

RESOLUTION NO. 2007-04

**A RESOLUTION BY THE BOARD OF THREE RIVERS LEVEE IMPROVEMENT
AUTHORITY IN REGARD TO CERTIFICATION OF THE FEATHER RIVER LEVEE
REPAIR PROJECT FINAL EIR; ADOPTION OF CALIFORNIA ENVIRONMENTAL
QUALITY ACT FINDINGS, MITIGATION MEASURES, MITIGATION
MONITORING PROGRAM AND STATEMENT OF OVERRIDING
CONSIDERATIONS; AND APPROVAL OF THE FEATHER RIVER LEVEE REPAIR
PROJECT**

I. CERTIFICATION OF THE FINAL EIR

Three Rivers Levee Improvement Authority (“TRLIA”), as lead agency, has completed the Final Environmental Impact Report (“Final EIR”) for Feather River Levee Repair Project (“Proposed Project” or “FRLRP”). The Final EIR comprises a project-level analysis of the Proposed Project, and has State Clearinghouse No. 2006062071.

A Draft Environmental Impact Report (“Draft EIR”) was released for public agency review on August 4, 2006. Volume 1 of the Draft EIR assesses the potential environmental effects of implementation of the Proposed Project, identifies means to eliminate or reduce potential adverse impacts, and evaluates a reasonable range of alternatives to the Proposed Project. Volume 2 of the Draft EIR consists of Appendices referred to in Volume I. The Final EIR is comprised of the Draft EIR together with one additional volume that includes the comments on the Draft EIR submitted by interested public agencies, organizations and members of the public, written responses to the environmental issues raised in those comments, revisions to the text of the Draft EIR reflecting changes made in response to comments and other information, and other minor changes to the text of the Draft EIR. The Final EIR is hereby incorporated into this document by reference.

The Board of Directors of the Three Rivers Levee Improvement Authority (“the Board”) certifies that it has been presented with the Final EIR and that it has reviewed and considered the information contained in the Final EIR prior to making the following certifications and the findings in Section II and the approvals in Section III, below.

Pursuant to CEQA Guidelines Section 15090 (Title 14 of the California Code of Regulations, Section 15090) the Board certifies that the Final EIR has been completed in compliance with the California Environmental Quality Act, Public Resources Code Sections 21000 *et seq.* (“CEQA”) and the CEQA Guidelines, Title 14 of the California Code of Regulations, Sections 15000 *et seq.* The Board certifies the Final EIR for the actions described in these findings and in the Final EIR, *i.e.*, the Feather River Levee Repair Project

The Board further certifies that the Final EIR reflects its independent judgment and analysis.

II. FINDINGS

The Board is adopting these findings for the entirety of the actions described in these findings and in the Final EIR and for each individual action.

Having received, reviewed and considered the Final EIR and other information in the record of proceedings, the Board hereby adopts the following findings in compliance with CEQA and the CEQA Guidelines:

Part A: Findings regarding the environmental review process and the contents of the Final EIR.

Part B: Findings regarding the environmental impacts of the FRLRP and the mitigation measures for those impacts identified in the Final EIR and adopted as conditions of approval.

Part C: Findings regarding the environmental impacts of the FRLRP and mitigation measures for those impacts identified in the Final EIR and adopted as conditions of approvals relating to development of the FRLRP.

Part D: Findings regarding alternatives and the reasons that such alternatives are rejected.

Part E: Statement of Overriding Considerations determining that the benefits of implementing the FRLRP outweigh the significant unavoidable environmental impacts that will result and therefore justify approval of the FRLRP despite such impacts.

The Board certifies that these findings are based on full appraisal of all viewpoints, including all comments received up to the date of adoption of these findings, concerning the environmental issues identified and discussed in the Final EIR. The Board adopts the findings and the statements in Parts A through E for the approvals that are set forth in Section III, below.

A. Environmental Review Process

1. Development of the Feather River Levee Repair Project

Since the flood events that occurred in 1997, studies have been underway to develop a FRLRP for a higher level of protection to supplement flood protection system for Yuba County. In 2004, Yuba County Water Agency certified a program-level EIR for the Yuba-Feather Supplemental Flood Control Project (“Y-FSFCP”), which evaluated three flood control elements including a setback of the east bank of the Feather River below the Yuba River in two segments. The FRLRP is a modified version of the Above Star Bend (“ASB”) levee setback

project segment evaluated in the Y-FSFCP EIR and consists of repairing and strengthening the Feather River left bank levee as well as a small portion of the left (south) bank levee of the lower Yuba River. An alternative approach to simply repairing and strengthening the existing levee is constructing a setback levee in the central portion of the project area following a modified version of the ASB levee setback alignment. The FRLRP Draft EIR evaluated three equal-weight project alternatives reflecting combinations of repair, strengthening, and setback levee components. (Draft EIR, pp. 2-2 to 2-5.)

2. Preparation of the EIR

On June 14, 2006, TRLIA issued a Notice of Preparation announcing the intended preparation of the Draft EIR and describing its proposed scope. A public scoping meeting was held on June 29, 2006. Comments received in response to the Notice of Preparation and the scoping meeting are included in Appendix A to the Draft EIR. Comments pertinent to the scope and content of the EIR are reflected in the Draft EIR.

TRLIA completed the Draft EIR on August 3, 2006 and circulated the Draft EIR for public review and comment for a period of 45 days ending September 18, 2006. Approximately five letters commenting on the Draft EIR were received during the comment period, and two letters (from the California Department of Water Resources and the U.S. Army Corps of Engineers) were received after the close of the comment period. No comments were received at the public meeting on September 6, 2006. (Final EIR, p. 2-1.)

The Final EIR was completed and made available for review by public agencies and members of the public on November 2, 2006.

The Final EIR contains all of the comments received during the public comment period, as well as the two letters received after the close of the comment period, together with written responses to those comments which were prepared in accordance with CEQA and the CEQA Guidelines.

The Board finds and determines that the Final EIR provides adequate, good faith and reasoned responses to all comments that raised significant environmental issues.

3. Absence of Significant New Information

CEQA Guidelines Section 15088.5 requires a lead agency to recirculate an EIR for further review and comment when significant new information is added to the EIR after public notice is given of the availability of the draft EIR but before certification of the Final EIR. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the

project proponent declines to implement. The CEQA Guidelines provide examples of significant new information under this standard. Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.

The Board recognizes that the Final EIR incorporates information obtained by TRLIA since the Draft EIR was completed, and contains clarifications or other non-substantive changes. With respect to this information, the Board finds as follows:

Minor Changes. Various minor changes and edits have been made to the the Draft EIR, as set forth in the Final EIR. These changes are generally of an administrative nature such as correcting typographical errors, making minor adjustments, and adding or changing certain phrases to improve readability. The Board finds that these changes are of a minor, non-substantive nature and do not require recirculation of the EIR.

EIR Table 1.3. The Board further finds that there are no changes to the Draft EIR, Table 1.3 for purposes of certification of the Final EIR, attached as Exhibit A to these Findings. The Board finds that the mitigations proposed are identified in Exhibit A, Table 1.3 and more fully described in the Mitigation Monitoring and Reporting Program attached as Exhibit B to these Findings. The Board finds that any differences between Exhibit A and Exhibit B are minor and clerical in nature, and do not cause any new or more severe environmental impacts than previously revealed. Therefore, in accordance with CEQA and the CEQA Guidelines, no recirculation of the EIR is necessary based on Exhibits A and B.

In addition to the changes and corrections described above, the Final EIR and the February 6, 2007 staff report provide additional information in response to comments and questions from agencies and the public. The Board finds that this additional information does not constitute significant new information requiring recirculation, but rather that the additional information merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. Specifically, the Board finds that the additional information including the changes described above, does not show that:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.

- (4) The Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

Based on the foregoing, and having reviewed the information contained in the Final EIR and in the record of TRLIA's proceedings, including the comments on the Draft EIR and the responses thereto, and the above-described information, the Board hereby finds that no significant new information has been added to the Final EIR since public notice was given of the availability of the Draft EIR that would require recirculation of the EIR.

4. Differences of Opinion Regarding the Impacts of the Project

In making its determination to certify the Final EIR and to approve the Proposed Project, the Board recognizes that the Proposed Project implicates a number of complex environmental issues and that a range of technical and scientific opinion exists with respect to those issues. The Board has acquired an understanding of the range of this technical and scientific opinion by its review of the Draft EIR, the comments received on the Draft EIR and the responses to those comments in the Final EIR, as well as testimony, letters and reports regarding the Final EIR. The Board has reviewed and considered, as a whole, the evidence and analysis presented in the Draft EIR, the evidence and analysis presented in the comments on the Draft EIR, the evidence and analysis presented in the Final EIR, the information submitted on the Final EIR, and the reports prepared by the experts who prepared the EIR, TRLIA's consultants, and by staff, addressing those comments. The Board has gained a comprehensive and well-rounded understanding of the environmental issues presented by the Proposed Project. In turn, this understanding has enabled the Board to make its decisions after weighing and considering the various viewpoints on these important issues. The Board accordingly certifies that its findings are based on full appraisal of all of the evidence contained in the Final EIR, as well as the evidence and other information in the record addressing the Final EIR.

B. Impacts and Mitigation Measures: The Feather River Levee Repair Project

1. Impacts and Mitigation Measures

These findings provide the written analysis and conclusions of the Board regarding the environmental impacts of the Proposed Project and the mitigation measures proposed by the Final EIR and adopted by the Board as conditions of approval for the FRLRP.

In making these findings, the Board has considered the opinions of other agencies and members of the public disagreeing with some of the significance thresholds used in the EIR. The Board finds that the determination of significance thresholds is a judgment decision within the discretion of the Board; the significance thresholds used in the EIR are supported by substantial evidence in the record, including the expert opinion of the EIR preparers and TRLIA

staff; and the significance thresholds used in the EIR provide reasonable and appropriate means of assessing the significance of the adverse environmental effects of the Proposed Project.

Exhibit A attached to these Findings and incorporated herein by reference summarizes the environmental determinations of the Final EIR about the FRLRP's impacts before and after mitigation. This Exhibit does not attempt to describe the full analysis of each environmental impact contained in the Final EIR. Instead, Exhibit A provides a summary description of each impact, describes the applicable mitigation measures identified in the Final EIR and adopted by the Board, and states the Board's findings on the significance of each impact after imposition of the adopted mitigation measures. A full explanation of these environmental findings and conclusions can be found in the Final EIR and these findings hereby incorporate by reference the discussion and analysis in the Final EIR supporting the Final EIR's determinations regarding the FRLRP's impacts and mitigation measures designed to address those impacts. In making these findings, the Board ratifies, adopts and incorporates the analysis and explanation in the Final EIR in these findings, and ratifies, adopts and incorporates in these findings the determinations and conclusions of the Final EIR relating to environmental impacts and mitigation measures, except to the extent any such determinations and conclusions are specifically and expressly modified by these findings. In addition, the February 6, 2007 staff report further explains the TRLIA environmental findings and conclusions and these findings hereby incorporate by reference the discussion and analysis in the February 6, 2007 staff report supporting the Final EIR's determinations regarding the FRLRP's impacts and mitigation measures designed to address these impacts. In making these findings, the Board ratifies and adopts the analysis and explanation in the February 6, 2007 staff report and adopts the recommendations of the staff report regarding mitigation measures.

As set forth in Part III, below, the Board adopts, and incorporates as conditions of approval, the mitigation measures set forth in Exhibits A and B to reduce or avoid the potentially significant and significant impacts of the FRLRP, as well as certain less-than-significant impacts. In adopting these mitigation measures, the Board intends to adopt each of the mitigation measures proposed in the Final EIR together with such supplemental mitigation measures as have been recommended by the February 6, 2007 staff report. Accordingly, in the event a mitigation measure recommended in the Final EIR has inadvertently been omitted from Exhibit A or B, such mitigation measure is hereby adopted and incorporated in the findings below by reference.

Exhibit A is based on Table 1.3 of the Final EIR and with Exhibit B includes the full text of all mitigation measures. It also includes supplemental mitigation measures and enhancements to some mitigation measures identified in the Final EIR compiled by TRLIA's staff after the Final EIR was completed that are also adopted by this Board.

In several comments on the Draft EIR, various measures were suggested by commenters as proposed additional mitigation measures or modifications to the mitigation measures identified by the EIR. Several of the EIR's mitigation measures were modified in

response to such comments, and other mitigation measures were added to the Final EIR in response to such comments. Other comments requested minor modifications in mitigation measures identified in the Draft EIR, requested mitigation measures for impacts that were less than significant, or requested additional mitigation measures for impacts as to which the Draft EIR identified mitigation measures that would reduce the identified impact to a less than significant level; these requests are declined as unnecessary.

With respect to the additional measures suggested by commenters that were not added to the Final EIR or February 6, 2007 staff report, the Board hereby adopts and incorporates by reference the reasons set forth in the response to comments contained in the Final EIR and February 6, 2007 staff report as its grounds for rejecting adoption of these mitigation measures.

2. Further Findings Regarding Proposed Mitigation Measures

In addition to the reasoning contained in the responses to comments contained in the Final EIR, the Board provides the following additional explanation regarding its grounds for rejecting several mitigation measures proposed by commenter's during the EIR comment period or at various meetings:

Proposed Mitigation for Potential Conversion of Agricultural Acreage. The California Department of Conservation, Division of Land Resource Protection, encouraged the TRLIA to consider mitigating for conversion of agricultural land with an agricultural conservation easement in the form of an outright purchase or payment of a mitigation fee to an organization or agency that takes responsibility for agricultural conservation easements. As discussed in the responses to comments contained in the Final EIR, the purchase of conservation easements or payment of mitigation fees are neither necessary nor economically sound for this project. The establishment of agricultural conservation easements does not create new farmland, put new farmland into production, or increase productivity of existing farmland, but rather only ensures that existing farmland is not converted to a different use. Thus, the impact of conversion in one location is not avoided, minimized, rectified, or reduced by establishment of agricultural conservation easement elsewhere. (Final EIR, Response F-3.)

Furthermore, agricultural conservation easements are most commonly established where a project is permanently converting agricultural land to a non-open space use, such as residential, commercial, or industrial development. In those instances, there is no realistic potential for the land to be returned to agricultural use. For the FRLRP, however, most of the agricultural land that may be "converted" in the levee setback areas under Alternative 2 or 3 will remain in an undeveloped condition, as habitat or fallow lands. There is no requirement to commit to any particular scheme of habitat preservation for lands within the levee setback area. Thus, it is possible that some or all of the land, even if temporarily converted, could be returned to agricultural use in the future. (Final EIR, Response F-3; see also Draft EIR, pp. 5.1-15 to 5.1-16, 5.1-19 to 5.1-20.)

Alternative 1 could result in the conversion of up to 180 acres of farmland due to the construction of seepage/stability berms and a detention basin. (Draft EIR, pp. 5.1-12 to 5.1-13.) Alternatives 2 and 3 could result in the conversion of and/or loss of access to up to 1,045 acres or 720 acres, respectively, due to the construction of setback levees. (Draft EIR, pp. 5.1-15, 5.1-19.) Implementation of any of the alternatives would include compensating agricultural operators for temporary disturbance and/or permanent loss of agricultural lands associated with the project. (Draft EIR, pp. 5.1-12, 5.1-14, 5.1-18.) In addition, improvements to the flood control system will provide increased flood protection to thousands of acres of valuable farmland in the project vicinity. (*Id.*) For each alternative, the Draft EIR includes mitigation to minimize losses of farmland where it occurs, consistent with the nature and extent of the loss, and to preserve the productivity of existing farmland to the extent feasible. (Draft EIR, pp. 5.1-20 to 5.1-23; Final EIR, Response F-3.) The Board finds that these measures mitigate the loss of farmland in a manner that is proportionate to the nature and level of anticipated impact from the project.

In addition, there are limited funding sources available to accomplish TRLIA's flood protection goals. Particularly in light of the limited effectiveness of agricultural conservation easements in this context, the Board concludes that the purchase of easements or credits is not sound economic policy. Thus, the Board finds that after balancing environmental and economic factors, the purchase of agricultural conservation easements or mitigation credits, as proposed by the commenter's, is not feasible and declines to adopt the proposed mitigation.

3. Mitigation Measures Within The Jurisdiction And Control Of Other Agencies.

The Board has adopted all of the mitigation measures identified in Exhibit A. Some of the measures identified in Exhibit A are also within the jurisdiction and control of other agencies. To the extent any of the mitigation measures are within the jurisdiction of other agencies, the Board finds those agencies can and should implement those measures within their jurisdiction and control.

Mitigation measures within the control of other agencies include the following:

Mitigation Measure ASB-5.1-a: Resolve Inconsistencies between Proposed Uses of the Levee Setback Area and Yuba County Zoning. Mitigation Measure ASB-5.1-a provides that upon adoption of Alternative 2, TRLIA will coordinate with the Yuba County Planning Department to apply for general plan amendments and/or rezoning or other measures if necessary to ensure the consistency of proposed land uses with County Zoning. Any necessary modifications will require approval by the County Planning Commission and Board of Supervisors pursuant to County ordinances.

Mitigation Measure IS-5.1-a: Resolve Inconsistencies between Proposed Uses of the Levee Setback Area and Yuba County Zoning. If TRLIA adopts Alternative 3,

Mitigation Measure IS-5.1-a provides that TRLIA will coordinate with the Yuba County Planning Department to apply for general plan amendments and/or rezoning or other measures if necessary to ensure the consistency of proposed land uses with County Zoning. Any necessary modifications will require approval by the County Planning Commission and Board of Supervisors pursuant to County ordinances.

C. Basis for the Board's Decision to Approve the Proposed Project Rather Than An Alternative to the Proposed Project

1. Summary of discussion of alternatives in the Final EIR.

The Proposed Project consists of implementing one of three potential alternatives, each evaluated at an equal level of detail in the Draft EIR. The Draft EIR examines and compares the environmental impacts of each alternative and the relative ability of each alternative to satisfy Project Objectives.

The Draft EIR also summarizes the criteria used to identify a range of reasonable alternatives for review in the EIR and describes proposals that TRLIA concluded did not merit additional more detailed review either because they did not present feasible alternatives to the Proposed Project or are variations on the alternatives that are evaluated in detail. (Draft EIR, pp. 8-2 to 8-7.)

The discussion and analysis of alternatives in the Draft EIR is augmented by a further discussion of alternatives in the Responses to Comments section of the Final EIR. That discussion provides additional information about the range of alternatives examined in the EIR, provides further detail on proposals that did not merit more detailed evaluation in the EIR, further describes the relationship between alternatives examined in the EIR and project objectives, and addresses several variations on the alternatives that were suggested in comments on the Draft EIR.

2. The Board's Findings Relating to Alternatives.

In making these findings, the Board certifies that it has independently reviewed and considered the information on alternatives provided in the Final EIR, including the information provided in comments on the Draft EIR that proposed other options for flood protection improvements and the responses to those comments in the Final EIR. The Final EIR's discussion and analysis of these alternatives is not repeated in these findings, but the discussion and analysis of the alternatives in the Final EIR is incorporated in these findings by reference.

The Final EIR describes and evaluates three equal weight alternatives. Implementation of one of these alternatives comprises the Proposed Project. Each of these alternatives includes actions implicating each of the three project segments used to define the project area. Each alternative results in somewhat varying impacts on and benefits to the physical environment. For any of the alternatives, as set forth in section II.B above, the EIR

contains and the Board could adopt mitigation measures that substantially mitigate the significant environmental effects of the alternative. As explained in section II.D of these findings, while these mitigation measures will not mitigate all project impacts to a less-than-significant level, the measures will mitigate those impacts to a level that the Board finds is acceptable. Furthermore, the Board finds that each alternative satisfies the project objectives in varying degrees; accordingly, the Board considers the potential to achieve some or all of the project objectives alongside the impacts of each alternative and/or beneficial effect on the environment. The Board finds that, on balance, Alternative 1 has environmental advantages over Alternatives 2 and 3 that make Alternative 1 the “Environmentally Superior” Alternative. Alternatives 2 and 3, in turn have critical hydrologic and ecological benefits.

The Board has determined to approve Alternative 2. In making this determination, the Board finds that when compared to the other alternatives described and evaluated in the Final EIR, Alternative 2, as mitigated, provides a reasonable balance between implementation of the Project Objectives and reducing potential environmental impacts to an acceptable level. The Board further finds and determines that the environmental gains available under other alternatives are less compelling when compared with the benefits of Alternative 2, for the reasons set forth below.

a. Description of Project Objectives.

The overall goal of the Proposed Project is to correct deficiencies in the left (east) bank levees of the Feather and lower Yuba Rivers, and consequently to improve flood protection of the Reclamation District (RD) 784 area in Yuba County, and to achieve the following Project Objectives:

- To secure flood protection for at least a flood event with a 0.5% (or 1-in-200) annual chance of exceedance;
- To help secure Federal Emergency Management Agency (FEMA) accreditation of the subject reaches of levee;
- To avoid increasing downstream flow and stage during peak-flow conditions;
- To achieve those objectives as soon as possible; and
- To incorporate environmental mitigation as appropriate.

(Final EIR, p. 3-2.)

**b. Discussion and Findings Relating to the
Alternatives Evaluated In The Draft EIR**

No Project Alternative. Under CEQA, a “No Project Alternative” compares the impacts of proceeding with a proposed project with the impacts of not proceeding with the proposed project. A No Project Alternative describes the environmental conditions in existence at the time the Notice of Preparation was published, along with a discussion of what would be reasonably expected to occur at the site in the foreseeable future, based on current plans and consistent with available infrastructure and community services. Other than the FRLRP, there are no other near-term plans to comprehensively repair or improve the subject levees. Therefore, under the No-Project Alternative, no levee repair or strengthening would be implemented, and the river bank levees would be left in their current condition. (Draft EIR, p. 8-9.)

The No Project Alternative would not result in any adverse environmental effects from levee repair and strengthening activities or the construction of a setback levee. The No-Project Alternative, however, would not result in any beneficial effects in the form of increased flood protection and other benefits that would occur with implementation of Alternative 1, 2, or 3. (Draft EIR, pp. 8-10 to 8-12.)

Alternative 1 – The Levee Strengthening Alternative. Under Alternative 1, levee repair and strengthening activities, including installation of slurry cutoff walls, relief wells, and seepage/stability berms, would be completed along the entire length of project segments 1, 2, and 3. Pump Station No. 3 would be removed under this alternative, and a new pump station would be constructed farther east of the levee bank. Alternative 1 would also include construction of a detention basin to hold peak flows. (Draft EIR, p. 8-8.)

Alternative 1 has the fewest impacts that remain significant and unavoidable after mitigation. As discussed in section II.D below, of the remaining significant and unavoidable impacts of Alternative 1, two are temporary (construction air quality and noise impacts). (Draft EIR, p. 8-13.) The only non-temporary significant and unavoidable impact is the conversion of farmland to non-agricultural uses, and Alternative 1 results in the smallest acreage to be converted of the three alternatives that are evaluated in equal detail in the EIR (although, as noted above, most of the “conversion” associated with the other alternatives does not necessarily result in the same open space, soil, water and other impacts as does conversion to developed uses). (Draft EIR, pp. 5.1-12 to 5.1-13, 5.1-15, 5.1-19.) On balance, although the Draft EIR does not identify it as such, Alternative 1 should be considered to be the “Environmentally Superior Alternative” for the project under CEQA. Alternative 1 would meet the project objectives related to increasing flood protection, and unlike Alternatives 2 and 3, would not affect residences and other structures that could be affected by construction of a setback levee. Notwithstanding the consideration of Alternative 1 as the Environmentally Superior, some important environmental benefits associated with construction of a setback levee, such as changes in local flood hydrology upstream and downstream of the project area that would

provide higher levels of flood protection, would not occur with Alternative 1. (Draft EIR, pp. 8-12 to 8-18.)

Alternative 2 – The Levee Strengthening and ASB Setback Levee Alternative. Alternative 2 includes the levee repair and strengthening activities of Alternative 1 but adds a setback levee in project segment 2 roughly in the same alignment as the ASB levee identified in the Y-FSFCP EIR. The setback area would occupy approximately 1,600 acres, and would require the removal of several residences and other structures, as well as the relocation of those residents. (Draft EIR, p. 8-8.) The use of the setback area as a floodway would conflict with existing land use designation and zoning of the setback area acreage, and thus, Alternative 2 results in an additional significant and unavoidable impact in the area of Land Use Conflicts, as compared to Alternative 1. (Draft EIR, pp. 5.1-14 to 5.1-15, 8-12, 8-15.)

However, Alternative 2 would provide the greatest degree of flood protection benefits of all of the Alternatives. As identified in Table 1-2, Alternative 2 would result in the greatest reductions in water surface elevations in the Feather River at the upper end of the levee setback area and at the confluence of the Feather and Yuba Rivers than Alternatives 1 or 3. (Draft EIR, pp. 1-4.) Another favorable factor is that, as identified in Table 1-2, Alternative 2 would result in the same or slightly higher water surface elevations downstream of the levee setback area than Alternatives 1 or 3, which minimizes downstream impacts. (*Id.*)

At the same time, due to the size of the setback area Alternative 2 would have a relatively higher magnitude of environmental impacts, and impacts to residences and other structures, than either Alternatives 1 or 3. (Draft EIR, pp. 8-12 to 8-19.) More precisely, Alternatives 2 and 3 have the same number of impacts that remain significant and unavoidable after mitigation, but the magnitude of the impacts would be relatively higher under Alternative 2 because the acreage of the setback area under Alternative 2 is larger than under Alternative 3. At the same time, of the acreage affected by Alternative 2, it is anticipated that a substantial portion could continue to be cultivated and that acreage would benefit in the long-term from increased flood protection. (Draft EIR, pp. 5.1-14.)

The flood protection benefits of Alternative 2 are highly desirable, and the balance of impacts to benefits suggests that approval of this Alternative would be appropriate, as described in the February 6, 2007 staff report. With the passage of State Proposition 1E and DWR's favorable response to TRLIA Feather River Setback Proposition 1E funding request, TRLIA has sufficient funding to implement Alternative 2. Alternative 2 meets the primary objective of achieving the designated level of flood protection as soon as possible.

Alternative 3 – The Levee Strengthening and Intermediate Setback Levee Alternative. Alternative 3 involves the same levee repair and strengthening activities as Alternative 1, and a setback levee in project segment 2 similar to that proposed under Alternative 2. The setback levee follows a different alignment, however, that results in a setback area of approximately 1,300 acres. Thus, fewer houses, structures, and other facilities would be affected

or need to be removed from the setback area under Alternative 3 than under Alternative 2. (Draft EIR, p. 8-9.) Nonetheless, as with Alternative 2, the use of the setback area as a floodway would conflict with existing land use designation and zoning of the setback area acreage results in an additional significant and unavoidable impact in the area of Land Use Conflicts, as compared to Alternative 1. (Draft EIR, pp. 5.1-18 to 5.1-19, 8-12, 8-15.)

Alternatives 2 and 3 have the same number of impacts that remain significant and unavoidable after mitigation. The acreage of the setback area under Alternative 3, however, is smaller than under Alternative 2. Thus, while both Alternative 2 and 3 have more significant and unavoidable impacts than Alternative 1, the magnitude of certain impacts (which ones, plus residences/structures) of Alternative 3 is slightly smaller than under Alternative 2. However, Alternative 3 would provide a lower degree of flood protection benefit than Alternative 2. (Draft EIR, pp. 1-4; 8-12 to 8-19.) Moreover, of the acreage affected by Alternative 2, it is anticipated that a significant portion could continue to be cultivated. (Draft EIR, pp. 5.1-14.)

Summary of Findings Regarding Alternatives. For all of the foregoing reasons, given the nature and type of environmental impacts when viewed in light of the benefits of each Alternative, the record indicates that the Board could reasonably choose to approve any one of the Alternatives. Given the imperative for the highest degree of flood control protection and the availability of funding, the Board finds that on balance, after considering environmental, economic, social, technological and other feasibility considerations, the highest public interest supports approval of Alternative 2 instead of the other Alternatives.

Under Alternative 2, the setback levee footprint and levee easements identified in Segment 2 would cover approximately 240-250 acres of agricultural land, and setting back the levee could indirectly result in the removal of more land from agricultural production by dividing land parcels and allowing periodic flooding of agricultural land. Construction of a detention basin would be required to prevent adverse flooding effects on area properties, and this would like occur on several hundred acres of agricultural land. These uses would conflict without County land use policies regarding the preservation of agricultural land and would be inconsistent with current land use and zoning designations for the area.

This is the only impact that could be mitigated from significant and unavoidable to less than significant levels through selection of another project alternative (Alternative 1). However, TRLIA has concluded that the benefits of Alternative 2 outweigh any environmental gain in this resource category that might be incurred by selecting Alternative 1 over Alternative 2. Alternative 1 also results in some impacts in this resource category. (Draft EIR, pp. 5.1-11 to p. 5.1-12.) Both Alternatives 1 and 3 would result in some conversion of agricultural land, however, in all instances the impact remains significant and unavoidable. Although Alternatives 1 and 3 would convert a relatively smaller amount of land than Alternative 2, TRLIA has concluded that the benefits of Alternative 2 implicate a stronger public interest as compared to those environmental gains. The continuing evolution of flood control knowledge over time suggests that the higher level of protection under Alternative 2 is warranted to protect existing

and planned communities and as a precautionary measure in case new information or changing circumstances reveals new risks in the future. Moreover, of the acreage affected by Alternative 2, conversion impacts are not the same as those associated with conversion to developed urban uses; the vast majority of the Important Farmland that could be “converted” under Alternative 2 (up to approximately 1,045 acres) would remain in an undeveloped condition, as habitat or fallow lands within the levee setback area created by these alternatives. (Final EIR, Response F.) It is anticipated that a substantial portion could continue to be cultivated and that acreage would benefit in the long-term from increased flood protection. (Draft EIR, pp. 5.1-14.)

c. Findings Regarding Suggestions for Modifying the Proposed Project and Variations On The Alternatives.

In addition to the reasoning contained in the responses to comments contained in the Final EIR, the Board provides the following additional explanation regarding commenter’s suggestions for analysis of alternatives:

Eminent Domain Implications for Discussion of Alternatives. Attorney Thomas Eres submitted comments on behalf of Hofman Ranch, in which he opined that “the potential adoption of a ‘Resolution of Necessity’ may impact the analysis of alternatives” and that “the issue of feasibility of alternatives in the context of eminent domain need [sic] to be addressed.” Referring to Alternatives 2 and 3, the commenter seemed to be referring to the private ownership of the acreage that would be inside of a setback levee, if one were approved. As discussed in the responses to comments in the Final EIR, eminent domain proceedings and the accompanying Resolution of Necessity would only be needed if the landowners and TRLIA could not agree upon appropriate compensation for any private property that may be needed to accomplish the objectives of the project or that would otherwise require compensation. (Final EIR, Response G-15.)

Should TRLIA pursue eminent domain proceedings, a Resolution of Necessity would be required which would contain a finding that “the proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.” (Code Civ. Proc. § 1245.230(c)(2); *see also* § 1240.030(b).) As explained in the responses to comments in the Final EIR, there is a strong imperative for local flood control. Alternatives 2 and 3 provide greater flood control benefits than Alternative 1. Thus, although any of the three Alternatives would meet the requirements for eminent domain, if eminent domain proceedings were required, Alternative 2 would most easily meet the requirements.

The relocation of residents in a setback area may result in economic and social effects, as described in the EIR. TRLIA has determined that these effects are not significant, directly or indirectly. TRLIA has committed to pay compensation to relocated landowners and relocation assistance for eligible homeowners, tenants, businesses and farm operations under federal and state relocation statutes. (Draft EIR, pp. 5.1-16 to 5.1-17.) The Draft EIR reports

that as of the 2000 Census, there were 2,101 vacant housing units in Yuba County, with 312 of those units in the Marysville area. (Draft EIR, p. 5.1-17.) According to the U.S. Census Bureau, these numbers represent a 9.3% vacancy rate in Yuba County, and a 6.2% vacancy rate in Marysville. (US Census Bureau 2006.) Thus, the available data indicates there are sufficient existing housing units available in the project area to accommodate displaced residents under Alternative 2. (Draft EIR, p. 5.1-17.)

D. Statement of Overriding Considerations

1. Impacts That Remain Significant

As listed in Exhibit A, the following impacts of the FRLRP remain significant following adoption and implementation of the mitigation measures described in the Final EIR:

Number	Impact	Alt. 1	Alt. 2	Alt. 3
5.1-a	Conflicts with Land Use Planning and Policies Resulting from Levee Repairs and the Levee Setback.	LTS	SU	SU
5.1-b	Conversion of Important Farmland to Nonagricultural Uses Resulting from Levee Repairs and Strengthening.	SU	SU	SU
5.9-a	Temporary Emissions of ROG, NO _x , and PM ₁₀ during Construction.	SU	SU	SU
5.10-a	Temporary Increase in Noise Levels during Construction.	SU	SU	SU

2. Overriding Considerations Justifying Approval of Alternative 2

In accordance with CEQA Guidelines Section 15093, the Board has, in determining whether or not to approve the FRLRP, balanced the economic, social, technological and other benefits of the FRLRP against its unavoidable environmental risks, and has found that the benefits of the FRLRP outweigh the significant adverse environmental effects that are not mitigated to less-than-significant levels, for the reasons set forth below. This statement of overriding considerations is based on the Board's review of the Final EIR and other information in the administrative record.

The project is needed to help resolve the existing risk of flooding impacts in the identified area, as demonstrated by recent catastrophic flood events. Removing the potential for property and natural resource damage and destruction, personal injury and death, supports strong public, social and economic interests. The project would also address the deficiencies in the Feather River levee that have led to uncertainty and controversy surrounding planned and

ongoing development in the area, which is subject to a higher flood risk than previously believed. The continuing evolution of flood control knowledge over time suggests that the higher level of protection under Alternative 2 is warranted to protect existing and planned communities and as a precautionary measure in case new information or changing circumstances reveals new risks in the future. The additional flood protection will yield economic benefits in the form of reduced costs associated with flood insurance and flood-related property damage. Flood protection also results in an increased sense of security in the community, particularly among owners of property that has flooded in the past or has been in danger of flooding.

Two of the four significant unavoidable impacts of Alternative 2 are temporary: construction emissions of ROG, NO_x, and PM₁₀ (Impact ASB-5.9-a) and construction-related increases in noise levels (Impact ASB-5.9-b). Alternative 2 would potentially result in long-term beneficial changes to air quality. (Draft EIR, pp. 5.9-25 to 5.9-26.) The Board has determined to adopt mitigation measures that will reduce these impacts to the extent feasible. (Mitigation Measures ASB-5.9-1, ASB-5.10-a.) The Board finds that the short-term air quality and noise impacts would be significant and unavoidable under all Alternatives, and that the flood protection and other long-term benefits provided by Alternative 2 outweigh these temporary impacts.

The remaining significant unavoidable impacts are the related impacts of conflicts with land use plans and policies (Impact ASB-5.1-a) and conversion of agricultural land to nonagricultural uses (Impact ASB-5.1-b). In part, conflicts with land use plans and policies are outside the jurisdiction of TRLIA, as described above and in the EIR. (Mitigation Measure ASB-5.1-a.)

The EIR concludes that the conversion of agricultural land is significant and unavoidable for any of the three alternatives. Alternative 1 could result in the conversion of up to 180 acres of farmland due to the construction of seepage/stability berms and a detention basin. (Draft EIR, pp. 5.1-12 to 5.1-13.) Alternatives 2 and 3 could result in the conversion of and/or loss of access to up to 1,045 acres or 720 acres, respectively, due to the construction of setback levees, although most of that conversion would not result in the same open space, soil, water, and other impacts that is typically associated with permanent conversion to developed uses. (Draft EIR, pp. 5.1-15, 5.1-19.) Implementation of any of the Alternatives would include compensating agricultural operators for temporary disturbance and/or permanent loss of agricultural lands. (Draft EIR, pp. 5.1-12, 5.1-14, 5.1-18.) In addition, improvements to the flood control system will provide increased flood protection to thousands of acres of valuable farmland in the project vicinity. (*Id.*)

Both Alternatives 1 and 3 would result in some conversion of agricultural land, however, in all instances the impact remains significant and unavoidable. Although Alternatives 1 and 3 would convert a relatively smaller amount of land than Alternative 2, TRLIA has concluded that the benefits of Alternative 2 implicate a stronger public interest as compared to those environmental gains. The continuing evolution of flood control knowledge over time

suggests that the higher level of protection under Alternative 2 is warranted to protect existing and planned communities and as a precautionary measure in case new information or changing circumstances reveals new risks in the future. Moreover, of the acreage affected by Alternative 2, conversion impacts are not the same as those associated with conversion to developed urban uses; the vast majority of the Important Farmland that could be “converted” under Alternative 2 (up to approximately 1,045 acres) would remain in an undeveloped condition, as habitat or fallow lands within the levee setback area created by these alternatives. (Final EIR, Response F.) It is anticipated that a substantial portion could continue to be cultivated and, as noted, that acreage would benefit in the long-term from increased flood protection. (*E.g.*, Draft EIR, pp. 5.1-14.) TRLIA has proposed, and the Board herein adopts, mitigation measures that will preserve the productivity of Important Farmland to the extent feasible by, for example, minimizing fragmentation, retaining contiguous parcels where practical, addressing access issues, providing productive topsoil, and addressing protection of existing utilities, strategically siting laydown and staging areas, and using existing roads for access. (Mitigation Measure ASB-5.1-b.)

The displacement of a small number of residences and other structures in the setback area under Alternative 2 may result in economic and social effects, as described in the EIR. (Draft EIR, pp. 5.1-17.) To the extent these are considered relevant to physical impacts under CEQA, the Board concludes that these effects are not significant. (*Id.*) TRLIA has committed to pay compensation to relocated landowners and relocation assistance for eligible homeowners, tenants, businesses and farm operations under federal and state relocation statutes. (Draft EIR, pp. 5.1-16 to 5.1-17.)

In short, implementation of Alternative 2 will result in additional flood protection, which in turn will yield economic benefits in the form of reduced costs associated with flood insurance and flood-related property damage. Flood protection also results in an increased sense of security in the community, particularly among owners of property that has flooded in the past or has been in danger of flooding. The Board finds that these social and economic benefits outweigh the impacts that cannot be reduced to less than significant levels, and warrant approval of Alternative 2 in spite of those remaining impacts. The Board finds that under all of the circumstances, the flood control benefits of Alternative 2 outweigh its environmental costs.

E. Record of Proceedings

Various documents and other materials constitute the record upon which the Board bases these findings and the approvals contained herein. The location and custodian of these documents and materials is Paul G. Brunner at Three Rivers Levee Improvement Authority.

F. Mitigation Monitoring and Reporting Program

In accordance with CEQA and the CEQA Guidelines, the Board must adopt a mitigation monitoring and reporting program to ensure that the mitigation measures adopted

herein are implemented in the implementation of the Proposed Project. The Board hereby adopts the Mitigation Monitoring Program for the Project attached to these Findings as Exhibit B.

G. Summary

1. Based on the foregoing findings and the information contained in the administrative record, the Board has made one or more of the following findings with respect to each of the significant environmental effects of the Proposed Project identified in the Final EIR:

a. Changes or alterations have been required in, or incorporated into, the Proposed Project which avoid or substantially lessen the significant environmental effects on the environment.

b. Those changes or alterations that are wholly or partially within the responsibility and jurisdiction of another public agency have been, or can and should be, adopted by that other public agency.

c. Specific economic, social, technological, or other considerations make infeasible the mitigation measures or alternatives identified in the Final EIR that would otherwise avoid or substantially lessen the identified significant environmental effects of the Proposed Project.

2. Based on the foregoing findings and information contained in the record, it is hereby determined that:

a. All significant effects on the environment due to approval of the Proposed Project have been eliminated or substantially lessened where feasible.

b. Any remaining significant effects on the environment found unavoidable are acceptable due to the factors described in the Statement of Overriding Considerations in Section II.D above.

III. RESOLUTION OF APPROVAL

NOW, THEREFORE, BE IT RESOLVED THAT:

The Board hereby takes the following actions and makes the following approvals:

A. The Board has certified the Final EIR in Section I, above.

B. The Board hereby adopts as conditions of approval all mitigation measures within the responsibility and jurisdiction of Three Rivers Levee Improvement Authority as set forth in Section II.B of the Findings, above.

C. The Board hereby adopts the Mitigation Monitoring Program for the Proposed Project as set forth in Exhibit B and discussed in Section II.F of the Findings, above.

D. The Board hereby adopts these Findings in their entirety as its findings for these actions and approvals.

E. The Board hereby adopts the statement of overriding considerations set forth herein.

F. Having certified the Final EIR, independently reviewed and analyzed the Final EIR, incorporated mitigation measures into the Proposed Project, and adopted Findings and a statement of overriding considerations, the Board hereby approves Alternative 2 set forth in the EIR as the Feather River Levee Repair Project. The Board also directs staff to file a Notice of Determination pursuant to CEQA Guidelines Section 15094, and to take other necessary and appropriate actions to implement this approval.

PASSED AND ADOPTED this 6th day of February 2007,

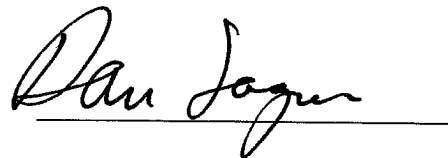
by the Board of Directors of Three Rivers Levee Improvement Authority, by the following vote:

AYES: Directors Brown, Crippen, Griego, Logue

NOES: None

ABSENT: Director Webb

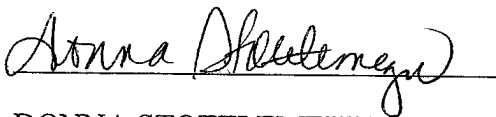
ABSTAIN: None



Dan Logue

Vice Chairman

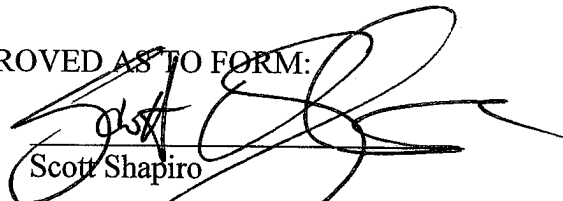
ATTEST:



DONNA STOTTLEMEYER

Secretary

APPROVED AS TO FORM:



Scott Shapiro

TRLIA Special Counsel