

Draft

GUIDELINES
Flood System Repair Project

Authorized Under
the Disaster Preparedness and Flood Prevention Bond
Act of 2006 (Proposition 1E)
Flood Control, River and Coastal Protection Bond Act

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Acronyms and Abbreviations

Term	Description
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
CWC	California Water Code
CVFPB	Central Valley Flood Protection Board
DWR	Department of Water Resources
FSRP	Flood System Repair Project
LMA	local maintaining agency
NEPA	National Environmental Policy Act
O&M	operations and maintenance
SPFC	State Plan of Flood Control
USACE	U.S. Army Corps of Engineers
USC	U.S. Code

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1.0 INTRODUCTION

1.1 Goals and Objectives

The passage of Proposition 1E, the Disaster Preparedness and Flood Prevention Bond Act of 2006 and Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 authorized the Department of Water Resources (DWR) to make funds available for, among other things, projects for repair, rehabilitation, reconstruction, or replacement of levees, weirs, bypasses, channels, and other facilities of the State Plan of Flood Control (SPFC) (See Section 1.2). The Central Valley Flood Protection Board adopted the 2012 Central Valley Flood Protection Plan (CVFPP) on June 29, 2012. The CVFPP is a critical document to guide California's participation in managing flood risk along Sacramento and San Joaquin River Systems. The CVFPP proposes a State Systemwide Investment Approach (SSIA) for sustainable integrated flood management approach in the areas protected by State Plan of Flood Control (SPFC) facilities. Under the Flood System Operation and Maintenance Program, the SSIA sets the near-term priority for implementing repair of erosion sites, known and documented critical problems, and providing all weather access for effective emergency response capability. The Department has developed the Flood System Repair Project (FSRP) to assist the local maintaining agencies (LMAs) responsible for maintaining facilities of the SPFC. For the purposes of these guidelines, LMAs may include levee districts, cities, counties or other public agencies with maintenance responsibilities for SPFC facilities, as well as maintenance areas where the state has maintenance responsibilities. The FSRP is funded from a portion of funding authorized for the evaluation, repair, rehabilitation, reconstruction, or replacement of levees, weirs, bypasses, and facilities of the SPFC under § 5096.821 of the Public Resources Code.

To ensure that funds are spent in accordance with Proposition 1E requirements, and are consistent with the State System-Wide Investment Approach detailed in the 2012 Central Valley Flood Protection Plan, the FSRP incorporates prioritization of funded projects to focus on repair of performance problems that are critical, serious, or that may impede flood fight capabilities. Critical problem is defined as damage to a flood protection facility that would reasonably be expected to fail during the course of a single flood season or single high water event. Serious problem is defined as damage to a flood-protection facility such that the facility is approaching a state of failure but is not likely to fail during the next flood season or single high-water event. The FSRP also provides for proactive repairs that lead to sustainable operations and maintenance practices. Proactive repairs will address small damages that may not qualify as critical or serious, but are worsening rapidly, have the potential to become critical, and that can be designed and constructed by the LMA.

Proposition 1E requires that the funds be expended while:

- Securing the maximum feasible amounts of federal and local matching funds and ensuring prudent and cost-effective use of the funds to the extent that doing so does not prohibit timely implementation of disaster-preparedness and flood-prevention projects.
- Prioritizing selection and project design to achieve maximum public benefits from the use of the funds.

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In support of these principles, the objectives of the FSRP are:

- Repairing critical problems to SPFC facilities in partnership with the LMAs.
- Helping LMAs to proactively repair small erosion sites that could deteriorate to pose a critical threat which are within the overall scale of the LMAs' maintenance program and can reasonably be performed by the LMA, but fall outside of activities considered to be routine maintenance as defined in Appendix A.

Repair of critical problems is needed to advance the primary 2012 Central Valley Flood Protection Plan goal of improving flood risk management. The intent of the repair of proactive sites under the FSRP is to assist LMAs in preventing these problems from becoming critical, thus reducing repair costs and enhancing the long-term sustainability of O&M programs.

1.2 FSRP Definition

The FSRP applies to projects involving repair of damaged SPFC facilities maintained by LMAs or by DWR, which may include levees, channels, and related flood control structures as further defined in Section 3.2. An LMA sponsor for an FSRP repair project must be a levee district, reclamation district, or other agency with maintenance responsibilities for SPFC facilities that is qualified to contract with DWR. A joint powers authority or other entity created and funded to design and implement flood control repairs or improvements may participate as a sponsor provided the LMA representing the SPFC facility is a member of the joint powers authority or other entity, and accepts responsibility for maintaining the future facility to be repaired.

Working collaboratively with LMAs, DWR will first identify potential repair sites by:

- Developing a list of past performance problems on SPFC facilities from the available inspection and reporting programs.
- Collecting engineering data and additional information from LMAs and other relevant sources to classify past performance problems sites by severity of damage and potential impact to lives and property.
- Screening potential repair sites against administrative criteria to eliminate repairs that are inconsistent with the State System-Wide Investment Approach under the 2012 Central Valley Flood Protection Plan, or that may be addressed under other state, local or federal programs.

DWR will prioritize the screened sites and notify LMAs of sites that are eligible for repair. If an LMA agrees to sponsor an eligible repair site, DWR will enter into a Project Agreement with the LMA which will define the roles and responsibilities of the LMA and DWR and the cost-share provisions (Appendix B). In the case of repairs to SPFC facilities maintained by DWR, DWR will perform the repairs on behalf of a maintenance area.

Subject to a Project Agreement and DWR's approval, LMA or DWR will prepare environmental documentation, collect engineering data, provide design services, obtain required property rights, and procure, execute, administer, and manage the construction contract with DWR review and oversight. DWR will be responsible for implementing projects

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at facilities identified in California Water Code (CWC) § 8361 and those maintained by DWR pursuant to CWC 12878 et seq.

1.3 About These Guidelines

These draft FSRP Guidelines (draft Guidelines) govern the process by which DWR reviews and selects FSRP repair projects to fund, and the resulting implementation process. Where a project receiving FSRP funding is governed by specific laws, these draft Guidelines only apply to the extent they are consistent with those specific laws. These draft Guidelines concern the site eligibility and selection process that will be used to disburse funds, the agreements that the LMA sponsors will be required to sign, and the way in which these agreements will be administered. These draft Guidelines may be amended as described in Section 6.2.

1.4 Funding

Up to \$150 million Proposition 1E funds may be allocated to the FSRP through fiscal year 2017. FSRP repair projects will be cost-shared with eligible LMA sponsors. Projects will be DWR-directed as defined in these draft Guidelines. At its discretion, DWR may also opt to select projects by competitive solicitation under a project solicitation package process; however such a process would be defined at a later date under separate guidelines or revisions to these draft Guidelines.

The minimum state cost-share percentage will be based on the latest edition of DWR's Division of Flood Management Guidelines For Establishing Local Agency Cost-Sharing Formulas for Flood Programs and Projects (DWR Cost-Share Formula) (DWR, 2010). The FSRP includes additional cost-share enhancements based on the LMA's O&M and emergency response preparedness performance, as described in Section 0. The state cost-share percentage for FSRP repair projects will range from 50 percent to 90 percent based on application of the DWR Cost-Share Formula and the additional FSRP cost-share enhancements. The maximum state cost-share amount per project will be \$5,000,000.

Implementation of any or all FSRP repair projects is subject to future funding restrictions. FSRP eligibility criteria, requirements, or procedures may be changed, substituted, or terminated, and other criteria may be added at DWR's discretion. Such changes may be required as a result of state or federal legislative or administrative actions (i.e., actions associated with passage of the annual state budget or other legislation).

1.5 FSRP Limitations

The FSRP is limited to facilities of the SPFC maintained by LMAs or by DWR, as defined in Public Resources Code § 5096.805(j):

...the state and federal flood control works, lands, programs, plans, conditions and mode of maintenance and operations of the Sacramento River Flood Control Project described in Section 8350 of the Water Code, and of flood control projects in the Sacramento River and San Joaquin River watersheds authorized pursuant to Article 2

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(commencing with Section 12648) of Chapter 2 of Part 6 of Division 6 of the Water Code for which the board or the department has provided the assurances of non-federal cooperation to the United States, which shall be updated and compiled into a single document entitled “The State Plan of Flood Control.”

In addition, the FSRP cannot be accessed to fund routine maintenance activities performed under an LMA’s O&M program or repair projects that increase a facility’s level of protection to a higher design level of performance or original design intent. These limitations are described in greater detail in Section 3.3.

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2.0 FLOOD SYSTEM REPAIR PROJECT IMPLEMENTATION PROCESS

This section describes the process by which DWR will implement the FSRP. Section 2.1 summarizes the process by which potential FSRP sites are identified, classified, and prioritized. Section 2.2 describes the process by which DWR will solicit sponsorship by LMAs and negotiate Project Agreements with the sponsoring LMA. As the overarching objective of the FSRP is to fund repairs, for facilities maintained by LMAs, the process has been designed to include close collaboration and to address critical past performance problems while supporting broader 2012 Central Valley Flood Protection Plan goals. For facilities maintained by LMAs, funding and implementation of repair projects under the FSRP are contingent upon the execution of a Project Agreement between DWR and an eligible LMA sponsor. Figure 2-1 summarizes the process. The repair of facilities maintained by DWR (identified in CWC § 8361 and pursuant to CWC § 12878 et seq) will be implemented by DWR and will not require Project Agreements. Provisions for Project Agreements are provided in Appendix B.

2.1 FSRP Site Selection Process

2.1.1 Compilation of Potential Repair Sites

On an annual basis, the Department will compile a list of potential repair sites from available sources, which may include the following:

- Annual inspections of SPFC levees, structures, channels, and other flood management facilities performed in accordance with the Code of Federal Regulations (33 CFR Section 208.10) and documented in an annual Inspection Report of the Flood Control Project Maintenance and Repair.
- Annual inspections or periodic inspections conducted by the USACE under its Levee Safety Program.
- Information provided by LMAs
- Flood facility assessments conducted by the Department under other programs, most notably the urban and non-urban levee evaluations being performed by the Department in support of the Central Valley Flood Protection Plan.

The Department will coordinate with LMAs to gather available information regarding potential repair sites. LMAs are encouraged to work with FSRP management to ensure that known sites have been captured as part of the compilation step. If a new potential repair site is identified after the compilation step, the Department will separately evaluate the site for potential addition as an eligible repair.

Data from available sources will be examined for past performance problems. The past performance problems will be reviewed to eliminate instances related to general compliance or routine maintenance.

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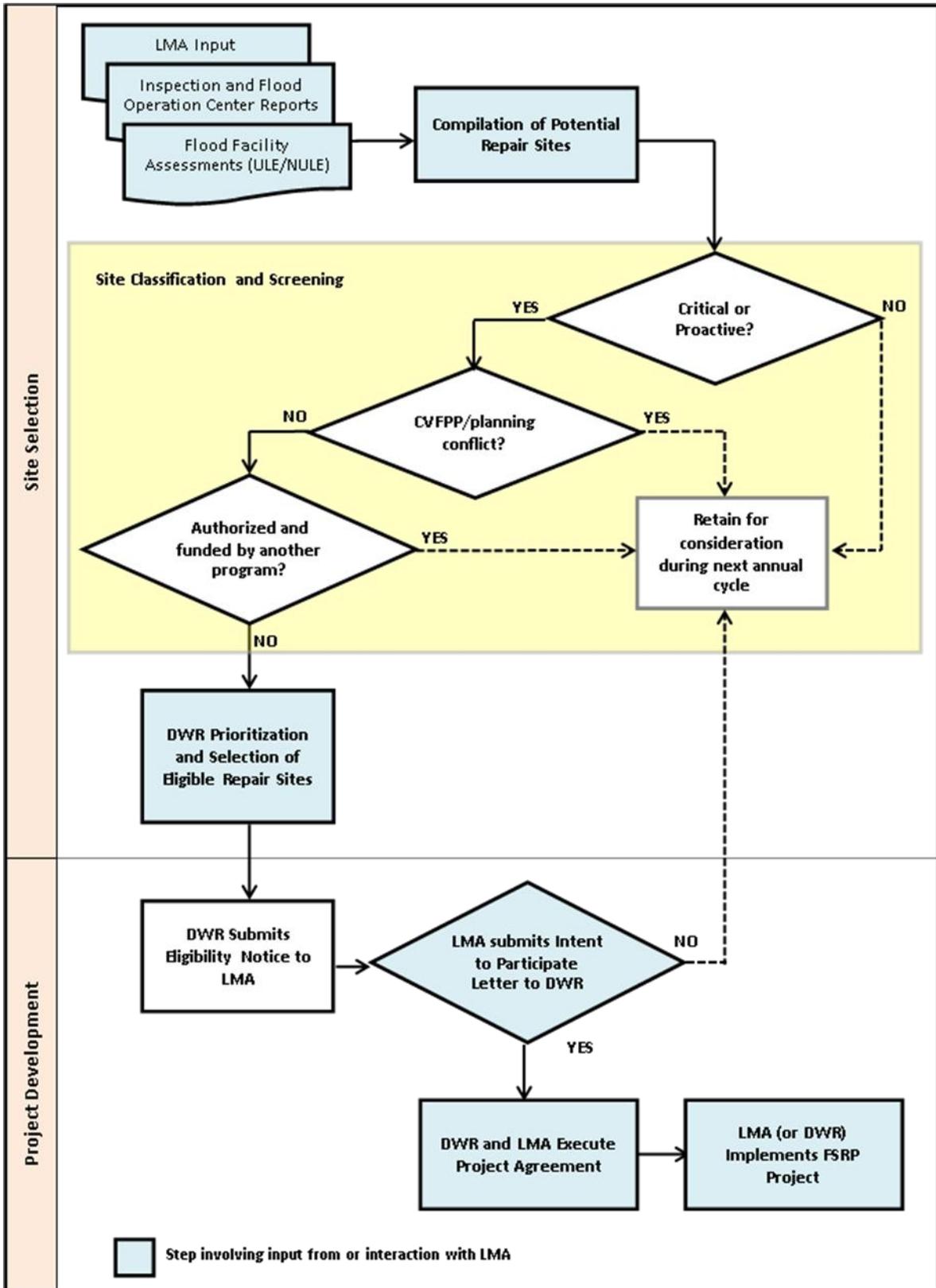


Figure 2-1. FSRP Process.

2.1.2 Classification of Potentially Eligible Repair Sites

2.1.2.1 Critical or Serious Site Classification

DWR will review available engineering data, coordinate with LMAs to conduct reconnaissance-level field assessments, and classify sites by severity of damage as critical, serious, or other. Each classification has an individual ranking method that will determine whether the site represents critical or serious problem as defined in Appendix A.

Sites classified as critical, based on these definitions, will be identified as potentially eligible sites. Sites will be prioritized based on maximum flood risk reduction. If other factors are deemed equal, critically damaged facilities will receive funding in preference to seriously damaged facilities.

Sites not found to be critical will not be eligible, but may be retained for reassessment during subsequent evaluation and ranking under the FSRP. For each potentially eligible critical FSRP site, DWR will prepare a summary alternative repair analysis, including:

- Analysis of a levee setback as appropriate.
- A preliminary estimate of all costs, opportunities, and constraints.
- A real estate and environmental permitting needs assessment.
- A determination of the affected area in the event of a failure of the facility.
- An estimate of benefits.

An evaluation of these factors will result in a list of potentially eligible repair sites, with:

- Preferred repair alternatives.
- An engineer's pre-design estimate.
- A project schedule and budget.
- A summary of needs for real estate and environmental and administrative permits.

The scope of this effort is intended to support determination of site eligibility and the prioritization of repair sites. For sites that proceed to a Project Agreement, the LMA or DWR, per the terms of the Project Agreement, will be responsible for the design and permitting needs as described later in these draft Guidelines.

2.1.2.2 Proactive Site Classification

Each potentially eligible FSRP site is also examined to determine whether its condition qualifies for construction as a Proactive Repair project, which is addressed differently from other eligible repairs. Proactive Repairs are defined as small problems that are worsening rapidly and that can be designed and constructed by the LMA or DWR. Implementation of such proactive repair projects allows for efficient repair of sites that may not otherwise be eligible but would be significantly more costly to implement if allowed to worsen. To qualify for proactive repair, the site must:

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- Have conditions requiring repair beyond the scope of routine maintenance.
- Not have critical erosion problem or erosion damage longer than 50 feet. The 50 feet limitation of erosion length does not apply to Small Erosion Repair Program (see detail below)
- Not have levee slope instability conditions longer than 50 feet.
- Not require abatement of seepage conditions.
- Not require new property rights.

If a site qualifies, it is listed as a Proactive Repair Site. If not, it is listed as a Potential Repair Site that will go through further evaluation and ranking. Small Erosion Repair Program (SERP) is a collaborative effort to streamline permitting process for repair of small erosion sites in a proactive and environmentally responsible manner. The first phase of SERP is implementing a pilot study to repair up to 15 sites per year for 5 years in the DWR maintained areas. If the resources agencies and other stakeholders find the process adequate, the SERP may be extended to all LMAs in the second phase.

2.1.3 Screening Potentially Eligible FSRP Sites Against Administrative Criteria

The annual list of potentially eligible sites will be assessed against administrative criteria for eligibility and sites falling into any of the categories below will be eliminated from further consideration:

- Sites that are inconsistent with the Site System-Wide Investment Approach identified in the 2012 Central Valley Flood Protection Plan.
- Sites that are components of a proposed or scheduled DWR or Central Valley Flood Protection Board (Board) project under other funding
- Sites that are authorized or scheduled to be addressed under an existing federal program.

2.1.4 Prioritization of Eligible Repairs

DWR's prioritization of potentially eligible repairs for soliciting LMA sponsorship will be based on:

- Maximizing flood risk reduction.
- Implementability and sustainability of repairs.
- Project funding.

Based on these criteria, a single potential FSRP repair project may consist of repairs at multiple sites of similar severity where collective repair will result in a significant incremental improvement in flood protection in a specific leveed area. Preference may be given to projects that would repair all eligible sites of similar severity in a leveed area over a project that would repair only a portion of similarly eligible sites.

Because of potential funding limitations, not all critical repair sites may be funded in each annual FSRP cycle. In addition, because implementation of an FSRP repair project is

contingent upon execution of a Project Agreement with the LMA, availability of funding, obtaining all necessary permits and real estate, and other constraints, not all eligible sites identified during an annual FSRP cycle may be implemented. Any potentially eligible critical or proactive repair site that is ineligible, or any eligible repair site that does not proceed to a Project Agreement with an LMA, will be retained for consideration during the next FSRP cycle.

2.2 FSRP Project Development Process

2.2.1 DWR Solicitation of LMA Sponsorship

For each eligible repair site or set of repair sites specific to an LMA, DWR will submit an Eligibility Notice to the LMA. The Eligibility Notice will contain:

- A description of the eligible repair site(s), including classification (i.e., critical or proactive repairs).
- Estimated cost of construction.
- A request for an Intent to Participate Letter from the LMA for entering into a Project Agreement with DWR.
- A list of documentation that must accompany the Intent to Participate Letter.

The requirements of the Intent to Participate Letter will be limited to confirmation that the LMA is authorized to contract with the state and intends to implement the project under DWR oversight and with cost-share.

The Eligibility Notice will specify a response deadline when Intent to Participate Letters must be either mailed (postmarked), submitted in person, or submitted electronically to DWR, as specified in the Eligibility Notice. An LMA receiving an Eligibility Notice will be encouraged to submit any questions to DWR that might help clarify Intent to Participate Letter requirements within 2 weeks of when the Eligibility Notice was provided. Incomplete Intent to Participate Letters submitted after the response deadline may be considered; however, DWR will reserve the right to delay consideration of such applications until the selection process for previously submitted Intent to Participate Letters is completed.

2.2.2 LMA Sponsorship

Implementation of an FSRP project is contingent on LMA sponsorship for an eligible FSRP project. LMA will confirm sponsorship by submitting to DWR an Intent to Participate Letter. At a minimum, an Intent to Participate Letter must include:

- A reference to the Eligibility Notice, including an overview of the FSRP repair project.
- A statement identifying the LMA's representatives.
- A statement concerning the applicant's legal authority to enter into a contract with the State of California, to implement a flood protection program, and to levy assessments and charges.

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- A Resolution of Authority authorizing filing of the sponsorship and designating a representative to sign the Intent to Participate Letter.
- A statement indicating the LMA is willing and able to design and implement the project as agreed upon in the Project Agreement negotiations and will comply with CWC § 9140 for reporting requirements.

The Resolution of Authority must be a resolution of the LMA's governing board authorizing specific individuals to sign a Project Agreement on behalf of the LMA sponsor and authorizing specific individuals to apply for and accept state disbursements.

On receipt of an Eligibility Notice, if the LMA declines to sponsor an eligible FSRP project, DWR will not perform repairs. Additionally, DWR may petition the Central Valley Flood Protection Board for formation of a maintenance area under CWC § 12878 et seq

2.2.3 Project Agreement

When an LMA submits an Intent to Participate Letter, DWR will provide the LMA a list of the documents required to support the development of a Project Agreement between the LMA and DWR. The extent of required documentation will depend on the type and size of the project and the complexity of the repair effort. This process is described in detail in Appendix B.

Once an LMA has submitted an Intent to Participate Letter and provided the required Project Agreement documentation, DWR will prepare a Project Agreement identifying the roles and responsibilities for DWR and the LMA when implementing the FSRP repair project. Appendix B provides more detail about the conditions and requirements of Project Agreements under the FSRP. The Project Agreement will include a cost-share distribution based on the DWR Cost-Share Formula and will be modified as appropriate using the methods described in Section 4.5.

All Project Agreements must be signed by the LMA sponsor. If a Project Agreement is not signed within 6 months of the date the LMA sponsor indicates its intent to sign, or if an LMA needs additional time to complete environmental review and permitting, it may submit a written request for additional time with appropriate justification. DWR reserves the right to deny a request for more time.

2.2.4 Project Implementation

As a component of the Project Agreement between the LMA and DWR, the LMA will prepare and update as necessary a work plan for the full project implementation according to the Project Agreement (See Appendix B). Projects must result in a complete and maintainable facility.

2.2.4.1 LMA Sponsor-Led Project Implementation

The LMA sponsor will design and construct the repair project, except for facilities identified in Section 2.2.4.2 below. DWR will monitor LMA activities and confirm compliance with all

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applicable permits, standards, laws, and other local, state, and federal requirements. The extent of oversight, depending on the type and complexity of the project, will be identified in the Project Agreement. FSRP repair projects implemented by LMA sponsors will be subject to the independent review requirements described in Appendix B.

For approved FSRP repair projects constructed by the LMA sponsor, an approval letter must first be issued to the LMA sponsor after execution of the Project Agreement, but before construction may begin. Before DWR will issue an approval letter, the LMA sponsor will be required to submit

- Copies of any permits and mitigation monitoring plan(s).
- Design plans and specifications.
- Copies of real estate documents and other agreements, as appropriate, to demonstrate compliance with all applicable requirements of CEQA, NEPA, and all other applicable state and federal environmental requirements, including requirements of federal Clean Water Act, the federal Endangered Species Act, and the California Fish and Game Code).

Execution of a Project Agreement does not compel DWR to issue an approval letter. Issuance of an approval letter will constitute approval to begin construction.

2.2.4.2 DWR-Led Project Implementation

DWR will design and construct projects at facilities identified in CWC § 8361 and those maintained by DWR pursuant to CWC § 12878 et seq. DWR will be responsible for complying with all applicable permits, standards, laws, and other local, state, and federal requirements. FSRP repair projects implemented by DWR will be subject to the independent review requirements described in Appendix B.

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3.0 PROJECT AND LMA ELIGIBILITY

3.1 Eligible LMA Sponsor

An LMA sponsor for an FSRP repair project must be a levee district, reclamation district, or other agency with maintenance responsibilities for SPFC facilities. The sponsor must also be qualified to contract with DWR. A joint powers authority or other entity created and funded to design and implement flood control repairs or improvements may participate as an LMA sponsor provided the LMA with maintenance responsibility for the SPFC facility is a legal partner of the authority. The sponsor must also accept responsibility for continuation of O&M and related activities for the facility on completion of repairs.

LMA sponsors are subject to state and federal conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, may result in a withdrawn Project Agreement and the project becoming ineligible for funding. Other legal action may also be taken. Before agreeing to become an LMA sponsor, LMAs are urged to seek legal counsel regarding potential conflict of interest concerns and requirements for disclosure. Applicable statutes include Government Code § 1090 and Public Contract Code § 10410 and § 10411.

As part of the conflict of interest requirements, DWR may require individuals working on behalf of an LMA sponsor to file a Statement of Economic Interests in the form of a Fair Political Practices Commission Form 700 if it is determined an individual is a consultant for Political Reform Act purposes.

An LMA sponsor must provide documentation of its authority and capability to fund its cost-share and implement its participation in a FSRP repair project as defined in the Project Agreement. Depending on the level of participation and the size and complexity of the repair, DWR may require a written Financial Plan, including a statement of financial capability, a plan to fund its cost-share to build the project, a plan to fund its obligations to perform O&M for the project and a plan to fund its obligation to repair, rehabilitate, reconstruct and replace the project. Detailed requirements for the Financial Plan, if required, are contained in Appendix B.

An LMA sponsor will be required to keep informed of and take all measures necessary to ensure compliance with applicable California Labor Code requirements, including:

- § 1720 et seq of the California Labor Code regarding public works.
- Limitations on use of volunteer labor as defined in California Labor Code § 1720.4.
- Labor compliance programs as defined in California Labor Code § 1771.5.
- Payment of prevailing wages for work done and funded pursuant to these draft Guidelines, including any payments to DWR of industrial relations as defined in California Labor Code § 1771.3.

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3.2 Eligible Repair Projects

An eligible project must be a repair project consisting of work on a critical problem on existing facility of the SPFC. Eligible projects include repair of levees, weirs, flood relief structures, control structures, pumping plants, channels, bypasses, and other facilities of the SPFC. Actions that may be funded include:

- Repair of damaged levees.
- Repair of levee crest and access roads to ensure flood fight capability for the upcoming flood season.
- Erosion repair.
- Sediment control and channel capacity restoration.
- Repair of weirs, flood relief structures, and control structures.
- Modifications to pumping plants as necessary to restore facility to design capacity.
- Implementation of mitigation measures for the repair project, including capital costs related to mitigation through participation in a natural community conservation plan.
- Performance of work to meet habitat, open-space, or recreation objectives as part of a repair project.

Eligible FSRP projects may restore the level of protection up to the intended design level of protection and must fall outside the definition of routine maintenance. If a project improves a facility to a higher level of protection than originally intended, or represents routine maintenance, it is not eligible as discussed below.

3.3 Ineligible Repair Projects

The following project types are ineligible for consideration for repair under the FSRP:

- Repairs to sites that are not components of the SPFC, including appurtenant non-project levees (see below).
- Routine maintenance activities that should be performed under an LMA O&M program.
- Repair projects that increase a facility's level of protection to a higher level than its design level of performance or original design intent.

Appurtenant non-project levees are levees that, while not components of the SPFC, either have the potential to affect the operation of an SPFC feature should they fail, or that provide flood protection to areas that are also afforded protection by SPFC facilities. DWR has identified and evaluated such levees within its Levee Evaluation Program, and although potential repair sites identified on appurtenant levees may be evaluated under the FSRP as described in Section 3.0, these sites are not eligible FSRP repair projects. However, LMAs will be notified of any sites on appurtenant non-project levees that would otherwise meet eligibility, and LMAs may pursue a project under other state or alternate funding sources.

Routine maintenance responsibilities are defined in USACE's standard O&M manuals and unit-specific supplements, assurance agreements, and in state and federal law. For the

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Sacramento River Flood Control Project, O&M responsibilities are further defined by CWC § 8370 and § 12642. For the San Joaquin River Basin, O&M requirements and responsibilities are based on assurance agreements between the Board and each LMA, and CWC § 12642. For the purposes of the FSRP, routine maintenance activities may include:

- Removing debris, rubbish, downed trees, sediment, and other obstructions to natural flow.
- Controlling weeds, grasses, emergent vegetation, and woody vegetation.
- Controlling rodents, grouting rodent holes, dragging and track walking levee slopes.
- Repairing gates, barricades and small structures.
- Completing minor erosion and stability repairs.
- Other work necessary to maintain the function and integrity of the flood control projects.

Maintenance responsibilities are also described in the USACE Flood Control Regulations, 33 CFR § 208.10, USACE O&M manuals, and local assurance agreements.

3.4 Eligible Costs

Eligible project costs are the reasonable and necessary actual costs associated with an eligible project and are described in the Project Agreement, including:

- Costs associated with design.
- Environmental documents.
- Property rights acquisition or purchase.
- Construction.
- Independent reviews.
- Work to meet the habitat, open-space, or recreation objectives described in the DWR Cost-Share Formula.

Only costs for work performed as described in the Project Agreement, and for any DWR-approved change, are eligible project costs. For all eligible project costs described below, billing and payment will be based on the cost of work accomplished. For construction, billing and payment will be based on the cost of work accomplished on the contract items and tasks estimated in the Project Agreement. Unit prices will be used only for establishing the estimated amount of state funding.

Once an LMA sponsor is established, no funds will be disbursed until a Project Agreement has been executed. Under the conditions described in Appendix C, the cost of work performed prior to execution of the Project Agreement may be eligible for credit against the local share of project costs.

Eligible project costs include only reasonable and necessary actual costs directly related repair project elements such as:

- Obtaining necessary environmental permits and associated environmental mitigation directly related to the proposed project, including costs associated with preparing

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documents required by the California Environmental Quality Act (CEQA) and, if applicable, the National Environmental Policy Act (NEPA).

- Legal fees for conducting work eligible for reimbursement.
- A proportionate share of reasonable overhead costs related to the repair project.
- Performing design activities in accordance with the appropriate environmental documents.
- Collection of engineering data for use in the design or construction.
- Advance preparation for right of way acquisition, as described in Section 4.8.
- Eligible real estate capital outlay costs (see Section 4.8).
- Obtaining other necessary federal or state governmental approvals.
- Necessary relocation expenses for property owners and tenants affected by the project.
- Utility relocations and damage to real property.
- Constructing the project in accordance with the design, including project management and other supplementary costs approved in writing by DWR prior to construction.
- Progress reports and the final project report.
- DWR monitoring of project construction.
- Conducting an independent review as described in Appendix B.
- Other costs identified as determined by DWR to be eligible and included in the Project Agreement.

With respect to costs associated with environmental mitigation and monitoring required by CEQA, NEPA, or other applicable permits, only those costs incurred in the first 3 years that the mitigation and monitoring program is in effect may be considered eligible project costs. This mitigation and monitoring includes costs incurred to establish plants and monitor environmental health. After the mitigation and monitoring program has been in effect for 3 years, any continuing costs associated with environmental mitigation and monitoring will be considered routine maintenance, and will not be considered eligible FSRP costs.

To determine the eligibility of certain types of costs, DWR intends to use the same guidance document used by USACE, the Office of Management and Budget Circular A-87 (see 2 CFR Part 225, Exhibit E [indirect costs], or 2 CFR Part 225, Exhibit B, Item 23 [interest costs]). A copy the Office of Management and Budget Circular A-87 can be found at: http://www.whitehouse.gov/sites/default/files/omb/assets/omb/fedreg/2005/083105_a87.pdf.

4.0 GENERAL CONDITIONS

This section covers the general conditions that apply to implementation of all eligible FSRP repair projects. These conditions will be incorporated into the Project Agreement as described in Appendix B.

4.1 Basis for Initial Funding and Scheduling

Initial funding will be based on the pre-design estimate of costs and any LMA contributions that are to be credited as defined in Appendix C of these draft Guidelines. Funding may be adjusted immediately prior to the execution of a Project Agreement with the LMA, immediately after the project construction contract is awarded, and when all costs are known after completion of construction. The adjustments will be based on actual eligible expenditures and updated estimates of completion costs.

The initial schedule for construction will be derived from the critical path method diagram in the design, with the start date updated when determined. The schedule may be adjusted to reflect changes approved by DWR.

4.2 Basis for Disbursement of Funds

Disbursement of funds under an executed Project Agreement will be based on conditions identified in Appendix C of these draft Guidelines.

4.3 Regulatory Compliance

Projects will comply with all applicable permits, standards, laws, and other local, state, and federal requirements. These may include the regulatory requirements of the Federal Energy Regulatory Commission, USACE, the Central Valley Flood Protection Board, the State Water Resources Control Board, and other agencies. Projects will also comply with

- CEQA.
- NEPA, if applicable.
- State and federal Endangered Species Acts.
- Federal Clean Water Act.
- Any other applicable laws.

For projects constructed by an LMA, the LMA sponsor must identify and obtain any permits required for the work. For projects constructed by DWR, DWR will identify and obtain required permits.

4.4 Environmental Compliance

FSRP projects are required to comply with CEQA. DWR will not fund construction work before the CEQA/NEPA process is completed. For LMA-led FSRP projects, the LMA will be responsible for the preparation, circulation, and consideration of the environmental document prior to making any irretrievable commitments of resources for project activities that are

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subject to CEQA and NEPA when required. The LMA, in consultation with DWR, will be responsible for determining the appropriate environmental document to comply with CEQA requirements (i.e., Statutory Exemption, Categorical Exemption, Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report).

4.5 Cost-Share

Disbursement of FSRP funds to an LMA sponsor will be under a Project Agreement between DWR and the LMA sponsor. Projects will be cost-shared with LMA sponsors. The total project cost of repair projects sponsored by the LMA will be shared with the LMA according to percentages obtained using the methods described below. For FSRP repair projects on facilities maintained by DWR through a maintenance area, costs will be shared in the same manner, but the local share will be paid using maintenance area funds. For FSRP repair projects on facilities maintained by DWR under CWC § 8361, DWR will pay all applicable costs through the FSRP. DWR will apply a maximum state funding of \$5,000,000 per project. DWR's director may authorize variances to this provision to fund projects under exceptional circumstances. The total project cost does not include DWR's costs incurred prior to notifying the LMA of project eligibility, including the compilation, evaluation, prioritization and selection of potential repair sites or the development and negotiation of the Project Agreement.

Projects may also be partnered with federal agencies or state agencies other than DWR, if such sponsorship is available and applicable. Project partnering with federal or other state agencies will be accomplished under agreements between the LMA or DWR and those agencies. These additional funds will be applied against the total project costs, with the remaining project costs to be shared between the LMA and DWR in accordance with cost-share provisions described in this section.

4.5.1 Base Cost-Share Provisions

The base DWR cost-share of the FSRP will be based on the latest edition of the Guidelines for Establishing Local Agency Cost-sharing Formulas for Flood Programs and Projects (DWR Cost-Share Formula). The DWR Cost-Share Formula provides additional incentive objectives for the sponsors (i.e., the LMA) to reduce their cost shares. The DWR Cost-share formula can be referenced on the internet at:

http://www.water.ca.gov/floodsafe/docs/Cost_Sharing_Formula_12-29-10_Final.pdf

The DWR Cost-Share Formula allows the State to cost-share at a higher percentage than the base percentage of 50 percent. Credit is given for open space, habitat, and recreation enhancements, and for protection of State facilities up to a cap of 20 percent. Additional credit towards a higher State cost-share is available for flood protection in economically disadvantaged areas. The DWR Cost-Sharing Formula also allows credit to be given for program-specific enhancements; however, the maximum State cost-share cannot exceed 90 percent. The FSRP program-specific credits are described in the following section.

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Table 4-1. FSRP Cost-Share Incentive Objectives Performance Score.				
No.	Criteria Description	Rating Score¹	Weight Factor	Weighted Score
LMA - Reporting Performance per CWC §9140				
1	Information known to local agency that is relevant to the condition or performance of Project Levee (or jurisdictional Non-project Levee).		0.5	
2	Information identifying known conditions that might impair or compromise the level of flood protection provided by the Project Levee (or jurisdictional Non-Project Levee)		1	
3	A summary of maintenance performed by the LMA during the previous fiscal year.		1	
4	A statement of planned work and estimated cost for operation and maintenance of the Project levee (or jurisdictional Non-Project Levee) for the current fiscal year, as approved by the LMA.		0.5	
LMA - Emergency Response Preparedness				
1	Develop and publish Emergency Action Plan or Flood Safety Plan.		2	
2	Active participation in annual flood pre-season coordination meetings with the Flood Operations Center, the Sacramento County Office of Emergency Services, USACE, and other agencies.		2	
3	Training of all LMA staff and contractors likely to respond to flood emergencies in: a) Standardized emergency management system, national incident management system, and incident command system (SEMS/NIMS/ICS) introduction; b) Flood Fight Methods; and c) Environmental Awareness		1	
LMA - Operation and Maintenance				
1	All-weather access road to support emergency flood fight response.		1.5	
2	Rodent abatement program, entailing an effective plan, budget, practice, and inspections.		1	
3	Vegetation management in compliance with current DWR standards and policies.		1	
4	Encroachment management: inspections, evaluations, and enforcement.		1	
5	Routine maintenance of flood control facilities.		2.5	
6	Participation in a Corridor Management Strategy (see 2012 CVFPP - p. 4-8 and Att. 2, p. 5-23) or similar planning effort.		1.5	
7	5-year plan for routine and non-routine maintenance projects. The plan should include, at minimum, a list of prioritized projects, schedule, and annual budgets.		1.5	
LMA – Participation in State Systemwide Investment Approach				
1	Participation in Regional Flood Management Planning Initiative, IRWM region, or other multi-benefit project		1.0	
2	Collaboration with LMA's in same Region or Leveed Area		1.5	
Total weighted score:				
Minus minimum qualifying score for FSRP cost-share enhancement:				-6
LMA Maintenance Quality Index (MQI) Score (Max = 35):				

¹Rating Scores: Not acceptable = 0; Minimally-acceptable = 1; Acceptable = 2

4.5.2 Enhanced Cost-Share Specific to FSRP

The FSRP will provide for increasing the base state cost-share for LMAs who have demonstrated effective flood-risk reporting, emergency response, and/or operation and maintenance effectiveness or are actively participating in the regional flood management projects. The sponsoring LMA may be eligible to reduce its cost-share based on its past performance with respect to compliance with the reporting requirements per the CWC § 9140, to emergency response preparedness, and O&M. The sponsoring LMA may be eligible to reduce its cost-share based on its participation with DWR as a sponsor or participant in the Regional Flood Management Planning Initiative, an Integrated Regional Water Management region, or other multi-benefit project; or if it is collaborating on implementing projects with other LMAs in its region or leveed area for which collective repair will result in an incremental flood risk reduction. Table 4-1 lists performance criteria and associated scores. Scoring will be at the discretion of DWR and will be negotiated during the Project Agreement. The LMA maintenance quality index (MQI) score correlates to the percent increase in state cost share, subject to limitations.

The maximum credit for FSRP program-specific enhancements is 35 percent. When combined with the credits given for all of the enhancements (excluding credit for disadvantaged areas) allowed by the DWR Cost-Share Formula, the State's total cost-share cannot exceed 85 percent; however, if eligible for credit as an economically disadvantaged area, the maximum state cost share can increase to 90 percent. Several examples of cost-share calculations using these draft Guidelines are provided in Appendix D.

4.6 Design

Design calculations, plans, and specifications for FSRP repair projects will be prepared by the LMA or DWR as defined by the terms of the Project Agreement. Designs will be converted into formal contract documents providing the information needed to begin project construction, including plans showing project features, specifications complementing the plans, a detailed cost estimate showing the eligible project costs by line item, a design analysis or report showing engineering calculations, a task breakdown for project construction, and a schedule for project construction produced by use of a critical path method diagram. All documents will be prepared with enough specificity and completeness so that a qualified and experienced general contractor will be able to understand the intent of them and bid on the project. Design calculations, plans, specifications, and estimates will be certified by an engineer who is registered pursuant to California law with a minimum of 5 years of relevant geotechnical experience unless otherwise approved by DWR. DWR reserves the right to review and approve the qualifications of consultants and contractors employed on an FSRP Project Agreement. Projects must result in a complete and maintainable facility.

4.6.1 Design Criteria

The design criteria are the most significant factors affecting the selection of repair alternatives because they impact the repair costs. Design criteria will adhere to these principles:

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- Repairs will primarily focus on addressing a critical problem without exacerbating other existing problems at the same site. For example, if erosion problem is critical and is proposed for repair, the proposed repair shall be able to withstand the erosive forces anticipated up to a design level of flood protection. The erosion repair would not address existing through seepage that is a non-critical problem at the same site. Design reviews will ensure that the proposed repair does not exacerbate the other existing problems.
- Repairs shall meet the minimum engineering practices for safety.
- Repairs should be designed to maximize avoidance of environmental impacts and to limit mitigation to impacts that cannot be avoided.
- At DWR's discretion, the repairs may be designed to a lower level of flood protection. This pragmatic approach will allow an incremental reduction of flood risk.

To ensure consistency in FSRP designs and to expedite repair implementation, DWR will prepare rehabilitation criteria that will further define design criteria for erosion, slope stability, and seepage problems under the FSRP using these principles. In addition, the Central Valley Flood Protection Board may create an advisory committee that will work with DWR, LMAs, interested stakeholders, and USACE to develop rural levee repair and improvement criteria that may be applied to FSRP repairs. A draft of these rural levee repair and improvement criteria is scheduled to be available by July 2013.

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4.7 Ecosystem Improvement Habitat Enhancement, and Recreation Components

DWR or the LMA sponsor may originate elements contributing to the habitat, open space, and recreation objectives as described in the DWR Cost-Share Formula. These costs are part of the total project cost, provided they are originated by the LMA and are not funded by federal or other state agencies. Habitat, open space, and recreation elements that do not meet these conditions are not included in the total project costs.

4.8 Acquisition of Property Rights

FSRP repair projects may be constructed on land currently secured for flood project purposes that is managed by the Sacramento-San Joaquin Drainage District or on land for which the LMA has secured the rights to use for construction, and O&M of the project improvements. Costs associated with acquisition of property rights are considered eligible project costs as defined in previous sections. DWR may perform work in preparation for acquisition of right-of-way and other real property rights for the project being designed under the following conditions:

- DWR may advance state funds to pay the LMA staff salaries, staff expenses, and equipment and materials costs for performing work leading to the acquisition of property rights.
- DWR may advance state funds to pay for real property rights to be acquired that are necessary and appropriate for the project.
- DWR may account for all reimbursable costs of preparing for property rights acquisition as an item in the design task breakdown.

- DWR will provide a list of properties for which state funds were expended to prepare for acquisition. The list will identify which actions, such as parcel descriptions and title searches, were performed for each parcel.
- The LMA sponsor will pay the local share of the costs of property rights acquisition and preparation for such acquisition.

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5.0 CHANGES TO OVERALL WORK PLAN AFTER FUNDING AGREEMENT IS SIGNED

After the Project Agreement is executed, DWR will consider approving or requiring changes to the work plan due to circumstances that were not reasonably foreseeable at the time the Project Agreement was executed. DWR will allow non-material changes to be made to the work plan without formally amending the Project Agreement. Non-material changes include:

- Changes to the design plans if, at the sole discretion of DWR, DWR determines changes will improve the project design and will not result in a budget revision or an increase in the overall schedule beyond the term of the Project Agreement.
- Changes to portions of the work plan concerning budget that would not result in an increase to the state's funding commitment, as explained below.
- Changes to the work plan's project schedule that do not extend the term of the Project Agreement.

If, at DWR's discretion, changes in the scope of the work plan require an increase in funding, DWR may authorize an increase in the project budget of up to 10 percent without amending the Project Agreement.

If the LMA sponsor and DWR agree to a material change with respect to the work plan that decreases the total project cost, there shall be a proportionate reduction in the limit on state funds.

If a change to the DWR Cost-Sharing Formula causes the overall state share of the total project cost to increase or decrease, then the Project Agreement must be amended, which will be subject to approval by the Department of General Services.

If DWR approves a material change pursuant to the provisions of this section, the LMA sponsor shall include information regarding the material change in the reports required by the Project Agreement. DWR and the LMA sponsor shall also formally amend the Project Agreement to reflect any material change, which will be subject to approval by the Department of General Services.

5.1 LMA Sponsor's Construction Default

If for any reason an LMA sponsor is unable to completely construct an FSRP repair project, DWR, at its sole discretion, may do any or all of the following:

- Cancel the Project Agreement.
- Complete the project using its own resources.
- Contract with the current or any other contractor to compete the project.

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- Require that the LMA sponsor return all or a portion of state funds, with interest at the State Surplus Money Investment Fund rate at the time of default, accruing from the date the funds were provided.

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6.0 GUIDELINES FOR PUBLIC REVIEW AND AMENDMENTS

6.1 Public Review of Guidelines

These draft Guidelines in their present form represent a draft document to be submitted for public review and comment. Upon draft release, the draft Guidelines will be available for public comment for 45 days. DWR will hold one or more public meeting(s) during the public comment period to provide an additional opportunity for public review and comment on these the draft Guidelines. The location dates/times, and other relevant meeting information will be noticed upon release of these draft Guidelines. DWR will then consider comments received and make revisions, as appropriate. The final Guidelines will be noticed by DWR and made available on the FloodSAFE website at <http://www.water.ca.gov/floodsafe/>.

6.2 Amendments to Guidelines

Any or all of the eligibility criteria, requirements, or procedures specified in these draft Guidelines may be changed, substituted, or terminated, and other criteria may be added at DWR's discretion by amending these draft Guidelines pursuant to the process set forth in this section. Amendments to the draft Guidelines will be publicly posted and made available for public comment for a minimum of 2 weeks.

DWR does not intend to apply amendments to draft Guidelines for projects where Project Agreements have been executed; however, in situations where an executed Project Agreement must be amended for other reasons, DWR will consider making changes to the agreement that are consistent with the version of the Guidelines in effect at the time that the agreement is amended. An executed Project Agreement can only be amended if both DWR and the LMA sponsor agree to do so.

If the eligibility criteria are changed for any reason following issuance of any Eligibility Notices but before Project Agreements are executed, DWR will notify the LMA sponsor of the changes. If the LMA sponsor has supplied information, DWR will request additional information as needed to determine whether the proposed projects meet all applicable revised or new criteria. DWR, following any response of the LMA, shall have the option to either cancel the Eligibility Notice for the project or offer a revised Eligibility Notice reflecting the changed conditions.

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