** Join the local Coalition Group that supports land owners with the implementation of the Irrigated Lands Regulatory Program. The Coalition Group conducts water quality monitoring and reporting to the Central Valley Water Board on behalf of its growers. The Coalition Groups charge an annual membership fee, which varies by Coalition Group. To find the Coalition Group in your area, visit the Central Valley Water Board's website at: http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/for_growers/apply_coalition_group/index.shtml or contact water board staff at (916) 464-4611 or via email at IrrLands@waterboards.ca.gov.
2. **Obtain Coverage Under the General Waste Discharge Requirements for Individual Growers, General Order R5-2013-0100.** Dischargers not participating in a third-party group (Coalition) are regulated individually. Depending on the specific site conditions, growers may be required to monitor runoff from their property, install monitoring wells, and submit a notice of intent, farm plan, and other action plans regarding their actions to comply with their General Order. Yearly costs would include State administrative fees (for example, annual fees for farm sizes from 10-100 acres are currently \$1,084 + \$6.70/Acre); the cost to prepare annual monitoring reports; and water quality monitoring costs. To enroll as an Individual Discharger under the Irrigated Lands Regulatory Program, call the Central Valley Water Board phone line at (916) 464-4611 or e-mail board staff at IrrLands@waterboards.ca.gov.

Low or Limited Threat General NPDES Permit

If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may be

covered under the General Order for *Dewatering and Other Low Threat Discharges to Surface Waters* (Low Threat General Order) or the General Order for *Limited Threat Discharges of Treated/Untreated Groundwater from Cleanup Sites, Wastewater from Superchlorination Projects, and Other Limited Threat Wastewaters to Surface Water* (Limited Threat General Order). A complete application must be submitted to the Central Valley Water Board to obtain coverage under these General NPDES permits.

For more information regarding the Low Threat General Order and the application process, visit the Central Valley Water Board website at:
http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0074.pdf

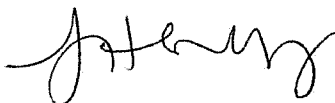
For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at:
http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0073.pdf

NPDES Permit

If the proposed project discharges waste that could affect the quality of surface waters of the State, other than into a community sewer system, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. A complete Report of Waste Discharge must be submitted with the Central Valley Water Board to obtain a NPDES Permit.

For more information regarding the NPDES Permit and the application process, visit the Central Valley Water Board website at:
http://www.waterboards.ca.gov/centralvalley/help/business_help/permit3.shtml

If you have questions regarding these comments, please contact me at (916) 464-4812 or Jordan.Hensley@waterboards.ca.gov.



Jordan Hensley
Environmental Scientist

cc: State Clearinghouse unit, Governor's Office of Planning and Research, Sacramento



EDMUND G. BROWN JR.
GOVERNOR

STATE OF CALIFORNIA
GOVERNOR'S OFFICE *of* PLANNING AND RESEARCH



KEN ALEX
DIRECTOR

Notice of Preparation

September 13, 2018

To: Reviewing Agencies

Re: Draft EIR for the SMUD Operations, Maintenance, and New Construction Habitat Conservation Plan
SCH# 2018092030

Attached for your review and comment is the Notice of Preparation (NOP) for the Draft EIR for the SMUD Operations, Maintenance, and New Construction Habitat Conservation Plan draft Environmental Impact Report (EIR).

Responsible agencies must transmit their comments on the scope and content of the NOP, focusing on specific information related to their own statutory responsibility, within 30 days of receipt of the NOP from the Lead Agency. This is a courtesy notice provided by the State Clearinghouse with a reminder for you to comment in a timely manner. We encourage other agencies to also respond to this notice and express their concerns early in the environmental review process.

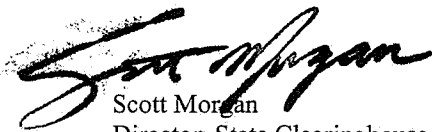
Please direct your comments to:

Sally Zeff
Sacramento Municipal Utility District
P.O. Box 15830 MS B203
Sacramento, CA 95852-1830

with a copy to the State Clearinghouse in the Office of Planning and Research. Please refer to the SCH number noted above in all correspondence concerning this project.

If you have any questions about the environmental document review process, please call the State Clearinghouse at (916) 445-0613.

Sincerely,



Scott Morgan
Director, State Clearinghouse

Attachments
cc: Lead Agency

**Document Details Report
State Clearinghouse Data Base**

SCH# 2018092030
Project Title Draft EIR for the SMUD Operations, Maintenance, and New Construction Habitat Conservation Plan
Lead Agency Sacramento Municipal Utility District

Type NOP Notice of Preparation
Description Sacramento Municipal Utility District (SMUD) is proposing an Operations, Maintenance, and New Construction Habitat Conservation Plan (HCP, or plan) that will provide the basis for permits by California Department of Fish and Wildlife (CDFW) (2081) and U.S. Fish and Wildlife Service (USFWS) (10(a)(1)(B)) for 30 years of coverage for 15 plant and animal species.

Lead Agency Contact

Name Sally Zeff
Agency Sacramento Municipal Utility District
Phone (916) 732-6334 **Fax**
email
Address P.O. Box 15830 MS B203
City Sacramento **State** CA **Zip** 95852-1830

Project Location

County Sacramento, Amador, El Dorado, San Joaquin, Yolo
City
Region
Cross Streets
Lat / Long
Parcel No.
Township **Range** **Section** **Base**

Proximity to:

Highways
Airports
Railways
Waterways Sacramento river, American river, Mokelumne, and Consumnes Rivers
Schools
Land Use

Project Issues Aesthetic/Visual; Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Drainage/Absorption; Flood Plain/Flooding; Forest Land/Fire Hazard; Geologic/Seismic; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Schools/Universities; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Landuse; Cumulative Effects

Reviewing Agencies Resources Agency; Cal Fire; Central Valley Flood Protection Board; Department of Parks and Recreation; Department of Fish and Wildlife, Region 2; Department of Fish and Wildlife, Region 3; Delta Protection Commission; Delta Stewardship Council; California Energy Commission; Native American Heritage Commission; Public Utilities Commission; State Lands Commission; Caltrans, District 3 N; Air Resources Board; Regional Water Quality Control Bd., Region 5 (Sacramento); Office of Historic Preservation

Date Received 09/13/2018 **Start of Review** 09/13/2018 **End of Review** 10/15/2018

Notice of Completion & Environmental Document Transmittal

Mail to: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044 (916) 445-0613
For Hand Delivery/Street Address: 1400 Tenth Street, Sacramento, CA 95814

SCH #2018092030

Project Title: Draft EIR for the SMUD Operations, Maintenance, and New Construction Habitat Conservation Plan

Lead Agency: Sacramento Municipal Utility District Contact Person: Emily Bacchini
Mailing Address: 6201 S Street, MS H201 Phone: 916-732-6334
City: Sacramento Zip: 95817 County: Sacramento

Project Location: County: Sacramento, Placer, Amador, El Dorado City/Nearest Community:

Cross Streets: Zip Code:

Longitude/Latitude (degrees, minutes and seconds): Total Acres: approx. 578,000

Assessor's Parcel No.: Section: Twp.: Range: Base:

Within 2 Miles: State Hwy #: Waterways: Airports: Railways: Schools:

Document Type:

CEQA: [X] NOP [] Draft EIR NEPA: [] NOI Other: [] Joint Document
[] Early Cons [] Supplement/Subsequent EIR [] EA [] Final Document
[] Neg Dec (Prior SCH No.) [] Draft EIS [] Other:
[] Mit Neg Dec Other: Governor's Office of Planning & Research

Local Action Type:

[] General Plan Update [] Specific Plan [] Rezone [] Annexation
[] General Plan Amendment [] Master Plan [] Prezone [] Redevelopment
[] General Plan Element [] Planned Unit Development [] Use Permit [] Coastal Permit
[] Community Plan [] Site Plan [] Land Division (Subdivision, etc.) [X] Other: HCP

SEP 13 2018

STATE CLEARINGHOUSE

Development Type:

[] Residential: Units Acres [] Transportation: Type
[] Office: Sq.ft. Acres Employees [] Mining: Mineral
[] Commercial: Sq.ft. Acres Employees [] Power: Type MW
[] Industrial: Sq.ft. Acres Employees [] Waste Treatment: Type MGD
[] Educational: [] Hazardous Waste: Type
[] Recreational: [X] Other: Habitat Conservation Plan
[] Water Facilities: Type MGD

Project Issues Discussed in Document:

[X] Aesthetic/Visual [] Fiscal [X] Recreation/Parks [X] Vegetation
[X] Agricultural Land [X] Flood Plain/Flooding [X] Schools/Universities [X] Water Quality
[X] Air Quality [X] Forest Land/Fire Hazard [] Septic Systems [X] Water Supply/Groundwater
[X] Archeological/Historical [X] Geologic/Seismic [X] Sewer Capacity [X] Wetland/Riparian
[X] Biological Resources [X] Minerals [X] Soil Erosion/Compaction/Grading [] Growth Inducement
[] Coastal Zone [X] Noise [X] Solid Waste [X] Land Use
[X] Drainage/Absorption [X] Population/Housing Balance [X] Toxic/Hazardous [X] Cumulative Effects
[] Economic/Jobs [X] Public Services/Facilities [X] Traffic/Circulation [] Other:

Present Land Use/Zoning/General Plan Designation:

Various

Project Description: (please use a separate page if necessary)
Please see attached.

Governor's Office of Planning & Research

SEP 13 2018

STATE CLEARINGHOUSE

Note: The State Clearinghouse will assign identification numbers for all new projects. If a SCH number already exists for a project (e.g. Notice of Preparation or previous draft document) please fill in.

Sacramento Municipal Utility District (SMUD) is proposing an Operations, Maintenance, and New Construction Habitat Conservation Plan (HCP, or Plan) that will provide the basis for permits by California Department of Fish and Wildlife (CDFW) (2081) and U.S. Fish and Wildlife Service (USFWS) (10(a)(1)(B)) for 30 years of coverage for 15 plant and animal species.

Resources Agency	Caltrans, District 9	Regional Water Quality Control Board (RWQCB)
<input type="checkbox"/> Resources Agency Nadell Gayou	<input type="checkbox"/> Caltrans, District 9 Gayle Rosander	<input type="checkbox"/> RWQCB 1 Cathleen Hudson North Coast Region (1)
<input type="checkbox"/> Dept. of Boating & Waterways Denise Peterson	<input type="checkbox"/> Caltrans, District 10 Tom Dumas	<input type="checkbox"/> RWQCB 2 Environmental Document Coordinator San Francisco Bay Region (2)
<input type="checkbox"/> California Coastal Commission Allyson Hitt	<input type="checkbox"/> Caltrans, District 11 Jacob Armstrong	<input type="checkbox"/> RWQCB 3 Central Coast Region (3)
<input type="checkbox"/> Colorado River Board Elsa Contreras	<input type="checkbox"/> Caltrans, District 12 Maureen El Harake	<input type="checkbox"/> RWQCB 4 Teresa Rodgers Los Angeles Region (4)
<input type="checkbox"/> Dept. of Conservation Crina Chan	<input checked="" type="checkbox"/> Cal EPA	<input type="checkbox"/> RWQCB 5S Central Valley Region (5)
<input checked="" type="checkbox"/> Cal Fire Dan Foster	<input type="checkbox"/> Air Resources Board	<input type="checkbox"/> RWQCB 5F Central Valley Region (5) Fresno Branch Office
<input checked="" type="checkbox"/> Central Valley Flood Protection Board James Herota	<input checked="" type="checkbox"/> Airport & Freight Jack Wursten	<input type="checkbox"/> RWQCB 6 Lahontan Region (6)
<input checked="" type="checkbox"/> Office of Historic Preservation Ron Parsons	<input type="checkbox"/> Transportation Projects Nesamani Kalandiyur	<input type="checkbox"/> RWQCB 6V Lahontan Region (6) Victorville Branch Office
<input type="checkbox"/> Dept of Parks & Recreation Environmental Stewardship Section	<input type="checkbox"/> Industrial/Energy Projects Mike Tollstrup	<input type="checkbox"/> RWQCB 7 Colorado River Basin Region (7)
<input type="checkbox"/> S.F. Bay Conservation & Dev't. Comm. Steve Goldbeck	<input type="checkbox"/> California Department of Resources, Recycling & Recovery Kevin Taylor/Jeff Esquivel	<input type="checkbox"/> RWQCB 8 Santa Ana Region (8)
<input type="checkbox"/> Dept. of Water Resources Nadell Gayou	<input type="checkbox"/> State Water Resources Control Board	<input type="checkbox"/> RWQCB 9 San Diego Region (9)
<input type="checkbox"/> Fish and Wildlife Region 4 Julie Vance	<input type="checkbox"/> State Water Resources Control Board Cindy Forbes -- Asst Deputy Division of Drinking Water	<input type="checkbox"/> Other _____
<input type="checkbox"/> Fish & Wildlife Region 5 Leslie Newton-Reed Habitat Conservation Program	<input type="checkbox"/> State Water Resources Control Board Div. Drinking Water # _____	
<input type="checkbox"/> Fish & Wildlife Region 6 Tiffany Ellis Habitat Conservation Program	<input type="checkbox"/> State Water Resources Control Board Student Intern, 401 Water Quality Certification Unit Division of Water Quality	
<input type="checkbox"/> Fish & Wildlife Region 6 I/II Heidi Calvert Inyo/Mono, Habitat Conservation Program	<input type="checkbox"/> State Water Resources Control Board Phil Crader Division of Water Rights	
<input type="checkbox"/> Dept. of Fish & Wildlife M William Paznokas Marine Region	<input type="checkbox"/> Dept. of Toxic Substances Control Reg. # _____ CEQA Tracking Center	<input type="checkbox"/> Conservancy _____
<input type="checkbox"/> Other Departments	<input type="checkbox"/> Department of Pesticide Regulation CEQA Coordinator	
<input type="checkbox"/> California Department of Education Lesley Taylor		
<input type="checkbox"/> OES (Office of Emergency Services) Monique Wilber		
<input type="checkbox"/> Food & Agriculture Sandra Schubert Dept. of Food and Agriculture		
<input type="checkbox"/> Dept. of General Services Cathy Buck Environmental Services Section		
<input type="checkbox"/> Housing & Comm. Dev. CEQA Coordinator Housing Policy Division		
<input checked="" type="checkbox"/> Independent Commissions, Boards		
<input checked="" type="checkbox"/> Delta Protection Commission Erik Vink		
<input checked="" type="checkbox"/> Delta Stewardship Council Anthony Navasero		
<input checked="" type="checkbox"/> California Energy Commission Eric Knight		
<input type="checkbox"/> Fish & Wildlife Region 1 Curt Babcock		
<input type="checkbox"/> Fish & Wildlife Region 1E Laurie Harnsberger		
<input checked="" type="checkbox"/> Fish & Wildlife Region 2 Jeff Drongesen		
<input checked="" type="checkbox"/> Fish & Wildlife Region 3 Craig Weightman		
<input type="checkbox"/> Native American Heritage Comm. Debbie Treadway		
<input checked="" type="checkbox"/> Public Utilities Commission Supervisor		
<input type="checkbox"/> Santa Monica Bay Restoration Guangyu Wang		
<input checked="" type="checkbox"/> State Lands Commission Jennifer Deleong		
<input type="checkbox"/> Tahoe Regional Planning Agency (TRPA) Cherry Jacques		
<input type="checkbox"/> Caltrans - Division of Aeronautics Philip Crimmins		
<input type="checkbox"/> Caltrans - Planning HQ LD-IGR Christian Bushong		
<input type="checkbox"/> California Highway Patrol Suzann Ikeuchi Office of Special Projects		
<input type="checkbox"/> Dept. of Transportation		
<input type="checkbox"/> Caltrans, District 1 Rex Jackman		
<input type="checkbox"/> Caltrans, District 2 Marcelino Gonzalez		
<input checked="" type="checkbox"/> Caltrans, District 3 Susan Zanchi		
<input type="checkbox"/> Caltrans, District 4 Patricia Maurice		
<input type="checkbox"/> Caltrans, District 5 Larry Newland		
<input type="checkbox"/> Caltrans, District 6 Michael Navarro		
<input type="checkbox"/> Caltrans, District 7 Dianna Watson		
<input type="checkbox"/> Caltrans, District 8 Mark Roberts		



980 NINTH STREET, SUITE 1500
SACRAMENTO, CALIFORNIA 95814
HTTP://DELTACOUNCIL.CA.GOV
(916) 445-5511

DELTA STEWARDSHIP COUNCIL

A California State Agency

October 15, 2018

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Emily Bacchini, Environmental Services Supervisor
Sacramento Municipal Utility District, Environmental Services
6201 S Street, MS H201
Sacramento, California 95817

Executive Officer
Jessica R. Pearson

Via email: emily.bacchini@smud.org

RE: Notice of Preparation of a Draft Environmental Impact Report for SMUD Operations, Maintenance, and New Construction Habitat Conservation Plan, SCH# 2018092030

Dear Ms. Bacchini:

Thank you for the opportunity to review and comment on the Notice of Preparation (NOP) of the Draft Environmental Impact Report (EIR) for the Sacramento Municipal Utility District (SMUD) Operations, Maintenance, and New Construction Habitat Conservation Plan (HCP). The purpose of the HCP is to provide incidental take coverage for 15 plants and animal species for a period of up to 30 years. Based on the project description in the NOP, the Delta Stewardship Council (Council) understands that the primary intent of the HCP is to provide mitigation for impacts on covered species, such as the Giant garter snake and Swainson's hawk. The HCP also intends to contribute conservation measures to protecting a wide range of natural resources and habitat for native species, natural communities, and local ecosystems. The total size of the HCP Permit Area is approximately 578,000 acres. Within the Sacramento-San Joaquin Delta (Delta), the HCP Permit Area includes portions of SMUD's Service Territory in Sacramento County, and also a swath of land centered on SMUD's gas pipeline in Yolo County. Portions of the Permit Area are located in both the Delta Primary Zone and Delta Secondary Zone.

The Council is an independent State of California agency established by the Sacramento-San Joaquin Delta Reform Act of 2009 (SBX7 1; Delta Reform Act). The Council is charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan, regulatory portions of which became effective on September 1, 2013. As stated in the Delta Reform Act, the State has coequal goals for the Delta: providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural,

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

– CA Water Code §85054

recreational, natural resource, and agricultural values of the Delta as an evolving place (Water Code section 85054).

Covered Action Status

Through the Delta Reform Act, the Council was granted specific regulatory and appellate authority over certain actions that take place in whole or in part in the Delta and Suisun Marsh, which are referred to as "covered actions". The Council exercises that authority through development and implementation of the Delta Plan. State and local agencies are required to demonstrate consistency with 14 regulatory policies identified in the Delta Plan when carrying out, approving, or funding a covered action.

Based on the project location and scope as described in the NOP, the proposed project meets the definition of a covered action. SMUD must determine if the project is a covered action, and if so, file a certification of consistency with the Delta Plan.

For the purposes of compliance with both the Delta Reform Act and California Environmental Quality Act (CEQA), we offer the following comments for your consideration in preparing the Draft EIR for this project.

Comments regarding the NOP and Content of the Draft EIR

Given the list of Covered Activities and land cover and land use types identified, please consider including additional Covered Species (described in Table 1 of the NOP) that would require incidental take coverage, such as Greater Sandhill Crane, Cooper's Hawk, and Western red bat. The recently adopted South Sacramento HCP provides recent species habitat models for portions of the Permit Area, and identifies sensitivities and threats that may be useful in assessing the need for incidental take of additional Covered Species.

The Draft EIR should incorporate the following content related to the Delta Plan:

- Please describe and reference the 2009 Delta Reform Act in relevant discussions of State plans, policies, and regulations.
- Please identify the Delta Plan in the EIR's description of the regulatory setting for each applicable resource section. Where possible, please reference specific applicable regulatory policies as described below.

Comments regarding Delta Plan Policies and Consistency Certification

The following section describes Delta Plan policies that may apply to the proposed project based on available information. This information is intended to assist SMUD in describing the relationship between the proposed project and the Delta Plan in the Draft EIR as part of the record supporting the project's certification of consistency.

The Delta Plan includes regulatory policies that are applicable to all covered actions. Below, we have highlighted key regulatory policies that may be relevant to the proposed project. We encourage SMUD to review the following Delta Plan policies prior to completing the Draft EIR and in anticipation of submitting a certification of consistency to the Council at a later date.

Mitigation Measures

Delta Plan Policy **G P1** (23 Cal. Code Regs. section 5002) requires that actions not exempt from CEQA and subject to Delta Plan regulations must include applicable feasible mitigation measures consistent with those identified in the Delta Plan Program Environmental Impact Report or substitute mitigation measures that are equally or more effective. See the Delta Plan's Mitigation and Monitoring Report Program (MMRP) available at:

http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%202.pdf.

Please review the Delta Plan MMRP to determine if feasible mitigation measures related to significant impacts identified in the Draft EIR would apply. If Delta Plan Program EIR mitigation measures are applicable and feasible, please incorporate such measures in the Draft EIR.

Best Available Science and Adaptive Management

Delta Plan Policy **G P1** (23 Cal. Code Regs. section 5002) states that actions subject to Delta Plan regulations must document use of best available science as relevant to the purpose and nature of the project. The regulatory definition of "best available science" is provided in Appendix 1A of the Delta Plan

<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%201A.pdf>.

Delta Plan Policy **G P1** (23 Cal. Code Regs. section 5002) requires that ecosystem restoration and water management covered actions include adequate provisions for continued implementation of adaptive management, appropriate to the scope of the action. This requirement is satisfied through a) the development of an adaptive management plan that is consistent with the framework described in Appendix 1B of the Delta Plan <http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%201B.pdf>, and b) documentation of adequate resources to implement the proposed adaptive management plan.

The Council includes staff from the Delta Science Program that can provide guidance to help project proponents with the appropriate application of best available science and adaptive management in advance of a certification of consistency with the Delta Plan.

Restore Habitat at Appropriate Elevations

Delta Plan Policy ER P2 (23 Cal. Code Regs. section 5006) states that habitat restoration must be consistent with restoration guidance within Appendix 3

<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%203.pdf> of the Delta Plan regulations and that restoration must occur at appropriate elevations per Appendix 4 <http://deltacouncil.ca.gov/docs/appendix-4>. Appendix 3, which is an excerpt from the 2011 Draft Ecosystem Restoration Program (ERP) Conservation Strategy, provides a vision for a mosaic of different habitat types within the Delta.

If implementation of the HCP's Conservation Strategy would include habitat restoration within the Delta, please describe how it will follow the guidance provided in both Appendix 3 and Appendix 4 of the Delta Plan as part of the certification of consistency.

Protect Opportunities to Restore Habitat

Delta Plan Policy ER P3 (23 Cal. Code Regs. section 5007) requires that, within the priority habitat restoration areas (PHRAs) depicted in Appendix 5 of the Delta Plan

<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%205.pdf>, significant adverse impacts to the opportunity to restore habitat must be avoided or mitigated.

According to the NOP, the HCP Permit Area includes portions of the Mokelumne and Cosumnes Rivers. If the HCP Permit Area overlaps with the Mokelumne and Cosumnes River Confluence PHRA, SMUD must demonstrate how the proposed project would avoid or mitigate significant adverse impacts to the opportunity to restore habitat within the PHRA.

Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species

Delta Plan Policy ER P5 (23 Cal. Code Regs. section 5009) calls for avoiding introductions and habitat improvements for invasive nonnative species or mitigating these potential impacts in a manner that appropriately protects the ecosystem.

In the event that mitigation for invasive nonnative species is warranted, mitigation and minimization measures should be consistent with the Delta Plan Mitigation Measure 4-1 (http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%202.pdf).

Respect Local Land Use when Siting Water or Flood Facilities or Restoring Habitats

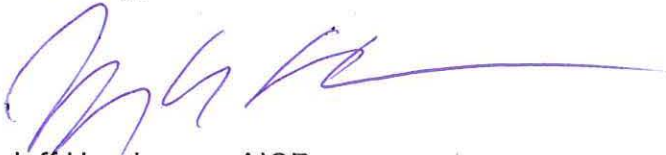
Delta Plan Policy DP P2 (23 Cal. Code Regs. section 5011) states that plans for ecosystem restoration must be sited to avoid or reduce conflicts with existing uses when feasible, considering comments from local agencies.

Emily Bacchini, Environmental Services Supervisor
Sacramento Municipal Utility District, Environmental Services
October 15, 2018
Page 5

Please consider the applicability of this policy to the location of habitat mitigation or restoration sites and any resultant changes to existing uses in and land use jurisdiction of cities and counties in the HCP Permit Area within the Delta, including agricultural uses. The Council also encourages SMUD to continue to coordinate with Sacramento County as they have recently adopted the South Sacramento HCP and certain project objectives and project locations overlap between the HCPs.

As mentioned at the scoping meeting, the Council would appreciate an opportunity to work collaboratively with SMUD to discuss the issues outlined in this letter as you proceed in the next stages of your project design and approval processes. We look forward to coordinating our first early consultation meeting. Please contact Ron Melcer at (916) 284-1619 (Ronald.Melcer@deltacouncil.ca.gov) with any questions.

Sincerely,



Jeff Henderson, AICP
Deputy Executive Officer

NATIVE AMERICAN HERITAGE COMMISSION

Cultural and Environmental Department
1550 Harbor Blvd., Suite 100
West Sacramento, CA 95691
Phone (916) 373-3710
Email: nahc@nahc.ca.gov
Website: <http://www.nahc.ca.gov>
Twitter: @CA_NAHC



September 25, 2018

Sally Zeff
Sacramento Municipal Utility District
P.O. Box 15830 MS B203
Sacramento, CA 95852-1830

RE: SCH# 2018092030 Draft EIR for the SMUD Operations, Maintenance and New Construction Habitat Conservation Plan, Sacramento, Amador, El Dorado, San Joaquin and Yolo Counties

Dear Ms. Zeff:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

AB 52

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:
 - a. A brief description of the project.
 - b. The lead agency contact information.
 - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
 - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).
 - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
 - a. Alternatives to the project.
 - b. Recommended mitigation measures.
 - c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).
4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:
 - a. Type of environmental review necessary.
 - b. Significance of the tribal cultural resources.
 - c. Significance of the project's impacts on tribal cultural resources.
 - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
 - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
 - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

7. Conclusion of Consultation: Consultation with a tribe shall be considered concluded when either of the following occurs:
 - a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).

8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document: Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).

9. Required Consideration of Feasible Mitigation: If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).

10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:
 - a. Avoidance and preservation of the resources in place, including, but not limited to:
 - i. Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i. Protecting the cultural character and integrity of the resource.
 - ii. Protecting the traditional use of the resource.
 - iii. Protecting the confidentiality of the resource.
 - c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - d. Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - e. Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
 - f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).

11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource: An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
 - a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
 - b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf

Some of SB 18's provisions include:

1. **Tribal Consultation**: If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation**. There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality**: Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation**: Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
 - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
 - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, §15064.5(f) (CEQA Guidelines §15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
 - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
 - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code §7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address: Sharaya.Souza@nahc.ca.gov.

Sincerely,



for
Sharaya Souza
Staff Services Analyst

cc: State Clearinghouse