

Early Implementation Program Guidelines

AUTHORIZED UNDER

**THE DISASTER PREPAREDNESS AND FLOOD PREVENTION BOND ACT OF 2006
(PROPOSITION 1E)**

AND

**THE SAFE DRINKING WATER, WATER QUALITY AND SUPPLY, FLOOD CONTROL,
RIVER AND COASTAL PROTECTION BOND ACT OF 2006 (PROPOSITION 84)**

STATE OF CALIFORNIA

DEPARTMENT OF WATER RESOURCES

DIVISION OF FLOOD MANAGEMENT

DECEMBER 2008

TABLE OF CONTENTS

	<u>Page</u>
I. Introduction.....	1
II. Definitions and Acronyms	2
III. General Requirements.....	8
IV. Application and Selection Process.....	10
A. Background.....	10
B. Who Can Apply	12
C. Eligible Projects and/or Components.....	12
1. Eligible Design Projects.....	12
2. Eligible Repair Projects	13
3. Eligible Improvement Projects	13
D. Ineligible Projects and/or Project Components.....	14
E. Ring Levees	15
F. Area Plan and Area Project Spending Cap	16
G. Eligible Costs	17
H. Application Process	19
1. Proposal Solicitation Package.....	19
2. Required Application Materials.....	19
I. Selection Process	20
1. Eligibility	21
2. Ranking.....	35
3. Determination of State’s Cost-Share	39
4. Announcement of Tentative Project Selection	49
V. Finalization of Agreement and Disbursement of Funds	50
A. Requirements for Finalization of Funding Agreements.....	50
B. Requirements for Disbursement of Funds	50
VI. Independent Review.....	51
VII. Guideline Amendments	52

TABLE OF CONTENTS

(continued)

	<u>Page</u>
Appendix A Applicant’s Cost-Share Recommendation and Report.....	54
Appendix A-1 Cost-Sharing Examples.....	57
Appendix A-2 Water Supply Facilities of the State Water Project	61
Appendix A-3 EIP Guidelines: Cost-Share and State Supplemental Cost-Share Cap	65
Appendix B Overview of Project Funding Agreement.....	66
Appendix C List of Reference Materials	77

I. INTRODUCTION

The passage of the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Proposition 1E) and the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84), authorizes the California Department of Water Resources (“Department”) to make funds available to Local Agencies for, among other things, flood protection work. These funds will be for: (a) repair, rehabilitation, reconstruction or replacement of levees, weirs, bypasses and facilities of the State Plan of Flood Control and (b) improving or adding facilities to the State Plan of Flood Control to increase levels of flood protection for Urban Areas. This program applies only to certain portions of the Central Valley and certain adjacent areas. California Public Resources Code § 5096.805(e) and (j).

Under the Early Implementation Program (“EIP”), eligible Projects must be ready for implementation in the fiscal year that funds are authorized by the Legislature through the budget process. In certain circumstances the Department may, at its sole discretion and as it may be authorized, use EIP funds to cover cost increases affecting a previous year’s EIP project. These *Guidelines* concern the application and selection process which will be used to disburse funds, as well as describe the Agreements that successful Applicants will have to sign and detail how these Agreements will be administered. The *Guidelines* may be amended as provided for in Section VII and may be changed for subsequent fiscal years.

Local Agencies contemplating undertaking eligible Projects should consider applying for funding as early as possible. Additional EIP funding may be available through Fiscal Year 2010-11, but the amount available will vary each year and will likely decrease. The Department envisions transitioning the distribution of funds for Projects that may be eligible under this program to the Department’s traditional capital outlay program for flood management projects. Local Agencies developing plans to repair, improve or add to facilities of the State Plan of Flood Control are encouraged to work with the Department at the earliest opportunity, since providing funds through the capital outlay budgeting process typically takes 18 – 24 months. The Department intends to use these *Guidelines* for EIP Projects selected and funded under a Funding Agreement, and, to the extent applicable, for EIP Projects funded through the Department’s capital outlay program.

The application process consists of multiple steps. First, to be eligible to receive any funding, submitted applications must meet all of the applicable eligibility criteria. Second, the Department will rank all eligible Projects using the ranking criteria discussed in these *Guidelines*. Finally, after Projects are ranked, the Department will determine the cost-sharing formula for the highest ranked Projects until no funds remain (or there are no eligible Projects left that meet the minimum required ranking score).

The Department will inform qualified Applicants of their award and the local cost-share that will be required in order for them to receive funding through this program. Projects eligible for funding through other state sources may be disqualified from EIP eligibility. No Applicant may use State funds for its local share unless specifically authorized to do so by the Legislature.

This application and selection process notwithstanding, the Department reserves the right to implement meritorious Projects in a manner feasible for the Department. If, for example, a Local Agency were to propose a full Area Project in the first EIP cycle, the Department retains the right to fund only an Element of that Area Project in any given EIP year.

These *Guidelines* reference several additional documents including the AB 1147 draft regulations for cost-sharing, the interim levee design criteria, the Department's hydraulic impacts analysis procedure (Draft Interim Risk and Uncertainty Procedure) and documents relating to calculation of the benefit-cost ratio. Where external documents are referenced, a link to where they can be found on the internet is offered. In addition, a list of reference materials is provided in Appendix C.

Any or all of the eligibility criteria, requirements or procedures specified in these *Guidelines* may be changed, substituted or terminated, and/or other criteria may be added at the Department's discretion by amending these *Guidelines* (pursuant to the process set forth in Section VII below) and as a result of State legislative actions associated with the passage of the annual State budget or other legislation. If the eligibility criteria are changed by the State legislature following issuance of any conditional funding commitment letters, the Department will notify these Applicants of the changes and will request additional information, as needed, to determine if proposed Projects meet all applicable revised and/or new criteria. The Department, following the Applicants' responses, shall have the option to either (1) cancel the funding commitment with no liability occurring to the State or (2) offer a revised funding commitment letter, reflecting a changed funding amount and/or other changed conditions, followed by execution of a Funding Agreement.

These *Guidelines* are the result of a rigorous internal drafting process and thorough public review. On September 19, 2008 the Department of Water Resources published a draft of these *Guidelines*. That draft was available for public comment for 30 days. Shortly before the end of the comment period, the Department held a public meeting to discuss the draft. After the 30 day period ended, The Department collected, analyzed and integrated, where possible, these comments into the final EIP Guidelines. Today, December 16, 2008, with Director approval, the Department issues this document: the final version of the EIP *Guidelines*.

II. DEFINITIONS AND ACRONYMS

“Agreement” or “Funding Agreement:” An agreement entered into by a successful Applicant and the State to provide funds for the Project.

“Applicant” or “Local Agency:” A Local Agency that applies for Project funding.

“Applicant’s Cost-Share Recommendation and Report:” A report that the Applicant is required to submit with its application that will make a recommendation regarding the appropriate State cost-share and provide substantiation of the basis for this recommendation, as more fully described in these *Guidelines*.

“Area:” A separable hydraulic basin protected by a system of flood management infrastructure.

“Area Plan:” A plan with a schedule, cost estimate and proposed cost-sharing prepared by a civil engineer and adopted by the Local Agency (and all other local agencies that will participate

financially in the Area Plan and which will have responsibility for the flood management infrastructure in the Area) for achieving a specific level of flood protection for an Area. An Area Plan may describe one or more Area Projects for a single Area. For a Non-Urban Area, the Area Plan must describe how to repair flood management infrastructure up to the Design Level of Performance. For an Urban Area, the Area Plan must provide at least 200-year protection by way of up to two Area Projects. The Area Plan must address the Project Levees *and* non-Project Levees that are necessary for protecting the Area.

“Area Project:” The work within an Area, comprised of one or more Projects that is required to achieve a specific Level of Protection or Design Level of Performance for an Area. Each Area Project is capped at \$200 million contribution from Cal. Pub. Res. Code § 5096.821 funds. The cost of repairs included in an Area Project is not counted against the \$200 million cap. Area Projects must incorporate non-Project Levees within the Area that are necessary for protecting the Area.

“Associated Ecosystem Restoration Project:” A Project associated with a flood protection Project that is eligible for funding under these *Guidelines* which is (1) not necessary for the flood protection project, (2) closely linked to the flood protection project and (3) for the improvement of a natural system and landscape features including, but not limited to, a Project for the management of erosion, the management and elimination of exotic species, including prescribed burning, fuel hazard reduction, fencing out threats to existing or restored natural resources, road elimination and other plant and wildlife habitat improvement to increase the natural system value of the property. An Associated Ecosystem Restoration Project shall include the planning, monitoring and reporting necessary to ensure successful implementation of the Associated Ecosystem Restoration Project objectives.

“Average Family Size:” The average family size for a block group. This data can be obtained from the U.S. Census Bureau or other Federal, State or local governmental demographics.

“Benefited Area:” The area that receives direct flood damage reduction benefits.

“Block:” The smallest subdivision within a census geographic tract. This data can be obtained from the U.S. Census Bureau or other Federal, State or local governmental demographics.

“Block Group:” A cluster of blocks within a census geographic tract. The block group is the smallest census unit to have demographic data. This data can be obtained from the U.S. Census Bureau or other Federal, State or local governmental demographics. “Block group” is a demographic term used by the U.S. Census Bureau.

“Board:” The Central Valley Flood Protection Board (formerly The Reclamation Board) or its successor.

“Central Valley Flood Protection Plan:” The plan to be developed by the Department in accordance with Cal. Water Code § 9612.

“Contractor:” The contractor performing the Project work for the Funding Recipient.

“Corps:” The United States Army Corps of Engineers.

“Delta:” The area of the Sacramento-San Joaquin Delta as defined in Cal. Water Code §12220.

“Department:” The Department of Water Resources.

“Design Level of Performance:” Refers to the authorized design water surface profile and levee crown elevation. For most of the facilities of the State Plan of Flood Control, this is the 1955 or 1957 design water surface profile, plus 3 feet or more freeboard, as designed and constructed by the Corps. The Design Level of Performance acceptable to the Department is the level which has been adopted by the State and for which the State has offered assurances to the federal government. If improvements have been made to the Design Level of Performance that have not been adopted by the State (i.e. assurances have not been provided to the federal government), they are not considered part of the Design Level of Performance for purposes of EIP funding.

“Design Project:” Refers to an EIP Project that only involves final design work without any actual construction. This does not include work associated with preliminary Project design.

“Early Implementation Program (EIP):” Refers to the program for improving or repairing facilities of the State Plan of Flood Control before the adoption of the Central Valley Flood Protection Plan. The EIP is funded by the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Proposition 1E) and the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84). This definition only applies to Projects solicited and funded under *this* program.

“Eligible Improvement Project Costs:” The Eligible Project Costs associated with an Improvement Project as further described in these *Guidelines*. Such costs only include work which is a necessary part of the flood protection efforts.

“Eligible Project Costs” or “Eligible Costs:” The reasonable and necessary actual costs associated with either a Repair Project or an Improvement Project as further described in these *Guidelines*. Such costs only include work that is a necessary part of the flood protection efforts.

“Eligible Repair Project Costs:” The Eligible Project Costs associated with a Repair Project as further described in these *Guidelines*. Such costs only include work which is a necessary part of the flood protection efforts.

“Facilities of the State Plan of Flood Control:” The levees, weirs, channels and other features of the Federal and State authorized flood control facilities located in the Sacramento and San Joaquin River drainage basin for which the board or the department has given the assurances of non-federal cooperation to the United States required for the project, and those facilities identified in Section 8361 of the Water Code. *See* Cal. Pub. Resources Code § 5096.805(e).

“Federal Feasibility Study Report:” The approved decision document used by the Corps or by the Natural Resources Conservation Service that establishes the feasibility for the Project, and typically includes an environmental document. This includes, but is not limited to, general reevaluation reports (GRR), limited reevaluation reports (LRR) and engineering documentation reports (EDR).

“Funding Agreement” or “Agreement:” An agreement entered into by a successful Applicant and the State to provide funds for the Project.

“Funding Recipient:” A Local Agency in the State of California, duly organized, existing and acting pursuant to the laws thereof, which is the signatory to a Funding Agreement, and its successors and assigns.

“Impoverished Area:” A Benefited Area that has a median household income of less than 120 percent of the poverty level, for the current or most recent year in which data is available at the time which the analysis is performed to determine the recommended state cost-share.

“Improvement Project:” A Project which will improve or add facilities to the State Plan of Flood Control to increase levels of flood protection for Urban Areas. Funding for Improvement Projects is authorized by Cal. Pub. Res. Code § 5096.821(b).

“Independent Review:” A review conducted at the Department’s discretion of design and construction activities prior to the initiation of physical construction and periodically thereafter on a regular schedule to inform the Department and the Funding Recipient on the adequacy, appropriateness and acceptability of the design and construction activities for the purpose of assuring public health, safety and welfare until Project construction activities are completed.

“Level of Protection:” Relates to the probability of flooding in any one year. It is expressed as 1 in x annual chance of flooding (*e.g.*, 1 in 50 annual chance of flooding is a 50-year level of protection.”). This term is different than “Design Level of Performance” which deals with the performance level of the facility at issue based on the original intended design.

“Limit on State Funds:” The maximum amount of State funds that will be expended on the Project, as set forth in the Funding Agreement.

“Local Agency” or “Applicant:” A public agency in the State of California, duly organized, existing and acting pursuant to the laws thereof, including, but not limited to, any county, city, city and county, district, joint powers agency or council of governments. For purposes of these *Guidelines* a Local Agency must have authority to implement flood management projects.

“Median Household Income:” The median household income for a Block Group. This data can be obtained from the U.S. Census Bureau or other Federal, State or local governmental demographics.

“Non-Urban Area:” Any area which is not an Urban Area.

“OMRR&R:” Operation, maintenance, repair, replacement and rehabilitation of the Project.

“Open-Space:” Is any parcel or area of land or water that is essentially unimproved and devoted to an Open-Space use. The Open-Space is either designated on an Open-Space or general plan or will be designated upon the next revision of the Open-Space element of a general plan. Open-Space is designated as any of the following:

- Open-Space for the preservation of natural resources;
- Open-Space used for the managed production of resources, including but not limited to, forest lands, rangeland, agricultural lands;
- Open-Space for outdoor recreation; and

- Open-Space for public health and safety, including, but not limited to, flood plains, watersheds, and areas required for the protection of water quality or groundwater recharge.

“Overall Work Plan:” The plan described in the Funding Agreement which sets forth the work to be done to complete the Project.

“Poverty Level:” The monetary income standard that defines whether a family qualifies as living in a state of poverty. The poverty level is determined by using the U.S. Census Bureau’s Poverty Threshold Chart for the current or most recent year in which data is available. Average Family Size and the Median Household Income, at the time the analysis is performed, is used to determine the recommended state cost-share. On the Poverty Threshold Chart, the poverty level is determined by rounding up the value of the Average Family Size, locating that rounded up value on the size of family unit column and locating the corresponding value in the weighted average thresholds column. The corresponding weighted average threshold value is considered to be the poverty level value.

“Project:” Means a Project for work (other than a Design Project) to be funded under these *Guidelines*. For EIP purposes, a Project will be defined as a distinct piece of work that is separately identifiable and physically separable from other work in the Area and will on its own, or as part of other work, repair, restore, replace or improve performance of a facility or facilities of the State Plan of Flood Control. A Project may be an Area Project or a component of an Area Project.

“Project Element” or “Element:” A discrete portion of the Project identified in the Overall Work Plan.

“Project Feature” or “Feature:” A discrete portion of a Project Element identified in the Overall Work Plan.

“Project Levees:” The levees that are part of the facilities of the State Plan of Flood Control.

“Project Real Estate Plan:” A plan for acquisition of interests in real estate needed to complete the Project. The Project Real Estate Plan must be reviewed and approved by the State.

“Quarterly Progress Report:” A report on the status of the Project offered on a quarterly basis.

“Quarterly Statement of Costs:” A statement of Eligible Project Costs incurred each quarter, as further described in the Funding Agreement.

“Quarterly Work Plan:” A plan described in the Funding Agreement which sets forth the work to be done each quarter to complete the Project, as further described in the Funding Agreement.

“Real Estate Capital Outlay Costs:” Reasonably justified costs for real property interests (fee/easement), private utility line relocation (*i.e.*, utility lines serving only one party), damage expenses (wells, fences and irrigation systems), goodwill and relocation assistance programs.

“Real Estate Support Costs:” Reasonable acquisition services, appraisal services, geodetic and cadastral services, environmental site assessment services, attorney’s services fees, engineering services fees, court costs, title and closing costs, and public utility relocations (*i.e.*, utilities serving multiple parties).

“Relocation Assistance Costs:” The portion of the Real Estate Capital Outlay Costs attributable to financial assistance for relocation as specified in the Relocation Assistance Plan.

“Relocation Assistance Plan:” The portion of the Project Real Estate Plan which identifies any required relocations and the amount of financial assistance required and authorized under Federal and State law for such relocations to occur.

“Repair Project:” A Project for “evaluation, repair, rehabilitation, reconstruction or replacement of levees, weirs, bypasses and facilities of the State Plan of Flood Control” for which funding is authorized by Cal. Pub. Res. Code Section 5096.821(a). A Project only qualifies as a repair if it restores the design level of the flood management facility to a capacity lower than or equal to the originally intended rating. If a Project results in the facility having a higher design level than originally intended, it is an improvement, not a repair. A Local Agency may, for its own purposes, consider work on past improvements for which the State has not offered assurances to the federal government to be a repair. For the purposes of complying with the requirements of Proposition 1E, however, the Department will not consider work beyond what is needed to meet the State’s assurances to the federal government a repair.

“Ring Levee:” A levee which by itself or by connecting to existing levees will encircle a particular asset or set of assets and provide them protection from flood risk.

“Routine Maintenance:” Any work required to retain or maintain the intended functions of flood protection facilities and of existing encroachments. Maintenance activities include but are not limited to mowing, tree and brush trimming and removal, revetment restoration, rodent management, spraying, painting, coating, patching, burning and similar works, but do not include any significant excavation or any excavation during flood season.

“Setback Levee:” A new levee constructed completely separate (except for the “tie-ins”) from an existing levee which allows for removal of the existing levee and creation of additional floodplain connected to the stream. In the Delta, a Setback Levee may not necessarily result in removal of the existing levee if habitat restoration will be better achieved with the existing levee left in place.

“State:” The State of California, acting by and through the Department of Water Resources.

“State General Obligation Bond Law:” The State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code).

“State Plan of Flood Control:” The State and Federal flood management 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 management projects in the Sacramento River and San Joaquin River watersheds authorized pursuant to Article 2 (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 by the Department and compiled into a single document entitled “The State Plan of Flood Control.” *See* Cal. Pub. Resources Code § 5096.805(j).

“State Supplemental Cost-Share Cap:” The State/local total investment corresponding to 70% of the investment required to provide an Urban Area with 200-year flood protection benefits.

“State Transportation Facility:” A state-numbered freeway, expressway or highway route as identified in Division 1, Chapter 2, Article 2 of the California Streets and Highways Code, including facilities for the transportation of passengers and property to and over any toll bridge, tube or other highway crossing and the approaches to each end thereof, acquired or constructed, or in course of construction by the State. Where a freeway, expressway or highway is labeled with more than one numerical designation, it shall be considered a single state transportation facility.

“State Water Supply Facility:” A State water supply facility listed in Appendix A-2, “Water Supply Facilities of the State Water Project.”

“Statement of Costs:” A statement of incurred Eligible Project Costs.

“Supplemental Benefits:” Benefits associated with a Repair or Improvement Project that are not required as mitigation by CEQA, and meet multipurpose objectives related to habitat, open space, recreation and/or contribute to the impoverished areas and/or State facilities objectives. Supplemental Benefits may make the Project eligible for an increased state cost-share under these *Guidelines* and are nearly identical to the cost-sharing regulations developed under AB 1147.

“Tract:” The census derived geographic subdivisions of a county. Each tract is made up of one or more block groups. This data can be obtained from the U.S. Census Bureau or other Federal, State or local governmental demographics.

“Urban Area:” Any contiguous area in which more than 10,000 residents are protected by Project Levees.¹ This means that a Project Levee failure could flood the residences of more than 10,000 people in a single Area.

III. GENERAL REQUIREMENTS

These *Guidelines* govern the process by which a Local Agency prepares and submits an application for a Project under the Early Implementation Program, the process by which the Department reviews and selects Projects to fund from that pool of applications and other

¹ The definition of “Urban Area” in Proposition 1E and one section of Senate Bill 5 are different. Here, the boundary for the 10,000 residents is “a contiguous area ... protected by project levees.” Under Section 65007(i) of SB 5, the 10,000 residents must fall within a “developed area” which is a defined term under Section 59.1 of Title 44 of the Code of Federal Regulations. All references in this document to the term “Urban Area” follow the definition provided herein, unless the term is used in a quote of, or direct reference to, SB 5.

requirements. In addition to governing the competitive process for EIP funds, these *Guidelines* are generally applicable to State-local capital outlay projects. Where a Project receiving EIP funds is governed by specific laws, these *Guidelines* only apply to the extent they are consistent with those specific laws.

Applicants must be a Local Agency. Applicants may submit proposals for one or more Repair or Improvement Projects that are consistent with an Area Plan and Area Project cost limits. The Area Project spending cap is \$200 million but the cost of repair work included in the Area Project is not counted against the \$200 million cap. In Urban Areas, the Department will fund no more than two Area Projects per Area from this program. This is because there are two important flood protection milestones for Urban Areas: (1) The 100-year Level of Protection Federal FEMA standard and (2) the 200-year Level of Protection State standard.

Applicants will be required to provide detailed applications with considerable supporting documentation. All applications must meet a series of eligibility requirements. All eligible applications will be ranked based on competitive criteria. Each Applicant will also need to submit a proposed cost-share analysis, using the procedures discussed in these *Guidelines* in Appendix A. The Department will issue a Project Solicitation Package (PSP) in December 2008. The PSP will provide additional detail regarding the required contents of all applications. The PSP will also contain information about a public workshop for all interested applicants and set the dates of other important milestones in the Project application and selection process.

Once a Project is selected, the Local Agency will need to sign a Funding Agreement with the Department. This Agreement is subject to the approval of the Department of General Services. The Agreement is a contract between the Applicant and the State covering the terms by which the Applicant and State shall work together to fund, manage and complete the Project. Those terms include, among other things, a discussion of the Project schedule and cost, cost-sharing agreement, limit on state funds, Applicant responsibility for completing and maintaining the Project, method by which Applicant receives Project funds from the State, a discussion of reporting requirements and a process through which Applicant completes an assessment of performance and the State verifies that performance. A sample Funding Agreement will be posted at the Department's website. An overview of the Funding Agreement is provided in Appendix B.

All participants are subject to State and Federal conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, will result in the application being rejected and any subsequent contract being declared void. Other legal action may also be taken. Accordingly, before submitting an application, Applicants are urged to seek legal counsel regarding potential conflict of interest concerns and requirements for disclosure. Applicable statutes include, but are not limited to, Government Code, Section 1090 and Public Contract Code, Sections 10410 and 10411, for State conflict of interest requirements.

Applicants should note that by submitting an application, they will waive their rights to the confidentiality of that application, though Department staff will endeavor to keep all applications confidential until Project selection. After the Projects are selected, all applications (those selected *and* those not) will be public documents.

IV. APPLICATION AND SELECTION PROCESS

A. Background

The majority of bond funds to be used for this program were authorized by the following portion of Proposition 1E, which added Section 5096.821 to the Public Resources Code:

5096.821. Three billion dollars (\$3,000,000,000) shall be available, upon appropriation to the department for the following purposes:

(a) The evaluation, repair, rehabilitation, reconstruction or replacement of levees, weirs, bypasses and facilities of the State Plan of Flood Control by all of the following actions:

- (1) Repairing erosion sites and removing sediment from channels or bypasses.
- (2) Evaluating and repairing levees and any other facilities of the State Plan of Flood Control.
- (3) Implementing mitigation measures for a project undertaken pursuant to this subdivision. The department may fund participation in a natural community conservation plan pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code to facilitate projects authorized by this subdivision.

(b) Improving or adding facilities to the State Plan of Flood Control to increase levels of flood prevention for urban areas, including all related costs for mitigation and infrastructure relocation. Funds made available by this subdivision may be expended for state financial participation in federal and state authorized flood control projects, feasibility studies and design of federal flood damage reduction and related projects, and reservoir reoperation and groundwater flood storage projects. Not more than two hundred million dollars (\$200,000,000) may be expended on a single project, excluding authorized flood control improvements to Folsom Dam.

The first part of this provision, Section 5096.821(a), authorizes the expenditure of bond funds for “evaluation, repair, rehabilitation, reconstruction or replacement of levees, weirs, bypasses and facilities of the State Plan of Flood Control” (hereinafter referred to as “Repair Projects”). The State Plan of Flood Control includes:

[S]tate 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 (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.

Cal. Pub. Res. Code § 5096.805(j).

Repair Projects are authorized for any facility that is a part of the State Plan of Flood Control regardless of whether the Project is in an Urban Area.

The second part of the portion of Proposition 1E above, Section 5096.821(b), authorizes use of bond money for “[i]mproving or adding facilities to the State Plan of Flood Control to increase levels of flood prevention for urban areas” (hereinafter called “Improvement Projects”). Such Projects must increase levels of flood prevention for an Urban Area.

In 2007, the legislature enacted Senate Bill (SB) 5, which provides further guidance regarding the types of Projects the Department can fund in advance of adoption of the Central Valley Flood Protection Plan that are intended to improve or add facilities or floodways to the State Plan of Flood Control. In particular, the legislation requires the Department to make certain findings with respect to such Projects. The Department will request information from applicants that intend to improve or add facilities to the State Plan of Flood Control that is sufficient to enable the Department to make these findings. These requirements have been codified at Cal. Water Code Section 9613 as follows:

9613. (a) Consistent with subdivision (b) of Section 5096.821 of the Public Resources Code, the department may implement flood protection improvements for urban areas protected by facilities of the State Plan of Flood Control before the adoption of Central Valley Flood Protection Plan if the director determines, in writing, that all of the following apply:

- (1) The improvements are necessary and require state funding before the completion of the Central Valley Flood Protection Plan prepared pursuant to Section 9612.
- (2) The improvements will reduce or avoid risk to human life in one or more urban areas.
- (3) The improvements will not impair or impede future changes to regional flood protection or the Central Valley Flood Protection Plan.
- (4) The improvements will be maintained by a local agency that has committed sufficient funding to maintain both the existing and improved facilities of the State Plan of Flood Control.
- (5) The affected cities, counties and other public agencies will have sufficient revenue resources for the operation and maintenance of the facility.
- (6) Upon the allocation of funds for a project, the proposed project is ready for implementation.
- (7) The improvements comply with existing law.

The flood protection improvements authorized by this section can include both improvements to facilities and acquisition of flood easements for floodways that support facilities of the State Plan of Flood Control. Specifically, Cal. Water Code § 9613 (b) provides:

(b) The flood protection improvements authorized by this section may include improvements to specific facilities of the State Plan of Flood Control or acquisition of flood easements for floodways that support facilities of the State Plan of Flood Control to increase levels of flood protection for urban areas in accordance with subdivision (b) of Section 5096.821 of the Public Resources Code.

The primary source of funding for Early Implementation Projects will be Proposition 1E. Proposition 84, however, approved at the same time as Proposition 1E, also makes some funding available to the Department for flood protection purposes. See Cal Pub. Res. Code §§ 75030 - 75034. Under some circumstances, the Department may supplement funds made available by Proposition 1E with funds available under Proposition 84. For instance, if a proposed Project includes an Associated Ecosystem Restoration Project component, the Department may choose to provide funding for the ecosystem component from Proposition 84 funds.

B. Who Can Apply

An Applicant must be a Local Agency. The Local Agency must propose a project for final design or construction work to implement flood protection programs or Projects that rehabilitate, reconstruct, replace, improve or add to the facilities of the State Plan of Flood Control, as defined in Proposition 1E, Section 5096.805.

C. Eligible Projects and/or Components

As defined above, for EIP purposes a Project will be defined as a distinct piece of work that is separately identifiable and physically separable from other work in the Area and will on its own, or as part of other work, restore, replace or improve performance of a facility or facilities of the State Plan of Flood Control. This program is limited to portions of the Central Valley and certain adjacent areas. . California Public Resources Code § 5096.805(e) and (j). Eligible Projects include Design Projects, Repair Projects and Improvement Projects.

1. Eligible Design Projects

Design Projects are eligible EIP Projects. Design Projects will comply, at the discretion of the Department, with all applicable Project requirements under these *Guidelines* and will only be evaluated and selected if money remains after all qualified Projects have been funded.

Design Projects will be ranked using the ranking system described in these *Guidelines*. The Department will score the Design Project as though it were a Project for construction work. As result, the Applicant should submit an Area Plan, Financial Plan, and all other required submittals so that the Department can use these documents to rank the Design Project. Design Projects are not required to have completed environmental compliance.

As described in the cost-share section below, the State will cost-share 50% of the Design Project. If the Project resulting from the Design Project ultimately achieves a higher State cost-share, the State will “true-up” the difference with the Local Agency. In addition to the 50% State share for the Design Project, the State will provide credits, at a 50% state cost-share, of all *necessary* environmental compliance work (CEQA, NEPA, etc.) completed at the time the Design Project Funding Agreement is executed. No credit will be given for work completed before Propositions 1E and 84 were approved by the voters in November 2006.

2. Eligible Repair Projects

A Repair Project must consist of work on an existing facility of the State Plan of Flood Control. Eligible Repair Projects include repair, rehabilitation, reconstruction or replacement of levees, weirs, bypasses and other facilities of the State Plan of Flood Control. Actions that can be funded include, but are not limited to:

- Repairing or replacing levees,² including Setback levees and, if appropriate, Ring Levees (see discussion on pages 15-16) and any other facilities of the State Plan of Flood Control;
- Raising levees to correct freeboard deficiencies with respect to the authorized design; and
- Implementing mitigation measures, including participation in a natural community conservation plan.

A Project qualifies as a repair if it restores the intended Design Level of Performance. If a Project restores a facility to a higher level of design than originally intended, it is an improvement, not a repair. For purposes of the Early Implementation Program, a Project for Routine Maintenance work is also not a repair.

3. Eligible Improvement Projects

Improvement Projects are those that improve or add facilities to the State Plan of Flood Control to increase levels of flood prevention for Urban Areas. Maps indicating what existing levees protect Urban Areas are available from the Department.

Eligible Improvement Projects may include, but are not limited to:

- The construction or improvements of weirs, bypasses and channels;

² Proposition 1E § 5096.821(a) allows for the “evaluation, repair, rehabilitation, reconstruction or replacement” of facilities of the State Plan of Flood Control. It further qualifies these actions, stating that they may occur “by all the following actions.” The only “following” action that fits “replacing” is § 5096.821(a)(2) which allows for “evaluating and repairing levees and any other facilities of the State Plan of Flood Control.” That “replacing” is tied to “repair” is important -- it indicates that Proposition 1E only allows for replacement where such a Project is clearly a repair.

- The construction of levees, such as Setback Levees and, where appropriate, Ring Levees;
- The construction of levee improvements;
- Raising existing levees to reduce the risk of overtopping and to address freeboard deficiencies; and
- The modification of existing Project dams and waterworks, including spillways, outlets or other-related capital outlay facilities for the purpose of improving low-level discharge and flood management storage capacity.

Eligible components of State-federal Flood Control System Modification Projects may include, but are not limited to:

- The construction of detention basins necessary for the Project function;
- Removal of structures located within the Project area;
- Relocation or reinforcement of utilities within the Project area;
- The installation of drainage improvements for flood protection systems, flood warning systems and telemetry devices;
- The purchase of Project-required lands, easements and rights-of-way;
- Capital costs of Project-related environmental mitigation; and
- Instrumentation associated with construction of the Project, such as piezometers.

To be eligible for funding before implementation of the Central Valley Flood Protection Plan, the Department must also be able to make the findings required by SB 5 and codified at Cal. Water Code § 9613 as set forth above on page 10.

D. Ineligible Projects and/or Project Components

Examples of the type of Project that would not be an eligible Repair Project include:

- A Project for repair of a facility that is not part of the State Plan of Flood Control;
- Elevation of threatened homes where there is no direct connection with facilities that are part of the State Plan of Flood Control;
- Work on a levee or other flood protection facility that raises the Design Level of Performance or Level of Protection *higher* than the original facility design intended; and
- Routine Maintenance of an existing facility, including erosion repair and sediment removal.

Examples of the type of Projects that would not be an eligible EIP Improvement Project include:

- A Project that does not restore or increase the Level of Protection for an Urban Area;
- Construction of new flood protection infrastructure to provide flood protection for a community that is not currently protected by State Plan of Flood Control Facilities; and
- A Project for which the Department cannot make the findings required under SB 5 and codified at § 9613.

Ineligible Project components include:

- Hydrologic, hydraulic, geologic and geotechnical investigations of State-federal levees; and
- Habitat restoration not directly related to Projects.

E. Ring Levees

The Department believes that construction of Ring Levees when such Projects are the most cost-effective alternative for a particular Area may be the best approach. The Department's authority to fund such projects using Proposition 1E funding depends, in some measure, on whether the flood protection benefits from the project accrue to an Urban or Non-Urban Area. In particular, Proposition 1E authorizes the construction of new facilities of the State Plan of Flood Control for projects that increase the level of flood protection in Urban Areas; thus, Ring Levees that provide such protection can be funded as new facilities of the State Plan of Flood Control.

By contrast, Proposition 1E does not authorize the addition of new facilities in Non-Urban Areas if the facilities provide no significant flood protection benefits to an Urban Area. Projects that benefit only Non-Urban Areas are limited to the *evaluation, repair, rehabilitation, reconstruction or replacement* of levees, weirs, bypasses and facilities of the State Plan of Flood Control. Thus, if a proposed Ring Levee does not increase flood protection for an Urban Area, it can only be justified as a repair, rehabilitation, reconstruction or replacement of an existing levee, weir, bypass or facility of the State Plan of Flood Control. In this regard, Ring Levees pose a funding challenge because they require the construction of facilities that did not previously exist.

In addition to Ring Levees that provide protection to Urban Areas, the Department will consider funding cost-effective Ring Levees in Non-Urban Areas. The Department's ability to fund such projects will, however, be contingent on whether the Applicant is able to substantiate to the Department's satisfaction the legal basis for such repair, rehabilitation, reconstruction or replacement efforts to an existing levee, weir, bypass or facility of the State Plan of Flood Control. If the Applicant is unable to substantiate the Non-Urban Ring Levee as a repair, rehabilitation, reconstruction or replacement of an existing levee, weir, bypass or facility of the State Plan of Flood Control, the Department will work with the Applicant to facilitate construction of the Ring Levee by considering, if funding is available, paying up to 100 percent

of the cost of repairs of the portion of the Ring Levee that already exists as a facility of the State Plan of Flood Control, or using other means, to help make construction of the “new” portion of the Ring Levee financially feasible for the Applicant.

Like other Repair Projects in Non-Urban Areas, the Department’s cost-share for the entire Ring Levee Project would be capped at the lower of (a) the benefits provided by the Project or, (b) 85 percent of the total cost of the Project. In other words, if the State cost-shares the repairs of the portion of the Ring Levee that already exists as a facility of the State Plan of Flood Control at a percentage higher than 85 percent in order to reduce the cost of the total Project for the Local Agency, the State will still verify the total cost of the Project (including Eligible Project Costs and the Project Costs associated with work on the “new” portion of the ring levee) to ensure that it is not paying an amount that exceeds the benefits provided by the Project or 85 percent of the total cost of the Project, whichever is lower.

F. Area Plan and Area Project Spending Cap

All applicants will be required to submit an Area Plan, which will contain a schedule, cost estimate and proposed cost-sharing prepared by a registered professional civil engineer and adopted by the Local Agency (and all other local agencies that will participate financially in the Area Plan and which have responsibility for the flood protection infrastructure in the Area) for achieving a specific level of flood protection for an area. An Area Plan may describe one or more Area Projects for a single Area. An “Area Project” is the work within an Area, comprised of one or more Projects, that is required to achieve a specific Level of Protection or Design Level of Performance for an Area. For a Non-Urban Area, the Area Plan must describe how to repair flood protection infrastructure but not beyond the original Design Level of Performance. The Area Plan and Area Project(s) must include any non-Project levees that are necessary for protecting the Area.

For an Urban Area, the Area Plan must provide at least 200-year protection by way of up to two Area Projects. Proposition 1E provides that “Not more than two hundred million dollars (\$200,000,000) may be expended on a single project, excluding authorized flood control improvements to Folsom Dam.” Cal. Pub. Res. Code § 5096.821(b). Therefore, each Area Project is capped at \$200 million contribution from Cal. Pub. Res. Code § 5096.821 funds. The cost of repair work is not counted against the \$200 million cap.

For example, flood work designed to raise the Level of Protection in a basin first from the intended design level to the 100-year flood protection level, and then later to a 200-year or greater flood protection level, can be viewed as two distinct Area Projects. Project one is all the work required to provide the Area with an intermediate Level of Protection (*e.g.*, 100-year flood protection to meet the FEMA standard). Project two raises the Level of Protection in the Area to at least the 200-year level to meet the urban protection standard under SB 5. In this example, each Project may qualify for \$200 million under Proposition 1E, such that the work involved in raising the Level of Protection in a basin to 200-year flood protection level, in two distinct steps, may qualify for up to \$400 million in Proposition 1E funding from Section 5096.821.

In a second example, if an Area Plan will provide 200-year protection by improving ten miles of levee and 100-year protection can be achieved by improving seven miles of levee, an Applicant may be funded to improve the seven miles of levee, with many or all of the improvements

constructed to meet the 200-year objective. The extra costs associated with aspects of the work included in the seven miles of work that are needed to meet the 200-year objective, but not needed for the 100-year objective, will be ascribed to the second Area Project. Typically, this might involve building a 250-foot wide seepage berm for 200-year protection, whereas a smaller -- 210-foot wide -- seepage berm was needed for 100-year protection. In such cases, the extra 40 feet of seepage berm would be considered part of the second Area Project.

Applicants are cautioned, however, that the Department will not fund work on related Projects that could have been avoided by thorough planning and coordination of related Projects. The Department, for example, would not want to cost-share a Project providing an intermediate Level of Protection (*e.g.*, 100-year FEMA level) that included a 30-foot deep slurry wall which would later need to be five feet deeper in order to achieve 200-year protection. Under this scenario, it is unlikely that the 200-year Urban Level of Protection would ever be achieved because the Department would only share in the nominal incremental cost of the additional five feet depth, and the Applicant would need to fund most of the cost of the duplicative slurry wall construction. Another example: the Department will not pay for incremental right-of-way acquisition work if, for the 100-year Level of Protection Project, 15 feet were required and obtained, but then, for 200-year Level of Protection, 10 additional feet are required and will have to be separately obtained because the additional footage was not considered at the time the 100-year flood protection plan was designed and implemented.

The Department expects Urban Area Applicants to lay out an executable plan for their long-term needs to achieve a 200-year or greater Level of Protection, not just for the intermediate Project currently under design or construction. The application package must include such a plan describing how build-out of phased Projects will be accomplished in a cost-efficient manner; duplicative or inefficient work resulting from a failure to take a long-term, coordinated approach to flood facility construction will not be funded.

G. Eligible Costs

Eligible Project Costs are the reasonable and necessary actual costs associated with an eligible Project incurred after November 7, 2006 (date of passage of Propositions 1E and 84) including, but not limited to the following:

- a) Eligible Real Estate Capital Outlay Costs specified in Funding Recipient's Project Real Estate Plan;
- b) Project engineering, design and construction costs;
- c) Costs of obtaining necessary environmental permits and associated environmental mitigation costs directly related to the proposed Project, including credit for costs associated with preparing documents required by CEQA and, if applicable, NEPA to the extent permissible under Proposition 1E³;

³ Environmental compliance (CEQA, NEPA, etc.) work directly related to the Project is eligible but will be capped at a 50 percent State cost-share, consistent with current Department practices.

- d) Costs of obtaining other necessary federal or state governmental approvals;
- e) Legal fees associated with incurring Eligible Project Costs, such as those listed in (a) through (d) above;
- f) A proportionate share of reasonable overhead costs; and
- g) Cost of conducting an Independent Review.

Costs that are **not** eligible include, but are not limited to, the following:

- a) Operation, maintenance, repair, replacement and rehabilitation (“OMRR&R”) costs;
- b) Purchase of equipment that is not an integral part of the Project;
- c) Establishing a reserve fund;
- d) Replacement of existing funding sources for ongoing projects;
- e) Support of existing agency requirements and mandates;
- f) Purchase of land in excess of the minimum required acreage established in Funding Recipient’s approved Project Real Estate Plan;
- g) Costs that the State does not authorize as part of final accounting;
- h) Payment of principal or interest of existing indebtedness, or any interest payments, unless the following conditions are met: the debt is incurred after effective date of a Funding Agreement with the State, State agrees in writing to the eligibility of the costs for reimbursement before the debt is incurred and the purposes for which the debt is incurred are otherwise reimbursable Project costs;
- i) Costs incurred as part of any and all necessary response and cleanup activities required under CERCLA, RCRA, Hazardous Substances Account Act or other applicable law; and
- j) Costs, including engineering and environmental expenses, associated with preliminary studies to choose the preferred alternative.

With respect to associated environmental mitigation costs, only those costs incurred up to the time of the final accounting under this Funding Agreement may be considered Eligible Project Costs. After that time, any continuing associated environmental mitigation costs will be considered OMRR&R costs.

The 50 percent cost-sharing applies irrespective of the actual cost-sharing formula for the underlying Project.

In order to determine the eligibility of certain types of costs, the Department intends to use the same guidance document that would be used by the Corps, which is Office of Management and Budget (“OMB”) Circular A-87. *See* 2 C.F.R. Part 225. *See, e.g.*, 2 C.F.R. Part 225, Exhibit E (indirect costs); 2 C.F.R. Part 225, Exhibit B, Item 23 (interest costs).

H. Application Process

1. Proposal Solicitation Package

The Department will prepare a proposal solicitation package (PSP) that includes application materials. The proposal solicitation package will be posted at the FloodSAFE website: <http://www.floodsafe.water.ca.gov>. Applicants will be encouraged to submit any questions to help clarify proposal solicitation package information within two weeks of the date the proposal solicitation package is posted. Questions can be asked any time. The Department will post responses to questions on the website.

By the due date provided in the PSP, complete applications must be either mailed (postmarked) or submitted in person to the Department as specified in the PSP. Applications submitted after the due date will not be reviewed.

The Department may, at its discretion, issue an additional PSP if the first round of applications does not use all available funding. If the Department does issue a new PSP, the late applications from the first round will be deemed submitted. In addition, applications that were not “ready” with their environmental work and new applications will be accepted. All Applicants will receive notice of the new PSP and, if necessary, should take care to update their applications.

In the unlikely event that there is enough money to fund every complete and eligible Project, the Department also reserves the right to set a minimum threshold of ranking points that a Project proposal must meet in order to merit funding.

2. Required Application Materials

The application will include:

- An application cover sheet that provides an overview of the Project;
- A statement identifying the Applicant’s representatives;
- A statement concerning the Applicant’s legal authority to enter into a contract with the State of California, implement a flood protection program and levy assessments and charges;
- A resolution authorizing filing of the application and designating a representative to sign the application;
- A statement by a registered professional civil engineer who certifies that he has reviewed the information presented in support of the application and the Level of Protection (*e.g.*, 100-year, 200-year, etc.);

- A statement of expected Project costs and proposed financing;
- A Financial Plan
- The Area Plan with a separate cost, schedule and cost-sharing description for each Area Project including phases, if applicable;
- A statement of loans from other sources or bonds that are associated with the Project financing plan and a statement of repayment method and loan security for such other financing sources; and
- A checklist of attachments.

I. Selection Process

Applications will first be screened for completeness and eligibility, using the eligibility criteria described in these *Guidelines*. Once an application is deemed complete and eligible, it will be ranked using the scoring presented below.

More specifically, successful applications will undergo two levels of review:

- **Technical Review**

The technical review is first. No applications are ranked until the technical review is complete for all applications. During the technical review, the Department's technical review team assesses the applications for completeness and eligibility. The technical review team also assesses the analyses submitted with the application to make sure they have been completed correctly. Department staff will contact applicants for completion, clarification, review of technical analyses and supplementation of supporting documentation during the technical review phase.

- **Ranking Review**

After all applications have been screened during the technical review, the remaining applications are ranked by the ranking review team. This team of management level Department employees will assess each application using the ranking system described in these *Guidelines*. This team will make recommendations to the Director about which Projects to fund on the basis of that ranking. The Department will not provide technical assistance to the Applicants during this review period.

1. Eligibility

To ensure that Projects meet the eligibility criteria, Applicants must provide the information described below. In the first stage of the application selection process, the Department will verify eligibility for funding. Since the eligibility criteria differ somewhat between Repair Projects and Improvement Projects, they are set out separately in this section. All Projects will also have to meet the applicable additional eligibility criteria set out in Section C below.

a. Repair Projects

Eligibility:

- The Project must be for repair, rehabilitation, reconstruction or replacement⁴ of levees, weirs, bypasses and facilities.
- The levees, weirs, bypasses and facilities must be existing components of the State Plan of Flood Control.
- The Project must not *increase* the Design Level of Performance.
- The Project must not be a bid for Routine Maintenance work.

Information Required:

The Applicant should explain in detail the nature of the work to be done. The Applicant must affirm that the Project is for repair, rehabilitation, reconstruction or replacement of a levee, weir or other type of flood protection facility. The Applicant must specifically document that the Project repairs a component of the State Plan of Flood Control.

The Applicant will be required to provide a certification from a registered civil engineer, providing information regarding: (1) the original Design Level of Performance for the Project; (2) the current level of performance and (3) the Design Level of Performance after the repair.

- If the Design Level of Performance after the repair will be equal to or less than the original Design Level of Performance, then the Project is an Eligible Repair Project (if it also meets the other eligibility requirements);
- If the Design Level of Performance after the repair will be greater than the original Design Level of Performance of the facility, the Department will presume that the repair is not an eligible Repair Project, except as noted below;

If the Project needed to restore the original Design Level of Performance also allows the levee to perform beyond the original design level, the work may be considered a repair if: (1) it is the minimum design needed to restore Design Level of Performance, (2) it is the least cost alternative to restore Design Level of Performance and (3) other flood protection facilities protecting the Area are not nearly capable of (or planned to be made capable of) performing beyond the Design Level of Performance.

Routine maintenance on a levee or other flood management facility is not considered a “repair” for purposes of funding under Proposition 1E. For purposes of this program, erosion repair and sediment removal will not be considered repair activities. All such work must be completed with other funding sources.

⁴ See above, Footnote 2.

b. Improvement Projects

Eligibility: The Applicant must provide sufficient information to show:

- The Project will improve or add facilities to the State Plan of Flood Control; and
- The Project will increase the Level of Protection for an Urban Area.

Information Needed to Make Findings: The Applicant will also be required to provide sufficient information to support the findings required by Cal. Water Code § 9613(a).

Finding 1: **The improvements are necessary and require State funding before the completion of the Central Valley Flood Protection Plan prepared pursuant to Section 9612.**

Applicants must demonstrate that proposed improvements are necessary and require state funding before the completion of the Central Valley Flood Protection Plan.

Applicants should also discuss how the proposed Project will maximize public benefits, enhance public safety and reduce state liability. This should include information about how the Project increases flood protection benefits and reduces residual risk to existing structures, critical infrastructure and to cultural/recreational/environmental resources.

Supporting documentation for this finding should include:

1. Increase in Level of Protection:

- State the before-Project Level of Protection for the Area and floodplain protected by the Project (if significantly smaller than the Area);
- State the after-Project Level of Protection for the Area and floodplain protected by the Project (if significantly smaller than the Area);
- Characterize any residual risk remaining after the proposed Project is implemented and plans to mitigate this risk in case of Project failure, overtopping, etc.; and⁵
- Discussion of why construction of this Project cannot wait until 2012, when the Central Valley Flood Protection Plan will be adopted.

2. Risk to existing structures

⁵ Residual risk is defined as “[t]he portion of the flood risk that still exists with the flood damage reduction project implemented” (National Research Council, 2000). Residual risk occurs because flood events may exceed project design levels or projects fail below design levels. Residual risk can be exacerbated if a Project increases flood protection levels and thereby induces growth in flood-prone areas.

- Types and numbers of existing structures within flood hazard areas protected by the Project (residential, commercial, industrial, public, etc.)
3. Risk to critical facilities/infrastructure
 - Types and numbers of critical facilities/infrastructure within flood hazard areas protected by the Project (water supply and treatment, hospitals, nursing homes, police/fire protection, utilities, highways, airports, flood protection facilities, etc.)
 4. Risk to cultural/recreational/environmental resources (parks, wetlands, riparian habitat, etc.)

Finding 2: The improvements will reduce or avoid risk to human life in one or more Urban Areas.

Applicants for Improvement Projects must provide a detailed explanation of how the improvements would reduce or avoid risk to human life. The Department will presume that the improvements would reduce or avoid risk to human life if they would reduce the risk that flooding in an Urban Area would reach a depth of three feet. Thus, the explanation must include a description of the depth of flooding that would be expected if the site(s) of the proposed improvement(s) should fail. The Department is developing maps of areas where a depth of three feet of flood water could be expected that may be of use to the applicant in providing this description. When available, the maps will be posted on the FloodSAFE website.

A map must be provided (in PDF format) to show the Project location and potential inundation areas. Include any information that helps describe potential flooding characteristics (depths, duration, velocities, etc.).

The Applicant must also provide the following information about the floodplain that the Project will protect:

- Number of people currently living within flood hazard areas;
- Number of people with special needs currently living within flood hazard areas (elderly, low income, living in institutions, etc.); and
- Projected growth in flood hazard areas, including estimates from the General Plan and any updated information.

Finding 3: The improvements will not impair or impede future changes to regional flood protection or the Central Valley Flood Protection Plan.

The Department will make a determination to ensure that Projects do not prejudice the potential for pursuing measures that may be identified in the next three to five years as the State updates the State Plan of Flood Control and develops the Central Valley Flood Protection Plan. The Department’s criteria for determining such prejudice would include, but not be limited to, the following set of questions:

- Could the risk reduction objectives of the Project be economically and feasibly achieved considering both capital and operation and maintenance costs by realigning one or more levee segments in such a manner as to increase the potential for enhancement of aquatic habitat values, reduce the potential for erosion that may require ongoing bank or levee armoring or reduce stages in the region?
- Could the risk reduction objectives of the Project be feasibly achieved by improving segments of the Sacramento River Flood Control Project or San Joaquin River Flood Control System, such as their bypass systems, in a manner that could provide significant flood risk reduction benefits to protected lands outside the Project area?
- Would the Project create any substantial hydraulic or other obstacles to pursuing reasonably foreseeable regional flood risk reduction or ecosystem restoration measures in the future? In other words, would the Project render an alternative regional project infeasible?

Applicants are required to present, in their application, analyses that answer these questions. As part of this effort, the Applicant must conduct an analysis using the Department's interim hydraulic impacts analysis procedure, available at http://www.water.ca.gov/floodsafe/docs/Interim_Risk_Uncertainty_Procedure.pdf). This analysis should be submitted to the Department along with an EIP application. Alternative methods of hydraulic analysis may be accepted if the work does not require a Section 408 permit and if the Department agrees, in writing, to the alternative method.

Prior to approval, the Department will screen the Projects to ensure that they generally do not trigger affirmative responses to these questions. The Department will also consider whether system-wide or regional measures are planned that would substantially reduce or obviate the need for the proposed Project and if they could be reasonably expected to be implemented within the next 10 years.

Finding 4: The improvements will be maintained by a local agency that has committed sufficient funding to maintain both the existing and improved facilities of the State Plan of Flood Control.

The Applicant must demonstrate through a financial plan that the Local Agency responsible for carrying out operations and maintenance for the Project and any other facilities of the State Plan of Flood Control for which the Local Agency is responsible has adequate funding for these responsibilities and has committed the necessary funds. The Department will also consider the maintenance ratings of the levee(s) to be improved. Since the Department will need similar financial information to make the findings required for Improvement Projects and to make sure that the Department's additional financial eligibility criteria are met, the informational needs of the Department, with respect to these findings, and the other financial eligibility criteria, are addressed together in Section C below.

Finding 5: The affected cities, counties and other public agencies will have sufficient revenue resources for the operation and maintenance of the facility.

To the extent a city, county or other public agency is “affected” by the Project (that is, it is benefited by or has a financial role in the operations and maintenance responsibilities connected to the Project) the agency must demonstrate a sound financial plan to cover its share of the operations and maintenance costs.

Finding 6: Upon the allocation of funds for a Project, the proposed Project is ready for implementation.

Since the Department will require that all selected Projects be ready for implementation, the information required to make this finding will be the same as that required to meet the Department’s Criterion 1, Readiness, which is described below.

Finding 7: The improvements comply with existing law.

In order for the Department to be able to make the finding that the improvements comply with existing law, Applicants should only propose improvements that are designed to comply with existing law. If Applicants are awarded funds, they will be required to sign a Funding Agreement that commits the Applicant to comply with existing law. The Funding Agreement is further explained in Appendix B.

c. All Projects

In addition to determining whether proposed Projects meet the requirements of Proposition 1E and SB 5, the Department has developed seven supplemental eligibility criteria. The first relates to Project readiness, one relates to an Area Plan, two relate to Project design and three relate to Project economics. The criteria are listed below along with a description of the information Applicants should provide to demonstrate that their proposed Project meets each criterion.

Criterion 1 – Readiness:

- **Applicants must demonstrate that their proposed construction Projects are ready to proceed during the State’s FY 2008-09 budget year.**

To be considered for construction funding, Projects or Project Elements must have all environmental compliance completed such that the Department can execute a Funding Agreement with the Local Agency in June 2009.⁶ Construction must begin before November 2009. The Department will consider funding ready-to-go Project Elements, rather than the Project itself, on a case-by-case basis. If Project work is anticipated to span multiple construction seasons the

⁶ Design Projects do not need to have all environmental documents complete by June 2009, but do need to demonstrate that they have made significant progress, as appropriate, on all required environmental documents for the State to fund the proposed design work.

Department will consider whether to approve, for the current EIP cycle, an Element of the Project instead of the entire endeavor. The factors used to determine the expected Project start date must be explained. The Applicant must provide a detailed schedule with supporting documentation including, but not limited to, plans and specifications, CEQA and, if applicable, NEPA compliance, and details on any required permits. If the CEQA process requires an EIR, the Corps will likely require an EIS. Projects deemed most ready to proceed will have completed final design, completed CEQA/NEPA compliance and obtained all applicable permits at the time of application submittal. The Applicant, a “Lead Agency” for CEQA purposes, should consult with the Department as early as possible *during* the CEQA process. In particular, the Department expects that Applicants consult with the Department on the analysis of growth-inducing and hydraulic impacts included in the CEQA work, and that the CEQA analysis of these two elements is both detailed and thorough in scope such that it meets the Department’s expectations. The Department’s accepted procedure for performing hydraulic impact analyses is available at http://www.water.ca.gov/floodsafe/docs/Interim_Risk_Uncertainty_Procedure.pdf. Applicants should note that this procedure is subject to change. It is currently under development to satisfy Corps requirements for approving modifications to federal levees, and the Corps has not yet agreed to the procedure. Consequently, Applicants are advised to consult with the Department prior to performing a hydraulic impacts analysis.

Local Agencies not applying for funding in the current EIP cycle, but who may want to apply in the future, should consider consulting closely with the Department early in the CEQA analysis. If the Applicant has not consulted with the Department regarding its analysis of growth inducing and hydraulic impacts during the CEQA process, the Applicant will be required to explain and justify, in writing, the approach used as part of the application process. The Department may require additional analysis and may disqualify the Project if the additional analysis identifies additional work needed to mitigate the impacts which changes the Projects’ costs to the point that it is no longer eligible for funding in relation to other Projects.

The Department may also consider funding Design Projects to help accelerate design for Projects that do not expect to bid and/or begin construction by the end of June 2009. These Applicants must meet all the applicable Project requirements outlined in these *Guidelines*. Also, for Design Projects, Applicants must be able to demonstrate significant process on all required environmental compliance before the Department will execute a Funding Agreement. Funding for these Projects will only be available after all eligible construction projects are funded.

If CEQA has been completed at the time of application, the Applicant should include a copy of the Notice of Determination or Notice of Exemption as appropriate with a written statement from the lead agency’s legal counsel certifying that no legal challenges have been made within the specified statute of limitations for the Notice of Determination or Notice of Exemption.

For applications that are selected for funding, it must be demonstrated that they have complied with all applicable requirements of CEQA and NEPA before execution of the funding agreement.

Criterion 2 – Area Plan:

- **If the Repair Project protects a Non-Urban Area: the Project will restore or partially restore the Design Level of Performance, there is an Area Plan to**

restore or partially restore the Design Level of Performance to the Area, and the Repair Project fits into the Area Plan.

- **If the Repair Project or Improvement Project protects an Urban Area: there is an Area Plan for achieving 200-year or better Level of Protection for the Area, the Project fits into the Area Plan, and a sound financial strategy exists for achieving the 200-year Level of Protection prior to 2025.**

As flood-protection design and hydrology are evolving, Applicants may submit Project designs that build-in an additional margin of error for a given Level of Protection. The Department will fund Projects that add more height to the design water surface elevation for the Project, up to one extra foot. The Department has proposed interim levee design criteria applicable to levee designs for EIP Projects. The interim levee design criteria can be found at http://www.water.ca.gov/floodsafe/docs/Interim_Levee_Design_Criteria.pdf). These design criteria apply to both urban and urbanizing levees (pursuant to SB 5 definitions).

Criterion 3 – Multiple Objectives:

- **The Project takes advantage of any feasible opportunities to provide additional room for the river to meander, thereby enhancing channel capacity, reducing maintenance, and providing regional flood-risk management and environmental benefits.**

Applicants must demonstrate that their proposed Projects will take advantage of any feasible opportunities to provide additional room for the river to meander, enhance channel capacity, reduce maintenance and provide regional flood risk management and environmental benefits.

Applicants will be required to identify all applicable benefits and provide an explanation, with supporting documentation, as to how the proposed Project will achieve these benefits. For example, the construction of a Setback Levee Project might include such benefits as:

- Reduced maintenance and repair by removing channel constrictions;
- Reduced need for bank stabilization;
- Reduced flood potential to an Area not directly protected by the Project;
- Reduced water surface elevation at flood stage;
- Reduced danger and consequences of levee failures;
- Restoration of fluvial geomorphologic processes;
- Addition of floodplain during small and moderate flood events;
- Preservation of habitat for riparian and other floodplain species; and
- Improved fish habitat and fisheries.

Criterion 4 – For Levee In-Place Repairs and Improvements Only:

- **If the Project would repair or improve a levee in place, it is because it is clearly infeasible to move the levee and/or there are no significant flood risk management benefits to moving the levee.**

Applicants with proposed fix in-place Projects must demonstrate that it is infeasible to move the levee and/or there are no significant flood risk management benefits to moving the levee. The Department will require Applicants to evaluate and describe a potentially viable Setback Levee alternative. This alternative should satisfy the objectives addressed with the proposed improve-in-place or repair-in-place project. If moving the levee (such as a Setback Levee) does not provide significant flood protection benefits to more than one Area, the supporting documentation must include a hydraulic analysis and study using applicable modeling. Based on this analysis, the Applicant must make a recommendation. The Department will then evaluate the information provided to determine whether to participate in either alternative.

Criterion 5 – Economic Feasibility:

- **For Repair Projects that will protect an Urban Area and Improvement Projects: The Project is economically feasible, taking into account both local and system-wide benefits.**
- **For Repair Projects that will not protect an Urban Area: Project benefits exceed the State's costs.**

Applicants should demonstrate, with supporting documentation, that their proposed Projects are economically feasible. A Project is economically feasible when the present value of its total benefits exceeds the present value of the total costs over the life of the Project. Where possible, Projects should incorporate multiple objectives (such as flood damage reduction, ecosystem restoration, etc.). To perform benefit-cost analysis for any Project that has a demonstrable ecosystem restoration element, the Applicant should initially “back out” the separable ecosystem restoration costs of the Project. Separable ecosystem restoration costs include, but are not limited to, costs related to preparing land for planting, the cost of the plants and making the plantings, irrigation, removal of orchards, acquisition of additional property rights beyond flowage easements, removal of bank protection, environmental monitoring, property management for environmental purposes and other associated work and expenses. Significant separable ecosystem restoration costs should be identified in order for ecosystem restoration to be considered a substantial purpose along with flood damage reduction.

The flood damage reduction and ecosystem elements should be jointly formulated using a tradeoff, cost-effectiveness or similar analysis with the sizes and/or configurations of one element depending upon the other element. In the case of a Setback Levee, the costs remaining, after the separable ecosystem restoration costs are “backed out,” can usually be considered joint costs, except for the separable costs of raising the levee above the elevation of the existing levee (which is a separable flood damage reduction (FDR) cost). This is because these costs are necessary to achieve either purpose. A formal cost allocation between the two elements must be accomplished to identify separable and joint costs of both elements using the separable costs and

remaining benefits (SCRB) method. The Hamilton City Flood Damage Reduction and Ecosystem Restoration Feasibility Study is an excellent example of this type of multi-objective SCRБ cost-allocation process (www.compstudy.net). The SCRБ cost allocation procedure can be found in the Department's Economics Guidebook and is also used by the Corps. The Department has also developed an interactive SCRБ analysis tool that is available at http://www.water.ca.gov/floodsafe/docs/EIP_SCRB.xls). The benefit-cost ratio is then estimated using only flood damage reduction benefits and costs. It will be assumed that ecosystem restoration costs equal ecosystem restoration benefits.

Applicants should consider benefits at both the local and system-wide level. Acceptable approaches for estimating FDR benefits and costs are described in the *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies* prepared by the United States Water Resources Council, 1983 (<http://www.usace.army.mil/cw/cecw-cp/library/planlib.html>) and in the US Army Corps of Engineers *Planning Guidance Notebook* ER 1105-2-100 (April 2000) (both available at: <http://www.usace.army.mil/cw/cecw-cp/library/planlib.html>). The Corps has also published a new *National Economic Development Manual* focusing on flood damage reduction which is an excellent reference for conducting benefit/cost analyses for these types of projects: (http://www.pmcl.com/nedprototype/Introduction/Chapter_1_1.0%20welcome.html). In addition, the Department has its own Economics Guidebook, as well as example analyses, which are posted on its Economics website (<http://www.economics.water.ca.gov/>). The Department also has proposed guidelines for performing flood risk management economic analyses which are primarily based upon Corps requirements. Those guidelines can be used for this process and are also found at <http://www.economics.water.ca.gov/>. Computer models for estimating flood damage reduction benefits are available from the U.S. Army Corps of Engineers (HEC-FDA) and the Federal Emergency Management Agency (HAZUS-Multiple Hazard and Mitigation BCA Toolkit). HEC-FDA is recommended, however, especially if the Applicant will be eventually seeking Corps funds. The economic analysis is conducted by using current price levels (in 2008 dollars), a 50-year analysis period and the Department's discount rate (6%).

The Applicant may choose which economic analysis methodology it will use to analyze its proposed Project. For the sake of comparison and consistency, however, the Applicant should apply the same economic analysis methodology to each alternative analyzed under the alternative analysis requirement in these *Guidelines*. The level of detail and accuracy of the economic analysis will depend on the nature of the Project. The quality of the economic analysis, its data and procedures need to be commensurate with the cost of the Project and with the proximity of the benefit-cost ratio to 1.0. In other words, a request for more money should correspond with a more detailed analysis. Likewise, a Project request with benefit-cost ratio very close to 1.0 (costs almost outweigh benefits), or where the costs actually outweigh the benefits, should be accompanied by a more in-depth economic analysis.

If the Applicant is seeking funding for a Project that is only the first phase of an Area Project, the Department requires that the Project is either: (1) cost justified on its own or (2) cost justified as part of an Area Project that is highly likely to be completed. Applicants will not know when they submit their application whether the Department will deem their Area Project "likely to be completed." As a result, all Projects must be economically analyzed both ways: (1) as if the Area Project will not be completed and (2) as if the Area Project will be completed.

The Department will consider funding EIP Projects that are not part of an Area Project that is highly likely to be completed, even if the Project costs outweigh its benefits, but only to the lesser of: (1) the total capitalized benefits offered in the Project or (2) the State cost-share of the Project pursuant to the cost-sharing formula set forth in these *Guidelines*. The Department will provide credits for the difference between these two amounts, but funding of the credits is subject to availability of funds and limited to work on the Area Project. There is one exception: a Setback Levee that is part of an Area Project. In this case, it may not be necessary to demonstrate that the Area Project is highly likely to be completed. The Department's consideration of full funding of the Setback Levee will be based on the extent to which the Setback Levee will provide system benefits and environmental benefits independently of the other remaining features of the Area Project.

For the Area Project to be considered highly likely to be completed:

- In an Urban Area, the Applicant must provide an acceptable Area Plan that offers at least 200-year protection with the associated schedule, cost, financial plan and CEQA/NEPA compliance for each Area Project. The Area Plan must be scheduled for completion by 2025.
- In a Non-Urban Area, the Department will need to see an acceptable Area Plan and the targeted Design Level of Performance for the flood protection system (the minimum and maximum is the original intended design level) with the associated schedule, cost, financial plan and CEQA/NEPA compliance.
- For both Urban and Non-Urban Areas:
 - The Applicant demonstrates readiness and financial capability to commit to constructing all of the Projects of the Area Project and/or Area Plan;
 - The timing of the Project is compatible with the rest of the Area Project; and
 - The Area Project and/or Area Plan are part of a Corps feasibility study.
- Additional Factors:
 - The number of Projects required to complete a proposed Area Project (the fewer the better);
 - The timing of the proposed Project with respect to the other Projects required to complete an Area Project (*i.e.*, is this the first Project or the last?);
 - The size of the Project compared to the Area Project;
 - The demonstrated need to complete the Area Project;
 - Evidence of local financial capability to complete the Area Project and the Area
 - Any other pertinent factors.

Applicants that plan to construct more than one Area Project in order to complete the Area Plan have a choice to make with respect to economic analyses of the two Area Projects. If they choose to construct features of the second Area Project concurrently with the features of the first Area Project (*e.g.*, making a seepage berm 40 feet wider than what is necessary for the first Area Project), the cost of the features of the second Area Project can be added to the cost of the first Area Project (the benefits may also be counted, but they typically would be minimal). In this case, any remaining features of the second Area Project to be constructed in the future are to be analyzed with the already-constructed features being considered as sunk costs. Alternatively, the costs and benefits of the second Area Project may be economically analyzed as a stand-alone Area Project including the costs of second Area Project features constructed with an earlier Area Project.

Criterion 6 - Most Cost-Effective Alternative:

- **The Local Agency has shown that it has selected the most cost-effective feasible alternative for ensuring adequate flood protection.**

The Applicant must perform a robust alternatives analysis. This analysis should address all feasible alternatives for achieving flood risk reduction and ecosystem restoration. Possible alternatives could include: (1) repairing or improving the entire levee system in which the community exists; (2) repairing or improving a portion of the levee system near the community that would reduce the velocity and depth of flooding but not eliminate it; (3) various alignments for the proposed Project including, where appropriate, Ring Levees, (4) different sizes and/or configurations of ecosystem restoration elements and (5) potential regional project alternatives.

The Applicant should include a benefit-cost review for each feasible alternative that takes into account all flood risk reduction benefits as well as other benefits of the Project. For ecosystem restoration benefits, a cost-effectiveness analysis can be used to demonstrate differences among plans for this element which is not included in the benefit/cost analysis.

The possible methodologies for performing the benefit-cost analysis are explained in Criterion 5. The benefit-cost analysis for the Project as proposed should be the same as that used to establish eligibility under Criterion 5 and used for Project ranking. For the sake of comparison and consistency, the Applicant should apply the same economic analysis methodology to each alternative analyzed under the alternative analysis requirement in these *Guidelines*.

Applicants may consult with the Department in advance of preparing the required benefit-cost analysis of possible alternatives to determine whether the Department believes that the Applicant has identified all feasible alternatives that should be analyzed. Applicants may also consult with Department staff regarding how the benefit-cost methodologies should be applied to the possible alternatives.

The Department will cost-share the most economically feasible alternative. If the Local Agency chooses to construct a different alternative, the Department may still limit the cost-share up to the amount that would qualify for the State cost-share if the most economically feasible alternative were constructed.

In a circumstance where the most cost-effective alternative and the best environmental alternative (under the CEQA/NEPA review) are *not* the same, the Department retains approval authority over Project selection.

Criterion 7 – Financial Plan:

- **The Local Agency has a sound financial plan to fund its cost-share to build the Project;**
- **The Local Agency has a sound financial strategy and plan to operate and maintain the flood facilities in the Area; and**
- **The Local Agency has a realistic Area Plan and supporting financial plan.**

Note: For Improvement Projects, the information that the Applicant should submit in order to establish that this eligibility criterion has been met will also be used by the Department to make findings 4 and 5. *See* page 22.

As further explained below, the financial plan should contain information regarding: (1) a financial plan and statement of financial capability for the local cost-share of the Project; (2) a financial plan for payment of operation and maintenance expenses for the Area's flood management facilities and the Project and a statement and documentation sufficient to demonstrate that the Applicant has developed a work schedule that ensures that the maintenance obligations for the Area will be met and (3) a financial plan for the long-term flood protection system improvements envisioned in the Area Plan.

Before developing their financial planning documents, Applicants should determine what local cost-share their proposed Project will have to pay in accordance with the portion of these *Guidelines* concerning cost-sharing. *See* pages 39-49. If the Applicant is uncertain what cost-share the Applicant may be entitled to under the cost-sharing guidelines, the financial plan should reflect the Local Agency's predicted cost-share as well as a reasonable range of possible cost-shares.

The financial plan for the Project, Area Project and the Area Plan must be reasonable in its accounting of federal matching funds. To be considered reasonable, the Local Agency's discussion of federal funding must take into account the following:

- The Local Agency must have an active federal feasibility study, General Reevaluation Report (or similar federal study) beginning or underway or it must have prior Congressional authorization for the Project;
- The Local Agency must be actively engaged in the Congressional appropriations process for Corps funding; and
- The Local Agency may not expect more than an average of \$10 million per Area Plan for ten years, beginning two years after the feasibility study (for a total of \$100 million). Nonetheless, Applicants may propose that a different amount should apply to their Project, but they have the burden to show that their proposal is reasonable.

Financial Plan and Statement of Financial Capability for Local Cost-Share

The Financial Plan and Statement of Financial Capability should demonstrate that the Applicant has the financial resources to adequately fund their portion of the cost-share and a reasonable contingency of at least 10 percent. The Financial Plan and Statement of Financial Capability must be prepared by a person qualified to perform such financial analyses.

The Statement of Financial Capability should include:

- evidence of the Applicant's authority to use the identified source or sources of funds;
- information on the Applicant's ability to obtain necessary additional funds (if any);
- a credit analysis that demonstrates the Applicant is credit worthy if the Applicant is relying on its full faith and credit to obtain remaining funds (as in the use of general obligation bonds, appropriations or a repayment agreement);
- an analysis that demonstrates the projected revenues or proceeds are certain and are sufficient to cover the applicant's stream of costs through time, if the Applicant is relying on non-guaranteed debt (for example, a particular revenue source or limited tax, or bonds backed by such a source);
- comparable data for the third party together with evidence of its legal commitment to the Applicant, if the Applicant is relying on third party contributions; and
- a list of all cash reserves (restricted and unrestricted) and any planned uses of these reserves.

The documentation used in the analysis should include audited financial statements for the last three years of the Applicant's operations (balance sheets, income statement, sources and uses of funds statement, most recent annual budget and, if applicable, water enterprise fund details).

Applicants that need to obtain loans to secure the remaining funds must include, with their Financial Plan and Statement of Financial Capability, information on these loans, including a description of the repayment method.

Financial Plan for Operation and Maintenance Expenses

Applicants must also demonstrate that they are financially able to properly operate and maintain their completed Projects. Applicants will be required to provide a summary of the operation and maintenance cost for the applicant's current flood management facilities and to identify the source of revenue to fund such costs.

Applicants will be required to provide an estimate of operation and maintenance costs after completion of the Project proposed for funding under the application and the impact of these costs on the applicant's current O&M budget. Applicants will also be required to identify a source of funds to address any additional O&M costs that may result from the Project.

Financial Plan Required to Support Area Plan

The Applicant must submit a Financial Plan and Statement of Financial Capability to support the Area Plan that should demonstrate that the Local Agencies that have developed the Area Plan will have the financial resources to adequately fund their portion of the cost-share and a reasonable contingency of at least 10 percent. The Financial Plan and Statement of Financial Capability to support the Area Plan must be prepared by a person deemed qualified by the Local Agency. In all cases, however, a Certified Public Accountant (CPA) or, preferably, a Certified Government Financial Manager (CGFM) must review and certify the plan.

The Statement of Financial Capability to support the Area Plan contains substantially the same requirements as those articulated above, including:

- evidence of the Local Agencies' authority to use the identified source or sources of funds;
- information on the Local Agencies' ability to obtain remaining funds (if any);
- a credit analysis that demonstrates the Local Agencies are credit worthy if the local agencies are relying on its full faith and credit to obtain remaining funds (as in the use of general obligation bonds, appropriations or a repayment agreement);
- an analysis that demonstrates the projected revenues or proceeds are certain and are sufficient to cover the stream of costs through time, if the Local Agencies will be relying on non-guaranteed debt (for example, a particular revenue source or limited tax, or bonds backed by such a source);
- comparable data for the third party together with evidence of its legal commitment to the Local Agencies, if the Local Agencies are relying on third party contributions; and
- a list of all cash reserves (restricted and unrestricted) and any planned uses of these reserves.

The documentation used in the analysis should include audited financial statements for the last three years of the Local Agencies' operations (balance sheets, income statement, sources and uses of funds statement, most recent annual budget and, if applicable, water enterprise fund details).

Local Agencies that need to obtain loans to secure the remaining funds must include, with their Financial Plan and Statement of Financial Capability for the Area Plan, information on these loans, including a description of the repayment method.

Applicants must also demonstrate that the Local Agencies that are working together to implement an Area Plan are financially able to properly operate and maintain their completed Projects. Applicants will be required to provide a summary of the operation and maintenance cost for the local agencies' current flood management facilities and to identify the source of revenue to fund such costs.

Applicants will be required to provide an estimate of operation and maintenance costs after completion of the Area Plan and the impact of these costs on the local agencies' current O&M

budget. Applicants will also be required to identify a source of funds to address any additional O&M costs that may result from implementation of the Area Plan.

Demonstration of Adequate Progress on Flood Protection System

Applicants for projects in Urban Areas are reminded that after 2015, for development to continue in the Area, the Area will need to have achieved 200-year protection or to make a showing of “adequate progress” on the construction of a 200-year Level of Protection system under Cal. Gov Code §§ 65962(a)(3), 65965.5 (a)(3) and 66474.5(a)(3). The 200-year Level of Protection is to be achieved by 2025 in order to continue development in the Area. This is not a requirement for EIP funding.

To show “adequate progress” the Local Agency must demonstrate the following, which are based on Cal. Gov’t Code § 65007(a):

- The total Project scope, schedule and cost of the completed flood protection system have been developed to meet the appropriate standard of protection;
- Revenues sufficient to fund each year of the Project schedule have been identified and, in any given year and consistent with that schedule, at least 90 percent of the revenues scheduled to have been received by that year have been appropriated and are currently being expended;
- Critical features of the flood protection system are under construction, and each critical feature is progressing as indicated by the actual expenditure of the construction budget funds; and
- The city or county has not been responsible for any significant delay in the completion of the system.

2. Ranking

All eligible EIP Projects will be ranked according to the following system. Where there is variability with respect to points (0-3) to be awarded, the Department will rank Projects on a relative basis. The best Project(s) will receive three points, and other Projects will be scored relative to that (those) Project(s). A zero indicates that the Project proposal fails to address the criterion.

Ranking Criteria	Score (0-3)	Weight	Maximum Total	Notes
Group One (Risk to Life)				
The Project serves a high-population floodplain at risk of three-feet or deeper flooding for 1 in 200 or more frequent events.		5	15	Projects that would reduce the risk of deep flooding of populated floodplains will receive higher scores based on the population at risk.

The Project serves a floodplain at risk of three-feet or deeper flooding with a relatively low level of flood protection.		5	15	Projects that would benefit floodplains at risk of three feet or deeper flooding with an existing low level of flood protection will receive higher scores based on the existing Level of Protection (<i>i.e.</i> , the lower the existing Level of Protection, the higher the score).
Subtotal Group One			30	

Ranking Criteria	Score (0-3)	Weight	Maximum Total	Notes
Group Two (Project Benefits)				
a. EIP Project Benefits				
The Project is economically efficient.		2	6	The Project, by itself, should provide significant benefits when compared to its cost.
The Project provides significant improvement in the Level of Protection for an Area.		1	3	Projects will receive higher scores based on the amount of improvement in the Level of Protection provided to an Area, as measured by the ratio of post-Project protection to existing protection.
The Project is ready to proceed.		1	3	Projects for which benefits will be realized soon, as measured by when the construction will start, will score higher.
The Project meets multiple objectives:				
a. Impoverished Area		1	3	Score is 0 or 3.
b. State Facilities		1	3	Score is 1 for 10%, 2 for 15% and 3 for 20%.
c. Open Space		1	3	Score is 1 for 5%, 2 for 10%, 3 for 15% or more contribution of total project costs.
d. Habitat		1	3	Score is 1 for 5%, 2 for 10%, 3 for 15% or more contribution of total project costs.
e. Recreation		1	3	Score is 1 for 5%, 2 for 10%, 3 for 15% or more contribution of total

Ranking Criteria	Score (0-3)	Weight	Maximum Total	Notes
				project costs.
b. Area Project Benefits				
The Area Project is economically efficient (high benefit-cost ratio).		1	3	The Area Project provides significant benefits when compared to its cost.
The Area Project is likely to be completed.		3	9	Likelihood of completing the Area Project will be assessed by: (a) the number of Projects required to complete a proposed Area Project; (b) the timing of the proposed Project vs. the other Projects required to complete an Area Project (<i>i.e.</i> , is this the first Project or the last?); (c) size of the Project compared to the Area Project; (d) demonstrated need to complete the Area Project; (e) local financial capability to complete the Area Project and the Area Plan; (f) participation in a Corps feasibility study; and (g) any other pertinent factors. To be eligible, the Area Plan must be scheduled to be completed by 2025. Area Plans scheduled to be completed <i>before</i> 2025 will likely receive a higher score.
The Area Project or Area Plan is likely to involve significant construction by the Corps.		1	3	Projects will receive higher scores based on the status of federal participation, the likelihood of federal authorization and construction, and the amount of federal funding likely to be invested in the Area.
The Area Project provides a significant increase in the Level of Protection.		1	3	Area Projects will receive higher scores based on the improvement in the Level of Protection provided to an Area, as measured by the ratio of post-Area Project protection to existing protection.

Ranking Criteria	Score (0-3)	Weight	Maximum Total	Notes
The Area Project meets multiple objectives:				
a. Impoverished Area		1	3	Score is 0 or 3.
b. State Facilities		1	3	Score is 1 for 10%, 2 for 15% and 3 for 20%.
c. Open Space		1	3	Score is 1 for 5%, 2 for 10%, 3 for 15% or more contribution of total project costs.
d. Habitat		1	3	Score is 1 for 5%, 2 for 10%, 3 for 15% or more contribution of total project costs.
e. Recreation		1	3	Score is 1 for 5%, 2 for 10%, 3 for 15% or more contribution of total project costs.
Subtotal Group Two			60	

Ranking Criteria	Score (0- 3)	Weight	Maximum Total	Notes
Group Three (Documentation)				
Quality of documentation of Area Project and Area Plan		1	2	
Quality of economic analysis		1	3	The economic analysis follows Department and Corps guidance.
Quality of financial planning		1	3	The financial planning must be realistic with respect to federal funding availability.
Project application is thorough and well documented.		1	2	
Subtotal Group Three			10	

Total Maximum Score (Groups 1, 2 and 3 combined)			100	
---	--	--	------------	--

3. Determination of State's Cost-Share

a. Overview

Proposition 1E requires that the State: “[s]ecure the maximum feasible amounts of federal and local matching funds to fund disaster preparedness and flood prevention projects in order to ensure prudent and cost-effective use of these funds to the extent that this does not prohibit timely implementation of this article.” Cal. Pub. Res. Code § 5096.820(b)(1). Applicants may not use State funds for the local portion of the cost-share unless such money has been specifically provided by the State legislature. The Department will credit reasonable in-kind contributions made by the Local Agency towards the local cost share.

A Project cost-share formula established under this section will be “locked-in” as this Project goes forward. If this Project is only one of several Projects comprising an Area Project, however, the Department will determine the cost-share for this Project based on the total Supplemental Benefits provided by this Project and past Project(s) in the Area. The intention is to complete the Area Project, on a Project by Project basis, as the Local Agency is able, so that the overall cost-sharing for the Area Project is unaffected by the phasing of the Projects.⁷ By way of example, suppose the work to complete an Area Project requires three separate Projects, each of which is presented sequentially to the Department in successive years. If the Department funds the first Project at a 50%-50% cost-share, then the second Project will be funded based on an analysis of the Supplemental Benefits provided by the combination of the first Project and the second Project. Suppose the second Project by itself merits a 70%-30% cost-share, but when considered in conjunction with the first Project, the two Projects together merit a 60%-40% cost-share. In that situation, the Department will cost-share the second project in a way that achieves the 60%-40% cost-share for the two Projects combined. Continuing with the example, if the third Project were to merit a 70%-30% cost-share by itself, but when considered together with the previous two Projects, the three Projects together (which constitutes the Area Project) merit a 65%-35% cost-share, the cost-sharing for the third Project will be adjusted to achieve this overall cost-sharing for the Area Project.

In the case of a Project that has separate individual Elements with different cost-sharing, and adjustments are needed as noted in the example above, the cost-share for each individual Element will be adjusted by prorating to provide the proper overall cost-sharing for the Project. If, as a result of the adjustments, the State cost-share for a particular Element exceeds 95%, the State cost-share for that Element will be capped at 95% and the remaining dollars will be allocated to other Elements in the Project. Any remaining excess dollars will be in the form of credit for future Projects that are part of the Area Project or Area Plan.

⁷ In the event that a Project is for work in one Area that is part of a federal feasibility study or reevaluation that, in the determination of the Department, is likely to result in federal authorization of work beyond that Area, the Project will be cost shared based on the Supplemental Benefits provided in all of the Areas where work is likely to be authorized.

In the case of an Area Plan comprised of two Area Projects, features of the second Area Project would be cost-shared looking cumulatively at all of the past Projects in the Area, so that if the entire Area Plan is constructed by the Local Agency, the phasing of the work would have no impact on the overall cost-sharing. There is one exception that applies when a Local Agency constructs some features of the second Area Project at the same time as features of the first Area Project (*e.g.*, adding 40 feet to a proposed 150-foot seepage berm so that it provides 200-year protection for a particular reach of levee). In this case, the additional features (*e.g.*, the additional 40 feet of seepage berm) that are technically part of the second Area Project may be cost-shared for the time being as if they were part of the first Area Project. Once separate construction of the second Area Project begins at a later date, however, the cost-sharing for the initial features that were constructed earlier along with the first Area Project will be reviewed and adjustments will be made to the cost-sharing of the upcoming second Area Project features to achieve cost-sharing as if the already-constructed features of the second Area Project were now part of the upcoming work.

The State will determine the State cost-share using a four-step process.

1. Applicant Provides Report. Applicants will be required to provide a Cost-Share Recommendation and Report which will include the Applicant's recommendations regarding the appropriate State cost-share developed in accordance with these *Guidelines* and substantiation for this recommendation.
2. State Reviews Report. The State will review Applicant's Cost-Share Recommendation and Report and, if necessary, will request further information from the Applicant.
3. State Determines State Cost-Share. The State will determine the overall State cost-share percentage. This percentage will vary depending on whether the Project is: (a) a repair Project in a Non-Urban Area or (b) a repair or improvement Project in an Urban Area or, (c) a Design Project. If the Project falls into group (a), the Department will assess, based on the benefits provided, whether the 85% state cost-share applies (to all work except Setback Levees). If the benefits are less than 85% of the costs, then the state cost-share will be reduced accordingly. In circumstances where a Repair Project involves a facility listed in California Water Code Section 8361, no local cost-share is required for the work on that facility. If the Project falls into group (b) the Department will further assess whether: (i) the Project offers Supplemental Benefits; (ii) the Project proposes a Setback Levee or (iii) the Project has an Associated Ecosystem Restoration Project. If the Project falls into group (c) the State will share 50% of the Eligible Costs associated with a Design Project.
4. State Determines Cost-Share Cap. The State will determine the overall State Cost-Share Cap, beyond which the State will pay no more than 50% of the costs regardless of Supplemental Benefits.

Appendix A-1 contains two examples of how cost-sharing would work in an Urban Area.

b. Information Required to Determine Cost-Share

All Applicants will be required to provide an “Applicant’s Cost-Sharing Recommendation and Report” which is intended to provide information to the Department that is needed to determine the appropriate cost-share. The Applicant will be required to make a cost-sharing recommendation and substantiate the claimed State cost-share with appropriate documentation. The Applicant will be required to provide, among other things:

- a detailed estimate of the Eligible Repair Project Costs and Eligible Improvement Project Costs;
- if applicable, an explanation of the Supplemental Benefits that the Applicant intends to undertake to achieve a higher state cost-share and an estimate of the cost of such work;
- if applicable, an explanation of whether the Project or any Project components will have a Setback Levee;
- if applicable, an explanation of whether the Project will have an Associated Ecosystem Restoration Project; and
- an assessment of the State Supplemental Cost-Share Cap, as detailed below.

Appendix A to these *Guidelines* further describes what the Applicant’s Cost-Sharing Recommendation and Report must contain.

The Department will review Applicant’s Cost-Sharing Recommendation and Report to determine whether the recommendation and the cost estimates are reasonable and have been adequately substantiated. In the event the Department determines that a recommendation or cost estimate is not reasonable or has not been adequately substantiated, the Department will notify the Applicant to discuss the matter and may permit the Applicant to supplement its application. If the Department finds, in its sole discretion, that a recommendation or cost estimate is not reasonable or has not been adequately substantiated, the Department may adjust the recommendation or cost estimate for purposes of determining the State’s cost-share.

c. Calculation of State Cost-Share

(i) Introduction

As described in the Overview, the State’s cost-share will depend on the nature of the Project proposed.

- For a Repair Project in a Non-Urban Area, the State cost-share will generally be 85% of the total cost of the Project plus 95% of the incremental cost of a Setback Levee. If a Repair Project proposal involves work on a facility listed in Water Code Section 8361, no local cost-share is required for the work on that facility.

- The base State cost-share for both a Repair Project and an Improvement Project in an Urban Area will be set at 50% of Eligible Project Costs. Whether the State’s cost-share paid from Cal. Pub. Resources Code § 5096.821 will be higher than this base cost-share depends on: (1) the Supplemental Benefits giving rise to an increased state cost-share; and (2) whether the Project includes a Setback Levee.
- If the Project requires acquisition of real estate that is already a State responsibility to have acquired, the Department may fund up to 100% of the cost of acquiring that real estate.
- If the Project has an Associated Ecosystem Restoration Project, the State may, at its sole discretion, fund up to 50% of the costs of the Associated Ecosystem Restoration Project in excess of those costs already being contributed by the State as a result of Supplemental Benefits from funds *other* than those available under Cal. Pub. Resources Code § 5096.821.

The Department will increase State cost-sharing for a Project in an Urban Area that includes Supplemental Benefits because the Legislature has encouraged the Department to provide additional funds for state-federal Projects that meet certain multi-purpose objectives. The Early Implementation Program cost-sharing rules for Projects in Urban Areas are contained in these guidelines and are nearly identical to the draft regulations promulgated pursuant to AB1147, codified at Cal. Water Code § 12585.7. The proposed regulations can be found on the Department website at www.water.ca.gov/floodmgmt/fpo/sgb/fcs/docs/Modifications_to_Text_of_Proposed_Regulations_Oct62008.pdf.⁸ If a Project provides Supplemental Benefits, the State will pay a higher cost-share for the Project up to 70%.

The Department will use a different cost-sharing approach for a Project or Project components that are Setback Levees as described in Section IV.F.3.c.(iii) below.

The Department will also pay, at its discretion, up to 50% of the eligible costs of a Design Project.

(ii) Supplemental Benefits that Will Result in Higher State Cost-Shares

The Local Agency will be entitled to separate incremental State cost-share increases above the base State cost-share for each of the objectives set forth below, up to the State Supplemental Cost-Share Cap. The costs must be in addition to any costs that could have been classified as Eligible Project Costs in the Applicant’s proposal because they are for mitigation required by CEQA or other environmental laws. The Project features that provide Supplemental Benefits must also have a strong connection with the flood management features of the Project to be considered Supplemental Benefits. The Department will find that a strong connection exists if

⁸ The Department has modified AB 1147 regulations in response to public comments. The rules in these Guidelines reflect the modified draft.

the Supplemental Benefits will be realized in close proximity to the Project and is such that it would ordinarily be provided at approximately the same time as the flood management work that is proposed as part of the Project. The State cost-share will be increased based on estimated Supplemental Benefits. Once the Project is complete the Applicant must provide a record of the actual Supplemental Benefits provided. The final cost-share will be adjusted as needed, based on the actual Supplemental Benefits.

Features of the Project *necessary* for flood protection will receive the baseline 50 percent plus the increases for Supplemental Benefits, up to a maximum total of 70 percent. For a multi-objective project, the features necessary for flood protection would be the features associated with the separable flood damage reduction costs *and* the joint costs. The recommended percentage increases shall be: (a) 0 percent, if the objectives are not met; (b) 5 percent for a significant contribution in open space, habitat or recreation; (c) 10 percent for each open space, habitat or recreation objective when 10 percent of the Project's estimated costs are contributed toward the respective objective; (d) 15 percent for each open space, habitat or recreation objective when 15 percent of the Project's estimated costs are contributed toward the respective objective; (e) 20 percent for each open space, habitat or recreation objective when 20 percent of the Project's estimated costs are contributed toward the respective objective; (f) 20 percent for a significant contribution to objectives related to providing flood protection for Impoverished Areas and; (g) 10 to 20 percent for a significant contribution to State Transportation Facilities or State Water Facilities. (See below for more detail). Joint costs in the SCRB analysis performed for economic justification of the Project may be considered necessary for flood protection if the flood protection function cannot be achieved without these costs. This is an important difference from Corps economic and cost-sharing procedures. For this program, joint costs may be funded entirely as flood protection costs.

For purposes of EIP cost-sharing, the following contributions are considered "significant contributions:"

- A Project provides a significant contribution to Open-Space, Habitat and/or Recreation if a minimum of five percent of the non-federal capital costs are spent for meeting an Open-Space, Habitat and/or Recreation objective. Non-federal capital costs spent for meeting one of the three objectives cannot be applied towards the other two objectives. A Project with less than five percent of the non-federal capital costs allocated to Open-Space, Habitat or Recreation objective does not meet the criteria for a significant contribution and will not be eligible for an increased cost-share.
- A Project provides a significant contribution to an Impoverished Area when it increases the Level of Protection by at least ten percent to a Benefited Area that has a Median Household income of less than 120 percent of the Poverty Level.
- A Project provides a significant contribution to the State Facilities Objective when it increases the Level of Protection for State Water Supply Facilities or State Transportation Facilities by at least ten percent.

As noted above, a contribution may only be counted once (*e.g.*, a \$3 million contribution for acquiring open space for fish and wildlife habitat may be counted for either purpose, but not for both, or alternatively, the \$3 million may be split into two appropriate amounts that are counted for each purpose).

- **Habitat Objective.** The Local Agency will be entitled to a five percent increase in the State cost-share if the Project makes a significant contribution towards the objective by protecting, creating, enhancing or providing opportunities for enhancing endangered species, riparian, aquatic, terrestrial or other important habitats. The Local Agency will be entitled to a ten percent increase in the State cost-share if at least ten percent of the estimated Project costs are contributed, a fifteen percent increase in the State cost-share if at least fifteen percent of the estimated Project costs are contributed and a twenty percent increase at twenty percent contribution. These habitat improvements shall achieve any of the following objectives beyond what is required to mitigate the Project's effects on the environment under CEQA:
 - Promote recovery of at-risk native fish, vegetation or wildlife species;
 - Improve ecological functions of aquatic and/or terrestrial habitats to support sustainable populations of diverse fish, vegetation and wildlife species;
 - Improve conditions for upstream migration, spawning, egg incubation, emergence, rearing and emigration of priority fish species through adjustment of river flows and temperature;
 - Cause increases in early life stage survival for priority fish species;
 - Improve fish passage through modification or removal of barriers;
 - Influence geomorphic processes within the floodplain in a manner that improves habitat or reduces the potential for fish stranding;
 - Enhance natural processes to support, with minimal human intervention, natural habitats that support native species;
 - Remove and/or prevent the establishment of non-native species; or
 - Provide other important habitat restoration opportunities.

- **Open-Space Objective.** The Local Agency will be entitled to a five percent increase in the State cost-share if the Project makes a significant contribution towards the objective by acquiring and preserving Open-Space land beyond what is required for project mitigation. Such lands may be acquired in fee or in the form of a flowage or other Open-Space easement that secures the rights necessary for flood management operations and maintenance. The Local Agency will be entitled to a ten percent increase in the State cost-share if at least ten percent of the estimated Project costs are contributed, a fifteen percent increase in the State cost-share if at least fifteen percent

of the estimated Project costs are contributed and a twenty percent increase at twenty percent contribution.

➤ **Recreation Objective.** The Local Agency will be entitled to a five percent increase in the State cost-share if the Project makes a significant contribution towards the objective by providing recreational improvements such as picnic areas, foot and bike paths and providing public access to all or nearly all of the Project works, except those areas where public access would constitute a threat to public safety or habitat or would constitute a trespass on private property. The Local Agency will be entitled to a ten percent increase in the State cost-share if at least ten percent of the estimated Project costs are contributed, a fifteen percent increase in the State cost-share if at least fifteen percent of the estimated Project costs are contributed and a twenty percent increase at twenty percent contribution. These recreational improvements shall achieve any of the following objectives beyond what is required to mitigate the Project's effects on the environment:

- Develop and maintain trails for pedestrians, bicycles and/or equestrians;
- Modify the operation of flood protection facilities to increase the diversity and duration of recreational opportunities;
- Enhance the condition and quality of existing recreational facilities;
- Provide facilities for rafting, canoeing, boating, fishing, viewing wildlife, swimming or other water dependent activities;
- Provide interpretive facilities and services that enhance visitor appreciation of natural, historical and cultural resources;
- Relocate major trails to avoid flooding so that they may remain open all year;
- Enhance public beach areas;
- Provide linkage between recreational areas; or
- Provide other important public recreational opportunities.

➤ **Impoverished Area Objective.** The Local Agency will be entitled to a twenty percent increase in the State cost-share if the Benefited Area is a community with a median household income of less than 120 percent of the poverty level, and the Benefited Area receives a significant contribution in flood protection from the Project. Community income will be determined by U.S. Census. Census information is available at <http://quickfacts.census.gov/qfd/states/06000.html> data using the following steps:

- The Benefited Area will be evaluated to determine the applicable Block Groups;

- For the applicable Block Groups, the Median Household Income and Average Family Size will be determined;
- The Average Family Size, rounded up to the next integer, will be used on the latest decennial Poverty Threshold Chart to locate the corresponding Poverty Level on the chart's weighted average threshold column; and
- The Median Household Income will be compared to 120 percent of the Poverty Level.

The Local Agency may choose an alternative calculation method for the impoverished area objective. Alternative methods must be certified by the Department of Finance prior to any evaluation by the Department.

- **State Facilities Objective.** The Local Agency will be entitled to the following increases:
 - Ten percent for a Project that makes a significant contribution to the objective by benefiting either two State Transportation Facilities or two State Water Supply Facilities;
 - Fifteen percent for a Project that makes a significant contribution to the objective by benefiting either three State Transportation Facilities or three State Water Supply Facilities; or
 - Twenty percent for a Project that makes a significant contribution to the objective by benefiting either two State Transportation Facilities and two State Water Supply Facilities; or four State Transportation Facilities; or four State Water Supply Facilities.
- A list of State Water Supply Facilities is provided in Appendix A-2.

(iii) Cost-Sharing for Projects or Project Components that are Setback Levees

The Department will pay a State cost-share for Projects or Project components that are Setback Levees, as set forth in this section. The following is a brief description of how the State will determine the State cost-share for Setback Levees:

- **Define the Portion of the Project Eligible for Application of the Setback Levee Rules.** For purposes of applying the cost-sharing rules for a Setback Levee, it will be important to determine whether the entire Project is a Setback Levee or whether one or more Project Elements or Features is a Setback Levee. Thus, the Applicant should clearly state whether an entire Project should be considered a Setback Levee or which elements or features are Setback Levees and provide adequate documentation to support this position.

- **Determine the State Cost-Share for Hypothetical Repair/Improve-in-Place Project.** For any Project that includes a Setback Levee, the Applicant will be required to describe a hypothetical repair-in-place or improve-in-place project, depending on whether it is a Repair Project or an Improvement Project. The Applicant shall prepare an analysis of what the appropriate State cost-share would be for the hypothetical Project, including any increase in the State cost-share that the hypothetical Project would be entitled to for meeting the multi-purpose objectives described in Section 3(c)(ii) above. For purposes of this analysis, the Applicant should not take into account that the actual Project will include construction of the Setback Levee. On the basis of this analysis, the State will determine what the appropriate State cost-share would be for the hypothetical repair-in-place or improve-in-place project.
- **Determine the Incremental Cost of Constructing a Setback Levee.** The Applicant will also be required to submit an analysis of the incremental cost of building a Setback Levee rather than the hypothetical repair-in-place or improve-in-place project. The State will review the Applicant's estimate to make sure that it fairly and accurately reflects the likely incremental costs. The Department will pay (from non-5096.821 funds), if funds are available, 95% of the separable ecosystem restoration costs associated with the purchase of additional property rights beyond a flowage easement if the additional rights are purchased at the same time the flowage easement is acquired.
- **Determine the State Cost-Share.** The State will pay the State's cost-share for the hypothetical repair-in-place or improve-in-place project plus 95 percent of the incremental additional Eligible Project Costs incurred as a result of constructing the Setback Levee instead of the hypothetical repair-in-place or improve-in-place project. The State will pay a blended cost-share rate for the entire Project. The blended rate will be determined by combining the Applicant's cost-share rate for the overall Project with the cost-share rate for all extra work incurred by building the Setback Levee. Applicants will be responsible for paying the balance.

(iv) **Cost-Sharing for Associated Ecosystem Restoration Projects**

The State may share 50% of the cost of an Associated Ecosystem Restoration Project if it has a strong connection with a flood protection Project that is eligible for funding under these *Guidelines*.⁹ For multi-objective projects, the separable ecosystem restoration costs may be considered as costs of an Associated Ecosystem Restoration Project. The source of this funding will not be Cal. Pub. Resources Code § 5096.821. The Department will likely find that a strong connection exists if the Associated Ecosystem Restoration Project will be done in close

⁹ There is one exception. The Department will pay (from non-5096.821 funds), if funds are available, 95% of the separable ecosystem restoration costs associated with the purchase of additional property rights beyond a flowage easement if the additional rights are purchased at the same time the flowage easement is acquired.

proximity to the Project and is such that it would ordinarily be done at approximately the same time as the flood protection work that is proposed as part of the Project.

Projects or Project components that are Setback Levees may have ecosystem benefits. But, for purposes of these *Guidelines*, costs necessary for construction of a Setback Levee will not be considered costs of an Associated Ecosystem Restoration Project.

For all Associated Ecosystem Restoration Projects, the State will have discretion to decide whether to fund all, some or none of the Associated Ecosystem Restoration Project. A decision not to fund the Associated Ecosystem Restoration Project during review of the EIP application will be without prejudice to later funding of the work. For all Associated Ecosystem Restoration Project costs that the State decides are eligible for a State cost-share, the State may pay a State cost-share of up to 50%, using non-Cal. Pub. Resources § 5096.821 money.

(v) State Supplemental Cost-Share Cap

As detailed above, the State is prepared to cost-share up to 70% for repairs or improvements to levees that protect Urban Areas (and more for Setback Levees). As a policy matter, however, the State's ability to pay at this rate ends once it has paid its share of 70% of the overall investment required to provide an Area with 200-year flood protection. After it has paid its share of 70% of the total investment to provide an Area with 200-year flood protection, the State will only pay a 50% cost-share for any remaining amount for the Project. The State Supplemental Cost-Share Cap refers to the point at which the State's cost-share is limited to 50% regarding any further work carried out by the Applicant, including Setback Levees.

Two examples illustrate how the State Supplemental Cost-Share Cap mechanism works. Suppose a Project costs \$50 million and results in 100-year flood protection and qualifies for a 65% State cost-share. If the investment required to bring the Area up to 200-year Level of Protection would cost a total of \$100 million, the State Supplemental Cost-Share Cap would be \$70 million (70% of \$100 million). The State Supplemental Cost-Share Cap of \$70 million exceeds the \$50 million Project cost, and therefore, would have no impact on cost-sharing for the Project.

If the Applicant were to propose a second Project the following year costing an additional \$50 million and was subjected to the same 65% State cost-share, only the first \$20 million would be eligible for the higher 65% State cost-share. Once the State has cost-shared at the higher level to the State Supplemental Cost-Share Cap (*i.e.*, \$70 million in this example), the State would only cost-share the remaining \$30 million on a 50% basis.

The State has implemented a State Supplemental Cost-Share Cap because Proposition 1E requires the State to maximize local and federal cost-sharing. In the absence of federal cost-sharing, the State must increase the local cost-share. Typically, the State cost-shares the first 35% of a federal project. Here, however, these Urban improvements must be made faster than they could be achieved through the federal process, so the State will fully cost-share at twice the typical level. Beyond that level, the State will not continue to fully cost-share and complete the Project without federal participation. Once federal cost-sharing is secured, that cost-sharing will

occur under different rules and will not be subject to this cap. See Appendix A-3 for a chart that further explains the State Supplemental Cost-Share Cap.

The State Supplemental Cost-Share Cap may be waived by the Department, at its sole discretion, in circumstances where either: (1) both an unacceptably high risk remains and federal cost-sharing is highly unlikely to materialize or (2) the Department has waived the requirement that the Local Agency seek federal credit.

d. Applicant Obligation to Help State Seek Federal Share

The State/local cost-sharing percentages set forth in these *Guidelines* are based on the assumption that the State and the Local Agency will have to pay in advance some of the federal share that would otherwise be paid if the Project were authorized and funded by Congress. But, the Disaster Preparedness and Flood Protection Act of 2006 specifies that the State is to seek the maximum feasible cost-share from the federal government. Cal. Pub. Res. Code § 5096.820(b)(1). Thus, in every Funding Agreement the Local Agency will be required to acknowledge that the State must have the full cooperation of the Applicant in making the arrangements necessary to put the State in a position where Project costs will be eligible for federal credit or reimbursement. Specifically, the Applicant will be required to agree to a number of conditions including: (1) a requirement that the Applicant file an application for credit or reimbursement with the Corps and (2) a requirement that, if the federal government ever authorizes any credit or reimbursement for the work done with bond funds, the Local Agencies will work with the State to ensure that the State gets its share of the benefit of that credit or reimbursement. These requirements may be waived by the Department, at its sole discretion.

4. Announcement of Tentative Project Selection.

Once Projects are selected, tentative award letters will be issued to successful Applicants. The State's commitment to fund the project will occur through a Funding Agreement. Applicants and the Department must enter into a Funding Agreement before any funds will be disbursed to the Applicant.

V. FINALIZATION OF AGREEMENT AND DISBURSEMENT OF FUNDS

A. Requirements for Finalization of Funding Agreements

Before a Funding Agreement is signed, the Applicant will be required to provide, at a minimum, the information specified below:

- Work Plan. Each Funding Agreement will include a work plan that sets forth the work to be done to complete the Project. At the time of the execution of the Funding Agreement, the work plan must be complete. If applicable, each work plan will be divided into Project Features and Project Elements. Each work plan will be

accompanied by a Project budget that sets forth Eligible Project Costs and a timetable. Funding Recipients will be required to meet or exceed the timetables established in the work plan or risk losing their funding as provided for in the Funding Agreement.

- Resolution Accepting Funds. The Local Agency must provide a copy of a resolution adopted by its governing body approving the Funding Agreement and designating a representative to execute this Funding Agreement and to sign requests for disbursement of State funds.
- Environmental Compliance. The Local Agency must demonstrate compliance with (i) all applicable requirements of CEQA and NEPA and submit copies of any environmental documents (including, but not limited to, any environmental impact report(s), environmental impact statement(s), environmental assessment(s), negative declaration(s), CEQA findings, Project approvals and permits and mitigation monitoring plan(s), as appropriate, and (ii) all other applicable state and federal environmental requirements (including, but not limited, to requirements under the federal Clean Water Act, the federal Endangered Species Act and the California Fish & Game Code) and submit copies of the appropriate environmental permits, authorizations and agreements.

B. Requirements for Disbursement of Funds

In order to receive disbursements under the Funding Agreement, the Local Agency must meet certain other requirements, specifically:

- Flood Risk Notification. The Local Agency must formally acknowledge the current flood risk and make arrangements to acknowledge the current flood risk through a resolution or resolutions adopted and signed by the governing bodies of all affected cities or counties and other agencies with flood management responsibilities located in the areas protected by their proposed Projects. The resolution or resolutions must be approved by the State in advance of adoption as to matters of both form and substance. The resolution cannot be modified or rescinded without approval of the State.
- Application to Corps. The Local Agency must file an application for credit or reimbursement with the federal government or, if the Local Agency is not an appropriate agency to file such an application, must enter into an agreement with an appropriate agency that obligates that agency to file such an application. The Department may, at its sole discretion, waive this requirement.
- OMRR&R Agreement. The Local Agency must enter into an OMRR&R agreement for the Project and, if the Local Agency is not an appropriate agency to perform OMRR&R, must enter into an agreement with an appropriate agency that obligates that agency to enter into such an agreement. Alternatively, the Local Agency must provide a resolution stating that it will enter into an OMRR&R agreement before funds are disbursed.
- Reports. The Local Agency must timely submit periodic progress reports.

- Design Approval. The Department must approve the Local Agencies' 100% design plans before it will disburse construction funds.

VI. INDEPENDENT REVIEW

The Department retains sole discretion to require, under these *Guidelines*, an Independent Review of each Project. Several factors increase the likelihood that such a review will be required, including:

- (1) whether the failure of the Project would pose a significant threat to human life;
- (2) whether the Project involves the use of innovative materials or techniques;
- (3) whether the Project design lacks redundancy;
- (4) whether the Project has a unique construction sequencing or a reduced or overlapping design construction schedule;
- (5) whether the Project cost is projected to be over \$5 million (projects under \$5 million in Proposition 1E funds are less likely to be chosen for Independent Review); and
- (6) whether the Project is being approved by the Corps under 33 U.S.C. 408.

The Local Agency may select the reviewers from among individuals who are distinguished experts in engineering, hydrology or other appropriate disciplines. The Department must approve the reviewers or, at the Department's discretion, it may choose the reviewers. In either circumstance there must be at least two and no more than five reviewers on the Independent Review panel. Reviewers must be free from any conflict of interest. Reviewers shall be compensated at a reasonable rate agreed to by the Department. Costs associated with this Independent Review are considered Eligible Project Costs and are to be cost-shared in the same manner as all other Eligible Project costs.

For reviews associated with work under 33 U.S.C. 408, the Department may impose additional review requirements as needed to comply with federal requirements under 33 U.S.C. 408.

An Independent Review may include a review of the design and construction activities prior to the initiation of physical construction and periodically thereafter until construction activities are completed on a regular schedule sufficient to inform the Department on the adequacy, appropriateness and acceptability of the design and construction activities for the purpose of assuring public health, safety and welfare. The Department and Local Agency shall cooperate to ensure that reviews under this section do not create any unnecessary delays in design and construction activities. At a minimum, all Independent Reviews should meet current applicable Corps requirements.

The Department retains sole discretion to decide whether to require the Local Agency to implement the recommendations of the Independent Review panel. If the Department requires changes, such changes will be cost shared according the cost-sharing rules. Such changes may not require an immediate amendment to the Funding Agreement; however, changes costing more

than 15% of the maximum state cost share will require an amendment to the Agreement before such changes can be funded.

Written recommendations of a reviewer or panel of reviewers under this section and the responses of the Local Agency and the Department (if any) will be available to the public on the Department website. The Local Agency, in cooperation with the Department, shall develop responses to the panel's written recommendations.

VII. GUIDELINE AMENDMENTS

These *Guidelines* may be amended at the sole discretion of the Department at any time. Amendments to the *Guidelines* will be publicly posted and made available for public comment for at least two weeks. If an amendment substantively changes these *Guidelines*, such that a Local Agency can make a showing that it would have qualified and would have submitted a proposal under the amended *Guidelines*, the Local Agency will be given the opportunity to submit the proposal for review.

APPENDICES

A. Applicant's Cost-Share Recommendation and Report

A-1. Cost-Sharing Examples

A-2. Water Supply Facilities of the State Water Project

A-3. Cost-Share and State Supplemental Cost-Share Cap

B. Overview of Project Funding Agreement

C. List of Reference Materials

Appendix A

Applicant's Cost-Share Recommendation and Report

A Local Agency that applies for an increased State cost-share must submit "Applicant's Cost-Sharing Recommendation and Report." This report should contain the following information and supporting documents:

- 1) A summary of the Applicant's cost-share recommendation which includes:
 - a) A summary of the cost estimates for Eligible Repair Project Costs and/or Eligible Improvement Project Costs, which are explained in detail elsewhere in the application;
 - b) The Applicant's estimate of the appropriate State cost-share calculated in accordance with these *Guidelines*, taking into account:
 - Whether the proposal is for a Design Project (if so, State cost-share is 50%, no additional analysis necessary);
 - Any Supplemental Benefits;
 - Whether the Project or a Project component is a Setback Levee; and
 - Whether the Project has an Associated Environmental Project.
- 2) The Project's proposed Supplemental Benefits.
 - a) For the Habitat Objective:
 - A narrative description of the elements of the Project that contribute to the habitat objective and the types of habitat that are created, protected or enhanced by this Project.
 - The method of calculating the percentage of the estimated Project Costs that contributes to the habitat objective.
 - b) For the Open Space Objective:
 - A narrative description of the elements of the Project that contribute to the Open Space objective.
 - The method of calculating the percentage of estimated Project Costs that contributes to the Open Space objective.
 - c) For the Recreation Objective:
 - A narrative description of the elements of the Project that contribute to the recreation objective.
 - The method of calculating the accessible and inaccessible areas of Project works, and the method of determining any areas withdrawn from public access because such access would constitute a threat to public safety or habitat, or would constitute a trespass on private property.

- The method of calculating the percentage of the estimated Project Costs that contributes to the recreation objective.

d) For the Impoverished Area Objective:

- A narrative description of the elements of the Project that contribute to the Impoverished Area objective.
- The rationale used in determining the Project's contribution towards the Impoverished Area objective.
- The method of calculating the Project's contribution towards the Impoverished Area objective. Provide detailed calculations regarding the increased Level of Protection for the Benefited Area, Median Household Income and Poverty Level determination.
- The source documentation used to evaluate the potential contribution, including publication and compilation dates. The latest decennial U.S. Census Bureau data is the Department's preferred choice of data source, however, an Applicant may elect to use an alternative method that has been certified as equitable by the Department, such as the American Community Survey (starting in 2010). All data that is used for evaluation must be applicable to the same year, originate from reliable sources and have details given down to the census Block Group level or better.
- A map of the Benefited Area clearly showing identified boundaries of flood protection levels and census Blocks, Block Groups and Tracts. Blocks chosen for evaluation must lie at least 50 percent within the Benefited Area.

e) For the State Facilities Objective:

- A narrative description of the State water supply and transportation facilities receiving an increase in flood protection from this Project.
- The rationale used in determining the Project's contribution towards the State water supply and transportation facilities objective.
- The method of calculating the Project's contribution towards the State water supply and transportation facilities objective. Provide specific details regarding flood protection improvement and the effect upon water supply and transportation facilities.
- A map of the Benefited Area clearly showing identified boundaries of flood protection levels and State water supply and transportation facilities.

f) Costs:

If the Applicant is requesting a higher State cost-share (above 50%) on the basis of a contribution towards any of the five objectives listed above, the Applicant should provide supporting cost documentation including the following estimated costs if not already provided elsewhere in the Application:

- Total Eligible Repair Project Costs and total Eligible Improvement Project Costs;
- The local share of the total Eligible Repair Project Costs and total Eligible Improvement Project Costs;
- Total estimated Project costs;

- The local share of fish, wildlife and recreation mitigation costs;
 - The local planning and engineering costs;
 - The total annual benefit of providing flood protection;
 - The annual cost of the Project allocable to flood management if the Project increases the level of flood protection for state facilities; and
 - The Applicant's estimated share of the Eligible Repair Project Costs and Eligible Improvement Project Costs towards each of the five multipurpose objectives.
- 3) Information needed to determine whether the Project or a component of the Project is a Setback Levee and the information required by these *Guidelines* to determine the State cost-share for the Project since it includes a Setback Levee.
- 4) Information needed to determine whether the Project has an Associated Ecosystem Restoration Project and the information required by these *Guidelines* to determine the State cost-share for the Associated Ecosystem Restoration Project.

Appendix A-1

Cost-Sharing Examples

Two cost-sharing examples are provided. The first example demonstrates how a Project with two separate Elements, each having its own cost-sharing formula, will be cost-shared. The second example demonstrates how an Area Project constructed on a Project-by-Project basis over three successive years, with the second year Project having two Elements, would be cost-shared.

COST-SHARING EXAMPLE 1: Big River Levee Project

Assume that a Local Agency has a Funding Agreement for a Project called the Big River Levee Project that provides a 65-35% State/Local split for improvements in place to existing levees. In addition, there will be an Element of the Project where they will construct a Setback Levee. Therefore, each of the two levee reaches (one reach with improve-in-place levee work and the other reach with a Setback Levee) will be considered as a separate Project Element with its own cost-sharing. The example contract is written as such:

- a) *Eligible Project Costs will be shared by the State and the Funding Recipient on the following basis:*

The State will pay sixty-five percent (65%), and the Funding Recipient will pay thirty-five percent (35%) of Eligible Project Costs for Project Elements that are levee repairs or improvements-in-place. For those Project Elements that incorporate a Setback Levee in lieu of a repair or improve-in-place, the State will pay 65% of the estimated cost of repairing or improving the levee in place plus ninety-five percent (95%) of the incremental additional Eligible Project Costs as a result of constructing a Setback Levee. To determine the State cost-share for Project Elements with Setback Levees, the Funding Recipient shall provide a levee "repair or improve-in-place" estimate to the State with sufficient documentation for the State to approve the estimate, along with the estimate to complete the Project as proposed. The State payment will be according to the appropriate cost-share associated with the particular project or portion of the Project. The final State payment will be a blended rate that applies to all Eligible Project Costs for each Project Element with Setback Levees that reflects 65% of Eligible Project Costs set forth in the approved repair or improve in place estimate and 95% of the remaining Eligible Project Costs, but in no event in excess of the Limit on State Funds set forth in this contract. Funding Recipient will be responsible for paying the remaining project costs above the state cost-share.

For Element A, the Setback Levee, the total cost of the hypothetical improve-in-place work is estimated at \$37.5 million. Constructing a Setback Levee will cost \$90 million. The contract states that the State's share of the improve-in-place levee work is 65% and will pay 95% of the difference between the improve-in-place and Setback Levee. The blended cost-share rate calculation is shown below:

Big River Levee Project (BRLP) Element A
State Cost-share Calculation for Setback Levee Related Features

Total Costs for Improve-in-place Levee Work	\$37,500,000
Less Ineligible Costs	<u>(\$500,000)</u>
Total Eligible Costs for Improve-in-place Levee Work	\$37,000,000
Total Cost of Setback Levee	\$90,000,000
Less Cost for Improve-in-place Levee Work	<u>(\$37,000,000)</u>
Less Cost for Separate Potentially Eligible Ecosystem Restoration	<u>(\$4,500,000)</u>
Less Ineligible Costs	<u>(\$2,500,000)</u>
	\$46,000,000
Total Eligible Costs (\$37M + \$46M)	\$83,000,000
65% Cost-share for Improve-in-place Levee Work (\$37M x 0.65)	\$25,050,000
95% Cost-share for Incremental Setback Costs (\$46M x 0.95)	<u>\$43,700,000</u>
Total State Cost-share	\$67,750,000
Element A Effective Percentage (\$67.75M / \$83M)	81.63%

For Element B, the improve-in-place levee work, the cost-share is calculated as follows:

Big River Levee Project (BRLP) Element B
State Cost-share Calculation for Improve-in-place Features

Total Costs for Improve-in-place Levee	\$22,000,000
Less Ineligible Costs	<u>(\$1,000,000)</u>
Total Eligible Improve-in-place Costs	\$21,000,000
65% Cost-share for Improve-in-place Levee Work (\$21M x 0.65)	\$13,650,000
Total State Cost-share	\$13,650,000
Element B Effective Percentage (\$13.65M / \$21M)	65.0%

For the overall Big River Levee Project, the cost-sharing is estimated as follows:

Total State Share of Eligible Costs	\$81,400,000
--	---------------------

Total Local Share of Eligible Costs **\$22,600,000**

Overall Estimated State Cost-share (\$81.4M / \$104M) **78.27%**

COST-SHARING EXAMPLE 2: Little River Levee Project

Assume that a Local Agency has proposed to construct the following three separate Projects that together comprise an Area Project called the Little River Levee Project. The Projects will be proposed and constructed over three successive years. The cost-share for each individual Project within the Area Project will be evaluated based on Supplemental and other benefits of the Project up to the time the Project is proposed. Future Supplemental and other benefits will not be recognized *until* they are proposed. The cost-sharing for the Area Project and each individual Project is established as described below:

Project 1 – improve-in-place work on a levee (no supplemental benefits identified)

Project 2 – two elements: 1) a setback levee and 2) improve-in-place work on a levee

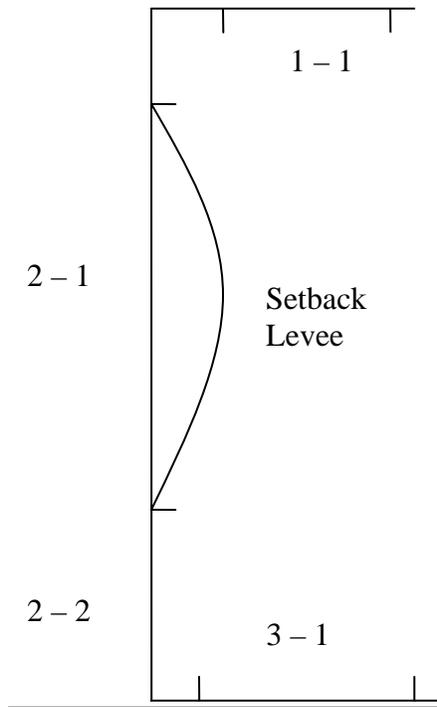
Project 3 – improve-in-place work on a levee with a benefit to a State highway

Project – Elements	Cost-Share as individual Projects (State – Local)	Cost-Share as an Area Project done at the same time	Cost-Share established in Funding Agreement	Cost of the Project	Credit prorated among future year projects	State cost-share according to the Funding Agreement
1 – 1	50 – 50%	70 – 30%	50 – 50%	\$5,000,000	(\$1,000,000)	\$2,500,000
2 – 1	90 – 10%	90 – 10%	95 – 5%	\$10,000,000	\$500,000	\$9,500,000
2 – 2	50 – 50%	70 – 30%	86.67 – 13.33%	\$3,000,000	\$500,000	\$2,600,000
3 – 1	60 – 40%	80 – 20%	80 – 20%	\$5,000,000		\$4,000,000
Area Project	70 – 30%	81 – 19 %	81 – 19%	\$23,000,000		\$18,600,000

The Project 1 (1–1) would have received a 70–30% cost-share if all three Projects were funded at the same time as an Area Project. Therefore, instead of \$2.5 million (50–50%) in State cost-share, the funding recipient would have been entitled to \$3.5 million (70–30%). The additional \$1 million (\$3.5–2.5M) credit is not realized until the second Project is approved and funded. At that time, the credit is utilized by increasing the State’s cost-share for Project 2. The credit would be prorated between the two Elements in Project 2. However, Element 1 receives only \$500,000 in credit adjustment because of the 95% cap. The remaining \$500,000 in credit is applied toward Element 2, increasing the cost-sharing for that Element to 86.67–13.33%.

If each individual Project had been cost-shared as if there were no other Projects in the Area Project, the overall cost-sharing for the Little River Levee Project would be approximately 70–30%. However, by considering each Project on a cumulative basis along with the past Projects

in the Area Project, the cost-sharing would be approximately 81–19%, the same as if all three Projects had been funded at the same time.



Conceptual map of the Little River Levee Project

Appendix A-2

Water Supply Facilities of the State Water Project

Part 1. Aqueducts of the State Water Project, including joint use facilities:

<p><u>1. Upper Feather River Division</u> <u>a. Grizzly Valley Pipeline</u></p> <p><u>2. Oroville Division</u> <u>a. Thermalito Power Canal</u></p> <p><u>3. North Bay Aqueduct</u> <u>a. Napa Pipeline</u> <u>b. Phase II Pipeline</u></p> <p><u>4. South Bay Aqueduct</u> <u>a. Brushy Creek Pipeline</u> <u>b. Dyer Canal</u> <u>c. Altamont Pipeline</u> <u>d. Livermore Valley Canal</u> <u>e. Alameda Canal</u> <u>f. Del Valle Pipeline</u> <u>g. Del Valle Branch Pipeline</u> <u>h. La Costa Tunnel</u> <u>i. Sunol Pipeline</u> <u>j. Mission Tunnel</u> <u>k. Santa Clara Pipeline</u></p> <p><u>5. Governor Edmund G. Brown California Aqueduct</u></p> <p><u>6. San Luis Division</u> <u>a. E.G. Brown California Aqueduct</u> <u>b. San Luis Canal</u></p> <p><u>6. South San Joaquin Division</u> <u>a. E.G. Brown California Aqueduct</u></p> <p><u>7. Tehachapi Division</u> <u>a. Tehachapi Tunnel No. 1</u> <u>b. Tehachapi Siphon No. 1</u> <u>c. Tehachapi Tunnel No. 2</u> <u>d. Pastoria Siphon</u> <u>e. Tehachapi Tunnel No. 3</u> <u>f. Carley V. Porter Tunnel</u></p> <p><u>8. Mojave Division</u> <u>a. Cottonwood Chutes</u> <u>b. Mojave Siphon</u> <u>c. Mojave Siphon Second Pipeline</u> <u>d. Mojave Siphon Powerplant Tunnel</u> <u>e. East Branch Aqueduct</u></p>	<p><u>9. Santa Ana Division</u> <u>a. San Bernardino Tunnel</u> <u>b. Santa Ana Pipeline</u></p> <p><u>10. West Branch</u> <u>a. Oso Canal</u> <u>b. Quail Canal</u> <u>c. Lower Quail Canal</u> <u>d. Peace Valley Pipeline</u> <u>e. Gorman Creek Channel Improvements</u> <u>f. Angeles Tunnel</u></p> <p><u>11. Coastal Branch</u> <u>a. Coastal Aqueduct</u> <u>b. Phase I Canal</u> <u>c. Phase II Pipeline:</u> <u>A. Reach No. 1 - Devil's Den to Cholame Valley</u> <u>B. Reach No. 2 - Cholame Valley to Shedd Canyon</u> <u>C. Reach No. 3 - Shedd Canyon to Calf Canyon</u> <u>D. Reach No. 4 - Calf Canyon to Cuesta Canyon</u> <u>E. Cuesta Tunnel</u> <u>F. Reach No. 5A1 - Cuesta Tunnel to Fiscalini Ranch</u> <u>G. Reach No. 5A2 - Fiscalini Ranch to Talley Farms</u> <u>H. Reach No. 5B - Talley Farms to Nipomo</u> <u>I. Reach No. 6 - Nipomo to Vandenberg Air Force Base</u></p>
--	---

Part 2. Hydroelectric or pumping plants of the State Water Project:

<ul style="list-style-type: none">1. <u>Oroville Division</u><ul style="list-style-type: none">a. <u>Edward Hyatt Powerplant</u>b. <u>Thermalito Powerplant</u>c. <u>Thermalito Diversion Dam Powerplant</u>d. <u>Sutter-Butte Outlet Powerplant</u>2. <u>North Bay Aqueduct</u><ul style="list-style-type: none">a. <u>Barker Slough Pumping Plant</u>b. <u>Cordelia Pumping Plant</u>3. <u>South Bay Aqueduct</u><ul style="list-style-type: none">a. <u>South Bay Pumping Plant</u>b. <u>Del Valle Pumping Plant</u>4. <u>North San Joaquin Division</u><ul style="list-style-type: none">a. <u>Harvey O. Banks Delta Pumping Plant</u>5. <u>San Luis Division</u><ul style="list-style-type: none">a. <u>William R. Gianelli Pumping – Generating Plant</u>b. <u>Dos Amigos Pumping Plant</u>6. <u>South San Joaquin Division</u><ul style="list-style-type: none">a. <u>Buena Vista Pumping Plant</u>b. <u>John R. Teerink Wheeler Ridge Pumping Plant</u>c. <u>Ira J. Chrisman Wind Gap Pumping Plant</u>	<ul style="list-style-type: none">7. <u>Tehachapi Division</u><ul style="list-style-type: none">a. <u>A.D. Edmonston Pumping Plant</u>8. <u>Mojave Division</u><ul style="list-style-type: none">a. <u>Alamo Powerplant</u>b. <u>Pearblossom Pumping Plant</u>c. <u>Mojave Siphon Powerplant</u>9. <u>Santa Ana Division</u><ul style="list-style-type: none">a. <u>Devil Canyon Powerplant</u>10. <u>West Branch</u><ul style="list-style-type: none">a. <u>Oso Pumping Plant</u>b. <u>William E. Warne Powerplant</u>c. <u>Castaic Powerplant</u>11. <u>Coastal Branch</u><ul style="list-style-type: none">a. <u>Las Perillas Pumping Plant</u>b. <u>Badger Hill Pumping Plant</u>c. <u>Devil’s Den Pumping Plant</u>d. <u>Bluestone Pumping Plant</u>e. <u>Polonio Pass Pumping Plant</u>
--	---

Part 3. Reservoirs or dams of the State Water Project:

<p><u>1. Upper Feather River Division</u></p> <ul style="list-style-type: none"> <u>a. Frenchman Dam</u> <u>b. Frenchman Lake</u> <u>c. Antelope Dam</u> <u>d. Antelope Lake</u> <u>e. Grizzly Valley Dam</u> <u>f. Lake Davis</u> <p><u>2. Oroville Division</u></p> <ul style="list-style-type: none"> <u>a. Oroville Dam</u> <u>b. Lake Oroville</u> <u>c. Parish Camp Saddle Dam</u> <u>d. Bidwell Canyon Saddle Dam</u> <u>e. Feather River Fish Barrier Dam</u> <u>f. Thermalito Diversion Dam</u> <u>g. Thermalito Diversion Pool</u> <u>h. Thermalito Forebay Dam</u> <u>i. Thermalito Forebay</u> <u>j. Thermalito Afterbay Dam</u> <u>k. Thermalito Afterbay</u> <p><u>3. North Bay Aqueduct</u></p> <ul style="list-style-type: none"> <u>a. Napa Turnout Reservoir</u> <u>b. Cordelia Forebay</u> <p><u>4. South Bay Aqueduct</u></p> <ul style="list-style-type: none"> <u>a. Patterson Reservoir</u> <u>b. Del Valle Dam</u> <u>c. Lake Del Valle</u> <p><u>5. North San Joaquin Division</u></p> <ul style="list-style-type: none"> <u>a. Clifton Court Forebay Dam</u> <u>b. Clifton Court Forebay</u> <u>c. Bethany Dams</u> <u>d. Bethany Reservoir</u> 	<p><u>6. San Luis Division</u></p> <ul style="list-style-type: none"> <u>a. O’Neill Dam</u> <u>b. O’Neill Forebay</u> <u>c. B.F. Sisk San Luis Dam</u> <u>d. San Luis Reservoir</u> <u>e. Los Banos Detention Dam</u> <u>f. Los Banos Reservoir</u> <u>g. Little Panoche Detention Dam</u> <u>h. Little Panoche Reservoir</u> <u>i. Arroyo Pasajero Impoundment Basin</u> <p><u>7. Tehachapi Division</u></p> <ul style="list-style-type: none"> <u>a. Tehachapi Afterbay</u> <p><u>8. Mojave Division</u></p> <ul style="list-style-type: none"> <u>a. Cedar Springs Dam</u> <u>b. Silverwood Lake</u> <p><u>9. Santa Ana Division</u></p> <ul style="list-style-type: none"> <u>a. Devil Canyon Powerplant Afterbay</u> <u>b. Devil Canyon Powerplant Second Afterbay</u> <u>c. Perris Dam</u> <u>d. Lake Perris</u> <p><u>10. West Branch</u></p> <ul style="list-style-type: none"> <u>a. Quail Lake</u> <u>b. Pyramid Dam</u> <u>c. Pyramid Lake</u> <u>d. Elderberry Forebay</u> <u>e. Elderberry Forebay Dam</u> <u>f. Castaic Dam</u> <u>g. Castaic Lake</u>
---	---

Part 4. Other water supply facilities of the State Water Project:

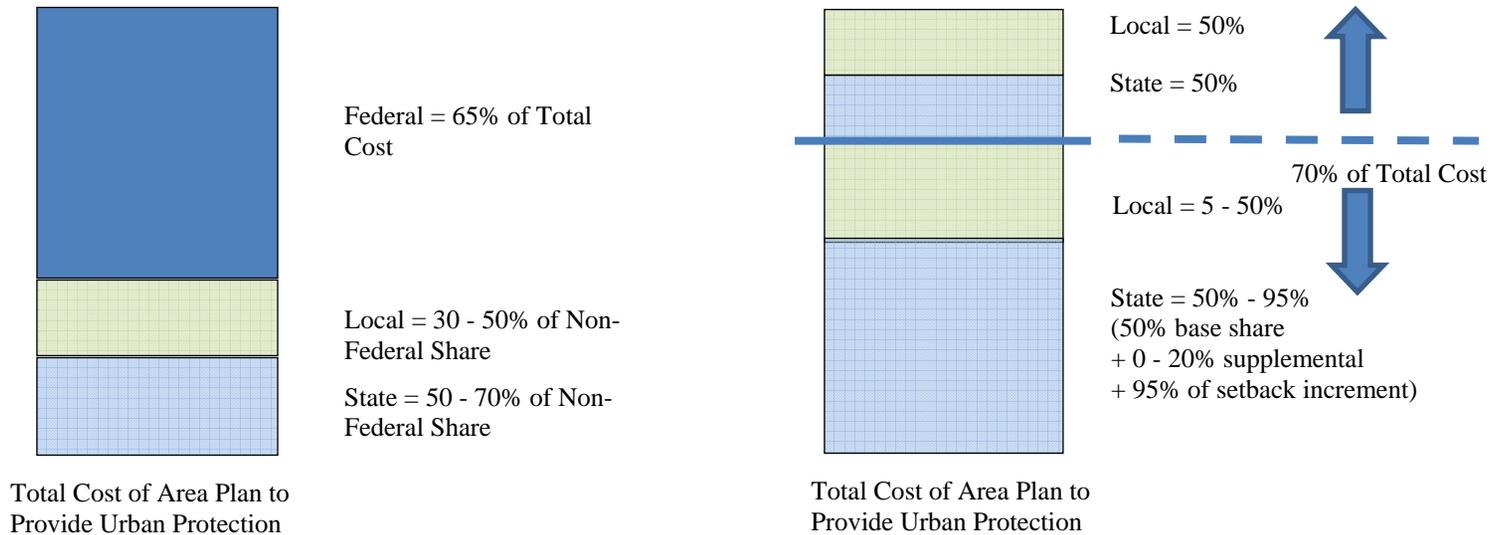
<ul style="list-style-type: none">1. <u>Oroville Division</u><ul style="list-style-type: none">a. <u>Oroville Area Control Center</u>2. <u>North Bay Aqueduct</u><ul style="list-style-type: none">a. <u>Cordelia Surge Tank</u>b. <u>Creston Surge Tank</u>c. <u>Travis Surge Tank</u>3. <u>South Bay Aqueduct</u><ul style="list-style-type: none">a. <u>Santa Clara Terminal Facilities</u>4. <u>North San Joaquin Division</u><ul style="list-style-type: none">a. <u>Delta Area Control Center</u>5. <u>San Luis Division</u><ul style="list-style-type: none">a. <u>San Luis Area Control Center</u>6. <u>South San Joaquin Division</u><ul style="list-style-type: none">a. <u>Kern River Intertie</u>b. <u>San Joaquin Area Control Center</u>7. <u>Mojave Division</u><ul style="list-style-type: none">a. <u>First Los Angeles Aqueduct Connection</u>a. <u>Cedar Springs Dam Maintenance Station</u>	<ul style="list-style-type: none">8. <u>Santa Ana Division</u><ul style="list-style-type: none">a. <u>San Bernardino Tunnel Intake Structure</u>b. <u>Perris Dam Maintenance Station</u>9. <u>West Branch</u><ul style="list-style-type: none">a. <u>Angeles Tunnel Intake Works</u>b. <u>Southern California Area Control Center</u>10. <u>East Branch</u><ul style="list-style-type: none">a. <u>First Los Angeles Aqueduct Connection</u>11. <u>Coastal Branch</u><ul style="list-style-type: none">a. <u>Tank Site 1 - Polonio Pass</u>b. <u>Tank Site 2 - Creston</u>
---	--

Appendix A-3

EIP Guidelines: Cost-Share and State Supplemental Cost-Share Cap

Scenario 1: 200-year Area Plan built with federal participation

Scenario 2: 200-year Area Plan built without federal participation



State-Local Cost-Share Notes:

- State share will be 50%-70% of non Setback Levee Projects depending on Supplemental Benefits
- State share may be as high as 95% for the incremental cost of building a Setback Levee
- State cost-share for Non-Urban Project is <= 85% subject to benefits produced
- State may also cost-share 50% of Associated Ecosystem Restoration Project (with different funds)

State Supplemental Cost-Share Cap Notes:

Scenario 1:

If the federal government is building a Project, there is no State Supplemental Cost-Share Cap. The federal government provides its usual 50%-65% of the Project cost, the State government provides 50-70% of non-federal share (the remaining 35%) and the Local Agency covers 30-50% of the non-federal share.

Scenario 2:

Assuming the federal government has not provided funds for the Project, the State Supplemental Cost-Share Cap takes effect. The State will provide its cost-share to match or exceed local funds until the non-federal cost reaches 70% of the cost of the 200-year Area Plan. After the 70% mark is reached, the State will only share 50% of the additional Project costs.

Appendix B

Overview of

Project Funding Agreement

Projects will be funded through a Funding Agreement between the Department and the Local Agency responsible for the Project. A sample Funding Agreement is available at the Department's website at http://www.water.ca.gov/floodsafe/docs/EIP_Funding_Agreement.pdf. The purpose of this Appendix is to briefly summarize key provisions of the *pro forma* Funding Agreement.

I. Key Provisions

Key provisions of the Funding Agreement will include the following¹⁰:

- Purpose of the Funding Agreement. The Agreement will set forth the statutory purpose behind the funding program. The Agreement will reference a “work plan” submitted by the Funding Recipient that explains in detail the purpose of the Project.
- Terms of the Funding Agreement. The Agreement will lay out a set term of validity.
- Project Schedule. The Agreement will establish a schedule for the Project. The Funding Recipient will be required to make periodic reports to update the Department on the status of the Project schedule.
- Project Cost. The Agreement will lay out the cost of the Project, set forth all Eligible Project Costs and discuss how additional costs (beyond those envisioned in the cost estimate) will be paid.
- Cost-Share. All Agreements will set forth the percentage of the cost of the Project that will be covered by the Funding Recipient and the percentage to be covered by the State.
- Responsibility and Liability for Work; Relationship of Parties. The Agreement will establish that the Funding Recipient is responsible for all work to be performed in completing the Project. The Funding Recipient will be required to supervise work, assume liability for problems arising from the work and assume financial responsibility for contract disputes arising out of work on the Project. The Agreement will make clear that the Funding Recipient is acting independently and is solely responsible for design, construction and OMRR&R (see below).

¹⁰ At the Department's discretion, Funding Agreements for Design Projects may not include all of these requirements.

- Disbursement Requirements. All funds will be subject to a series of conditions that the Funding Recipient must meet. The Agreement will identify and describe each of these conditions and will discuss the process by which the Department will offer advance work approvals. The Agreement will also discuss any disbursement withholdings. The Agreement will also discuss final accounting, procedures for adjusting cost sharing, and final disbursements or collections.
- Statement of Costs. The Agreement will set forth all requirements regarding periodic statement of cost submissions required by the Department.
- Land Acquisition Process. The procedure for obtaining payment of the State's share of certain Eligible Project Real Estate Costs will differ significantly from the procedures used for obtaining payment of other Eligible Project Costs. More specifically, certain acquisitions will require review and approval in accordance with the State's established procedures for land acquisition. As a result, the Agreement will discuss, in detail, the established State procedure for land acquisition.
- Submission of Information. The Agreement will require the Funding Recipient to submit the following items on a one-time or recurring basis: an Overall Work Plan, a Quarterly Work Plan, a Quarterly Progress Report, a monthly liquidating or reimbursement invoices, a Project completion report, a post construction performance report and a safety and emergency response plan.
- Operation, Maintenance, Repair, Replacement and Rehabilitation. The Funding Recipient will be required to provide the Department with an acceptable detailed interim OMRR&R manual at least 120 days before completion of the first Project Element. The OMRR&R manual will need to be consistent with the requirements of 33 C.F.R. § 208.10 and other applicable Corps engineering regulations. The Funding Recipient will also execute an agreement with the Central Valley Flood Protection Board, or a successor thereto which sets forth the obligations of the Funding Recipient to do the OMRR&R work for the Project. If the Funding Recipient is not currently responsible for OMRR&R of the associated federally authorized Project, the Funding Recipient will be required to make certain representations and warranties in the Funding Agreement.
- Permits, Licenses and Approvals. The Agreement will hold the Funding Recipient responsible for obtaining any and all permits, licenses and approvals required for performing any work on the approved Project.

Funding Agreements may also have other requirements not listed here.

II. Obligations of the Funding Recipient

The Funding Recipient will be responsible for obtaining any and all permits, licenses and approvals required for performing any work under this Funding Agreement, including those necessary to perform design, construction or OMRR&R for the Project. The Funding Recipient

will also be required to observe and comply with any applicable federal, state and local laws, rules or regulations affecting any such work, specifically those including, but not limited to, environmental, procurement and safety laws, rules, regulations and ordinances.

In addition, the Funding Recipient will be required to keep informed of and take all measures necessary to ensure compliance with California Labor Code requirements, including but not limited to Section 1720 *et seq.* of the California Labor Code regarding public works, limitations on use of volunteer labor (California Labor Code Section 1720.4), labor compliance programs (California Labor Code Section 1771.5) and payment of prevailing wages for work done under this Funding Agreement.

For Projects that receive funding pursuant to the provisions of Prop. 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, Cal. Pub. Res. Code § 75076 *et seq.*, the Funding Recipient will be required to maintain a labor compliance program that meets the requirements of California Labor Code Section 1771.5. Written evidence of the Labor Compliance Program will need to be submitted to the State.

B. Key Obligations During the Construction Phase

Funding Recipients will be required to meet certain obligations throughout the construction phase. More specifically, Funding Recipients will need to:

1. Labor Code Requirements

Stay informed of and take all measures necessary to ensure compliance with Labor Code requirements, including but not limited to, Section 1771.5 (b) of the Labor Code regarding public works.

2. Construction Reports

Submit construction reports to update the Department on the status of the Project. These include Quarterly Work Plans and Quarterly Progress Reports. Each is described below:

a. Quarterly Work Plans

The Funding Recipient will submit Quarterly Work Plans consistent with the Overall Work Plan for the term of this Funding Agreement. The first Quarterly Work Plan will be required within seven (7) days of the effective date of the Funding Agreement, and then will be submitted each quarter thereafter until construction is complete. Each Quarterly Work Plan will include detailed information regarding the work to be performed during the quarter, the projected budget for this work (broken down to show individual items and tasks) and the expected monthly schedule. Except for the first Quarterly Work Plan, the Funding Recipient will submit Quarterly Work Plans at least forty-five days before the work covered by the Quarterly Work Plan is scheduled to begin.

b. Quarterly Progress Reports

Funding Recipient will submit Quarterly Progress Reports on the status of the Project to date on a quarterly basis. The Funding Recipient will be required to submit these progress reports in order to secure continued disbursement of State funds. Each of these Quarterly Progress Reports will be filed within 45 days of performing the work covered in the most recent Quarterly Work Plan and will summarize the work completed during the reporting period, include a statement of construction progress compared to the Project schedule and provide a comparison of costs to date compared to the approved scope of work and Project budget as well as evidence that the Funding Recipient will have sufficient funds to pay its share of the Eligible Project Costs required to complete the Project.

C. Key Obligations Post-Construction

The Funding Recipient's responsibility to the Department does not cease after the Project is completed. The following is a brief discussion of each "post-construction" responsibility that a Funding Recipient will face after completing its Project:

1. Operation, Maintenance, Repair, Replacement and Rehabilitation

The Funding Recipient will be required to provide to the State an acceptable detailed interim OMRR&R manual at least 120 days before completion of the first Project Element. This manual will be consistent with the requirements of 33 C.F.R. § 208.10 and other applicable Corps engineering regulations.

The Funding Recipient will need to agree to execute an agreement with the Central Valley Flood Protection Board, or a successor thereto, which sets forth the obligations of the Funding Recipient to do the OMRR&R work for the Project. Refusal of Funding Recipient to do the OMRR&R work may, at the option of the State, be considered a breach of the Funding Agreement and may be treated as default.

If the Funding Recipient is not currently responsible for OMRR&R of the associated federally authorized Project, the Funding Recipient will need to submit a legally binding agreement with an appropriate legal entity which requires that legal entity to seek to enter into an OMRR&R agreement with the Central Valley Flood Protection Board, or any other successor thereto.

If requested to do so by the State, the Funding Recipient will need to provide a written notice to landowners and other affected interests of the extent of protection afforded by the Project not less than once each year. The contents of this written notice will be determined by the State and may include the types of statements specified in Assembly Bill (AB) 5 (Wolk), 2007 Cal. Stat. 366 (to be codified at Cal. Water Code § 9121 (b)).

2. Reporting Obligations

The Funding Recipient will be required to submit a Project completion report within ninety (90) calendar days of completion of all tasks associated with the Project. The report will include a description of actual work done, a final schedule showing actual progress versus planned progress, copies of any final documents or reports generated or utilized during the Project and three sets of as-built drawings. The report will also include certification of the final Project by a registered civil engineer.

After Project completion and within ninety (90) calendar days after the date of submission of the Project completion report, Funding Recipient will need to submit its first post-construction performance report which will include a summary of the operations for the Project.

3. Safety Plan

A new law requires many Applicants that enter into a Funding Agreement, as well as benefited cities and counties, to agree to prepare safety plans for their facilities. Cal. Water Code § 9650 (enacted by AB 5 in 2007). All funding recipients, including those not subject to the new law will be required, as a condition of entering into an Agreement with the Department, to provide a safety plan acceptable to the Department before the completion of their Projects. Funding Recipients will also need to agree to update the plan annually. The plan must cover the entire area affected by the Project. The Department is developing safety plan requirements that will include criteria and key elements. These requirements will be posted at <http://www.floodsafe.water.ca.gov>. In addition, Applicants and Funding Recipients may view the following State agencies' websites for reference materials:

“The Emergency Planning Guidance for Local Government,” “Volume I–The Emergency Planning Guide,” “Volume II, Model City Plan,” and “Volume III, Model County Plan” - Office of Emergency Services, (<http://www.oes.ca.gov/Operational/OESHome.nsf>)

“Flood Preparedness Guide for Levee Maintaining Agencies,” “Guidelines for Coordinating Flood Emergency Operations,” and “State of California Emergency Plan” - Department of Water Resources, (<http://www.dfm.water.ca.gov/pubs/pubs.cfm>)

4. Flood Risk Notification of Landowners

New laws require certain Local Agencies to provide for flood risk notification to landowners. Cal. Water Code § 9121 (enacted by AB 5 in 2007). Funding Recipients not subject to the new law will be required, as a condition of entering into an Agreement with the Department, to abide by those statutory requirements and advise landowners of flood risks.

III. Department Payment Obligations

A. Credit for Pre-Project Eligible Project Costs

The State may provide credit for Eligible Project Costs that were incurred after November 7, 2006 and before the effective date of the Funding Agreement. As a general matter, the credit will be limited to eligible costs expended by the Local Agency after written approval by the Department of proposed expenditures, consistent with any conditions in the written approval. The Department will, however, consider credit for Eligible Costs prior to written approval on case-by-case basis, but credit will not be considered for any construction work without prior written approval.

The State may provide credit for such pre-Project Eligible Project Costs if it finds that they were incurred for implementation of the Project. If the State provides credit, it will provide credit toward the Funding Recipient's share of Eligible Project Costs. Credit for pre-Project Real Estate Capital Outlay Costs shall be based on the review and approval process in accordance with the State's established procedures for land acquisition.

B. Payments for Eligible Project Costs

Eligible Project Costs may be covered by advanced payments. Advanced payments are made on the basis of estimated budgets included in Quarterly Work Plans and are true-up quarterly on the basis of a statement of actual Eligible Project Costs.

As soon as possible prior to commencement of the work to be performed from the effective date of this Funding Agreement through the end of the calendar quarter and forty-five days prior to each calendar quarter thereafter, the Funding Recipient shall submit to the State a Quarterly Work Plan for each calendar quarter. The State shall pay in advance on a quarterly basis for Eligible Project Costs (excluding Real Estate Capital Outlay Costs) its cost-share of the work covered in the Quarterly Work Plans submitted. Along with the Quarterly Work Plan, the Funding Recipient will be required to provide statements of incurred Eligible Project Costs. If the State determines that advances in that quarter exceed actual costs in that same quarter, such amounts may be applied against advances in succeeding quarters. The State's total amount of all advance payments shall not exceed 75 percent of the total estimated cost in the State's share of Eligible Project Costs payable under the Funding Agreement.

If the State determines that advances exceed the State's share of total actual Eligible Project Costs, the State may withhold advance payments equal to amounts advanced in excess of the State's share of Eligible Project Costs, but only after the Funding Recipient has had an opportunity to meet and discuss with State any alleged excess payments. Thirty days prior to expiration of this Funding Agreement, Funding Recipient will be required to remit to the State any advance payments that exceed the State's share of actual Eligible Project Costs. All advance payments will be used only to pay Eligible Project Costs for performing all or part of a task or item in the Project budget.

From each disbursement of funds for Eligible Project Costs, with the exception of funds disbursed for real estate payments, the State will withhold ten percent (10%) of the State share until the Project Element for which the payment is made is completed or, if the work on a particular Project

Element is further divided into Project Features, until the work on a Project Feature is completed. A Project Element or Feature will not be considered completed until: (1) the work on such Project Element or Feature has been completed to the State's satisfaction; (2) a final Statement of Costs has been submitted for Eligible Project Costs for the Project Element or Feature; (3) as-built drawings satisfactory to the State have been submitted to the State and (4) for a Project Element, a certification of a Registered Civil Engineer that the Project has been built in compliance with the plans that are approved by the State.

C. Final Statement of Costs

The Funding Recipient will be required to provide a final Statement of Costs that details funds spent. Included in this accounting will be an analysis of the actual Supplemental Benefits provided by the Project and a description of the funding adjustments necessary (if needed) to account for the cost-share discrepancies driven by the difference between actual and estimated Supplemental Benefits. This final Statement of Costs will also set forth a plan for final disbursement or collection.

D. Payments for Real Estate Costs

Unlike other Eligible Project Costs, certain expenditures made for land acquisition under the Funding Agreement will require review and approval in accordance with the State's established procedures for land acquisition. Thus, the procedures for obtaining payment of the State's share of certain Real Estate Capital Outlay Costs will differ significantly from the procedures used for obtaining payment of other Eligible Project Costs. Only costs incurred in a manner consistent with an approved Project Real Estate Plan will be considered for Eligible Project Costs under the Funding Agreement.

1. Project Real Estate Plan

The Funding Recipient, after consultation with State, will need to determine the lands, easements and rights-of-way necessary for construction and OMRR&R, including those rights required for the flood management structures, temporary construction areas, mitigation sites, borrow sites, spoil sites, access/haul routes, staging areas, private utility relocations, providing relocation assistance for qualified occupants of acquired property, as required by state and federal statutes, rules and regulations.

The Funding Recipient will be required to submit to the State a Project Real Estate Plan. Sample guidelines for such a plan will be provided upon request by the State. The Project Real Estate Plan will include such details as a narrative description of the real estate requirements including a break down of Funding Recipient's estimate of total acreage to be acquired, type of real property interests to be acquired and cost projections of eligible real estate Project costs. The Project Real Estate Plan shall also include lands needed for other Project purposes, such as mitigation and other regulatory needs and identify proposed end land uses for project lands. The Project Real Estate Plan will also include: a property owner tract register (matrix), identifying impacted property owners; real property interest to be acquired and area of acquisitions and a real estate requirement

map exhibit and design plans and specifications. The Funding Recipient may submit a Project Real Estate Plan by Project Element or Project Feature.

The Funding Recipient's Project Real Estate Plan will need to be based on, at a minimum, 65% designs, plans and specifications, which shall include: topographic drawings with the Project design features illustrated, assessor parcel numbers (APN), property lines, flood management structure, private utility relocations with the responsible party to relocate or protect in place noted and mitigation sites, borrow sites, spoil sites, access/haul routes, and staging areas. The Funding Recipient's Project Real Estate Plan will include a baseline cost estimate, broken down by discipline, staff and projected hours for eligible real estate Project costs. State will provide Funding Recipient with a written approval of Project Real Estate Plan. Note, the Funding Recipient is at risk of not receiving cost-sharing for land acquisition activities performed prior to receiving State's approval of Project Real Estate Plan.

The Funding Recipient will need to provide or acquire all necessary real property services for all parcels in support of approved Project Real Estate Plan in accordance with the land acquisition process described in this Funding Agreement, including the services and materials necessary to fulfill the land acquisition process and accomplish the following tasks:

- 1) Geodetic services include field surveys, examination of title to all parcels, including obtaining preliminary title reports or litigation guarantees, clearance of exceptions to title, policy of title insurance and the preparation of legal descriptions, maps and deeds.
- 2) Appraisal of all parcels establishing the fair market value.
- 3) Environmental site assessment reports to determine the existence of hazardous and toxic waste materials.
- 4) Preparation of written offer including necessary acquisition documents including purchase funding agreements, maps and deeds for all parcels. Funding Recipient will also prepare all other necessary temporary entry permits, rights of entry, borrow and spoil agreements.
- 5) Negotiations for the acquisition of all parcels by deed and contract and/or condemnation. For parcels being acquired by condemnation, an order of possession shall be deemed "acquisition."
- 6) Preparation of memorandums of settlement, a sample of such to be provided by the State to Funding Recipient upon request, for transactional review and approval including settlement justification, escrow instructions worksheet and closing.
- 7) Escrow and closing services required to consummate the transactions which are called for in the Funding Agreement, including clearing title at close of escrow, funding and issuance of a policy of title insurance.
- 8) Preparation of a land acquisition final accounting package.

9) Preparation of a Relocation Assistance Plan.

Descriptions of these activities will be set forth in detail in the Funding Agreement. The Funding Recipient will be required to: (1) keep State apprised of its land acquisition activities and the activities of its contractors; (2) consult with State on matters concerning compliance with State and federal acquisition rules and regulations and (3) provide complete access as requested to its records relating to such land acquisition.

2. Real Property Acquisition Disbursement Process

For acquisition of title or other interest in each parcel of land, the Funding Recipient may utilize any of the three disbursement approaches. The first is the standard approval process and provides the Funding Recipient with 100% of the State's cost-share for Real Estate Capital Outlay Costs upon the Funding Recipient's completion of all land acquisition requirements. The second approach provides a mechanism whereby the State will advance funding to the Funding Recipient for real estate capital outlays prior to completion of all land acquisition requirements. The final approach provides the process under which the State will advance Real Estate Capital Outlay Costs and, to the extent required by law, any Real Estate Support Costs for condemnation proceedings. Because the Funding Recipient may need to condemn only some of the parcels required to complete the Project, the State anticipates that the Funding Recipient may utilize more than one of the three disbursement approaches. These approaches are further explained below:

a. Standard Disbursement Approach

Upon completion of the applicable land acquisition standards and requirements set forth in the Funding Agreement, including the submission of a land acquisition final accounting package for the entire Project, the State will disburse 100% of its cost-share of Real Estate Capital Outlay Costs to Funding Recipient.

b. Advancement of State Cost-Share Prior to Completion of Land Acquisition Requirements

If requested by Funding Recipient, the State will advance fifty percent (50%) of the State cost-share of the appraised fair market value of the property after State completes its preliminary review of the appraisal and environmental site assessment, and remediation plan if necessary, for the property. The advance will be made directly to an escrow account established to hold funds for the seller of the parcel for release upon closing. At closing, the State will advance into the escrow account for immediate release to the seller another twenty-five percent (25%) of the State cost-share of the appraised fair market value of the property. The State will then reimburse Funding Recipient for the remaining State cost-share of the price paid for the property plus any unpaid associated capital outlays, up to the approved value of the real estate capital outlays, after Funding Recipient has followed the entire approval process including the submission of a land acquisition final accounting package for individual parcels. If the amount approved is less than the amount already paid to Funding Recipient, the difference will be deducted from the State cost-share for other Project expenses not yet reimbursed to Funding Recipient. If the State cost-share of the

approved fair market value is higher than the State cost-share of the amount outlined for capital outlays in Funding Recipient's Project Real Estate Plan, the State will pay the difference so long as total expenses paid to the Funding Recipient do not exceed the maximum amount of funds permitted to the Funding Recipient pursuant to the Funding Agreement. Any necessary environmental remediation shall be completed prior to transfer of the property to the State and the payment of the remaining State cost-share.

If requested by the Funding Recipient, the State shall advance seventy-five percent (75%) of the State cost share of the Relocation Assistance Costs specified in the Relocation Entitlement Report (less than 15 relocations) or the Relocation Assistance Plan (15 or more relocations) after State completes its preliminary review of the Relocation Assistance Plan. The State will then reimburse Funding Recipient for the remaining State cost share for Relocation Assistance Costs, after the Relocation Entitlement Report or Relocation Assistance Plan has been approved by the Department of General Services. Sample guidelines for Relocation Entitlement Reports and Relocation Assistance Plan will be provided upon request.

c. Eminent Domain Disbursement Procedures

If eminent domain proceedings are necessary pursuant to applicable law, including Gov't Code Section 7267.1, following its preliminary review of the independent appraisal of the parcel submitted by the Funding Recipient, the State will: (1) deposit 100% of the State cost share of the fair market value of the parcel, as determined by the independent appraisal, with the State Treasurer's Office; and (2) pay any additional associated Real Estate Capital Outlay Costs and Real Estate Support Costs, as required by applicable law, with the Court. At the sole discretion of the State, the State may become a party to the condemnation proceeding. The funding and reimbursement procedures described further below will be implemented whenever eminent domain proceedings are required.

After all other appraisals, transaction, cadastral, geodetic, and environmental site assessment reviews and a Court order approving the condemnation of the property, the State will pay the State cost share of the Court approved total just compensation for the parcel. Provided a Court Order approving the condemnation of the property has been made, no additional review by the Department of General Services is required. However such payments will be subject to the cap on total funds established in the Funding Agreement. Therefore, if the State cost share of the Court approved total just compensation is higher than the State cost share of the amount outlined for the property acquisition in Funding Recipient's Project Real Estate Plan, the Department will pay the difference so long as total expenses paid to the Funding Recipient do not exceed the maximum amount of funds permitted to the Funding Recipient pursuant to the Funding Agreement.

3. Surplus Land

In the event any lands, easements or rights of way acquired by the Funding Recipient are not used for the Project, such lands, easements or rights of way will need to be deemed a remnant and may be sold. Upon the sale of remnant property, the State will receive the percentage of the proceeds that is the State share. Alternatively, the Funding Recipient may elect to retain ownership by paying the State the percent of the appraised value that is the State share. The State shall have a

right of first refusal on any remnants offered for sale by the Funding Recipient. The State's right of refusal shall remain open for 60 days after the Funding Recipient gives written notice.

Provided a Court Order approving the condemnation of the property has been made, no additional review by the Department of General Services is required.

4. Leased Land

In the event any land acquired by Funding Recipient is subject to a lease or leases, Funding Recipient shall ensure that any such leases are identified in the Project Real Estate Plan, including arrangements that address what happens to such lease interests upon acquisition of title by the State. All proposed lease agreements must be approved by the State prior to negotiation and execution by the Funding Recipient. State must be given notice of all proposed modifications to lease agreements and must approve such modifications in writing before they are effective. Sample guidelines for lease agreements will be provided upon request.

In any event, all net proceeds received by Funding Recipient from any such lease agreement shall be applied as a credit to the State on Statements of Costs submitted pursuant to the Funding Agreement. No land necessary for construction of the funded improvements shall be subject to a lease when conveyed to the State without the express written consent of the State. Any other land acquired by the Funding Recipient to be transferred to the State under this Funding Agreement shall not be subject to any lease for longer one year without the express written consent of the State.

Appendix C

List of Reference Materials

General Analytical Tools:

AB 1147 draft cost-sharing regulations (available at http://www.fcpsubventions.water.ca.gov/docs/draft_regulations.pdf).

Draft Interim Risk and Uncertainty Procedure (available at http://www.water.ca.gov/floodsafe/docs/Interim_Risk_Uncertainty_Procedure.pdf).

Draft Interim Levee Design Criteria (available at http://www.water.ca.gov/floodsafe/docs/Interim_Levee_Design_Criteria.pdf).

Sample EIP Funding Agreement (available at http://www.water.ca.gov/floodsafe/docs/EIP_Funding_Agreement.pdf).

Early Implementation Plan SCRB Spreadsheet Analysis (available at http://www.water.ca.gov/floodsafe/docs/EIP_SCRB.xls).

Materials Relating to Economic Feasibility:

- United States Water Resources Council, *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies* (1983) (available at <http://www.usace.army.mil/cw/cecw-cp/library/planlib.html>).
- The Hamilton City Flood Damage Reduction and Ecosystem Restoration Feasibility Study (available at [www://compstudy.net](http://www.compstudy.net)).
- *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies* prepared by the United States Water Resources Council, 1983 (available at <http://www.usace.army.mil/cw/cecw-cp/library/planlib.html>).
- US Army Corps of Engineers Planning Guidance Notebook ER 1105-2-100 (April 2000) (available at <http://www.usace.army.mil/cw/cecw-cp/library/planlib.html>).
- The Corps' National Economic Development Manual (available at http://www.pmcl.com/nedprototype/Introduction/Chapter_1_1.0%20welcome.html).
- Computer models for estimating flood damage reduction benefits are available from the US Army Corps of Engineers (HEC-FDA) and the Federal Emergency Management Agency (HAZUS-Multiple Hazard and Mitigation BCA Toolkit).

- Department economics guidelines, economic guidebook and example analyses, posted at <http://www.economics.water.ca.gov/>.

Materials Relating to Emergency Planning:

- California Office of Emergency Services, “*The Emergency Planning Guidance for Local Government*,” “*Volume I–The Emergency Planning Guide*,” “*Volume II, Model City Plan*” and “*Volume III, Model County Plan*,” (available at <http://www.oes.ca.gov/Operational/OESHome.nsf>).
- California Department of Water Resources, “*Flood Preparedness Guide for Levee Maintaining Agencies*,” “*Guidelines for Coordinating Flood Emergency Operations*” and “*State of California Emergency Plan*,” (available at <http://www.dfm.water.ca.gov/pubs/pubs.cfm>).