

Certification of Consistency

C20214

Step 1 - Agency Profile

A. GOVERNMENT AGENCY: State Agency

Government Agency: Brannan-Andrus Levee Maintenance District
Primary Contact: Gilbert Labrie
Address: PO Box 929
City, State, Zip: Walnut Grove, CA 95690
Telephone/Fax: (916) 776-9122
E-mail Address: pefbuck@comcast.net

B. GOVERNMENT AGENCY ROLE IN COVERED ACTION: Will Approve / Will Carry Out / Will Fund

Step 2 - Covered Action Profile

A. COVERED ACTION PROFILE: Project

Title: Sacramento River Erosion Control And Habitat Enhancement Project

B. PROPONENT CARRYING OUT COVERED ACTION (If different than State or Local Agency):

Proponent Name: Brannan-Andrus Levee Maintenance District
Address: PO Box 929
City, State, Zip: Walnut Grove, CA 95690

C. OPEN MEETING LAWS

Agencies whose actions are not subject to open meeting laws (Bagley-Keene Open Meeting Act [[Gov. Code sec 11120 et seq.](#)] or the Brown Act [[Gov. Code sec 54950 et seq.](#)]) must post their draft certification on their website and in their office for public review and comment, and mail to all persons requesting notice (Administrative Procedures Governing Appeals, Rule 3). A state or local public agency that is subject to open meeting laws is encouraged to post the draft certification on their website and in the office for public review and comment and to mail to all persons requesting notice.

Any state or local public agency that is subject to open meeting laws with regard to its certification is also encouraged to take those actions. It is encouraged to upload any evidence that the project, plan or program went through for public review and comment as part of a Bagley-Keene or Brown Act meeting.

Is your agency subject to open meeting laws (Bagley-Keene Open Meeting Act [[Gov. Code sec 11120 et seq.](#)] or the Brown Act [[Gov. Code sec 54950 et seq.](#)])? (Note: Select "Yes" if your agency or organization is subject to open meeting laws. Select "No" if your agency or organization is not subject to open meeting laws.) Yes

Please attach any supporting evidence of the public review and comment period by clicking the upload button. Such evidence

could include but is not limited to: a meeting agenda and attachment demonstrating that this certification was made publicly available, a screenshot with date and link to a website where the materials were posted, or other similar documentation.

Note: Any public comments received during this process must be included in the record submitted to the Council in case of an appeal.

[BALMD Board Report - Sac R. Erosion CEQA IS-MND Dec. 10-2020 Final.pdf](#), [Approving Resolution Sac River Project IS-MND 7702.161 Resolution 2020-04.pdf](#)

D. COVERED ACTION SUMMARY: (Project Description from approved CEQA document may be used here)

BALMD Delta Plan Consistency Submittal - Summary Narrative Final Initial Study/MND [Final Adopted BALMD IS with Appendices_12.10.20 .pdf](#), [BALMD Delta Plan Consistency Submittal Summary Narrative 02082021.pdf](#)

E. STATUS IN THE CEQA PROCESS: NOD has been filed

F. STATE CLEARINGHOUSE NUMBER:(if applicable) 2020100329

G. COVERED ACTION ESTIMATED TIME LINE:

ANTICIPATED START DATE: (If available) 01/07/2021

ANTICIPATED END DATE: (If available) 12/31/2022

H. COVERED ACTION TOTAL ESTIMATED PROJECT COST: \$14,017,791

I. IF A CERTIFICATION OF CONSISTENCY FOR THIS COVERED ACTION WAS PREVIOUSLY SUBMITTED, LIST DSC REFERENCE NUMBER ASSIGNED TO THAT CERTIFICATION FORM:

J. Supporting Documents:

Step 3 - Consistency with the Delta Plan

DELTA PLAN CHAPTER 2

[G P1/Cal. Code Regs., tit. 23, § 5002](#) - Detailed Findings to Establish Consistency with the Delta Plan.

G P1/Cal. Code Regs., tit. 23, § 5002 identifies what must be addressed in a certification of consistency filed by a State or local public agency with regard to any covered action and only applies after a "proposed action" has been determined by a State or local public agency to be a covered action because it is covered by one or more of the regulatory policies listed under Delta Plan Chapters 3, 4, 5, and 7 of this form. Inconsistency with this policy may be the basis for an appeal.

A certification of consistency must include detailed findings that address each of the regulatory policies identified in Cal. Code Regs., tit. 23, §§ 5002-5013 and listed on this Form that is implicated by the covered action.

As outlined in Cal. Code Regs., tit. 23, § 5002 (b)(1), the Delta Stewardship Council acknowledges that in some cases, based upon the nature of the covered action, full consistency with all relevant regulatory policies may not be feasible. In those cases, the agency that files the certification of consistency may nevertheless determine that the covered action is consistent with the Delta Plan because, on whole, that action is consistent with the coequal goals. That determination must include a clear identification of areas where consistency with relevant regulatory policies is not feasible, an explanation of the reasons why it is not feasible, and an explanation of how the covered action nevertheless, on whole, is consistent with the coequal goals. That

determination is subject to review by the Delta Stewardship Council on appeal.

Specific requirements of this regulatory policy:

a. [G P1\(b\)\(1\)/Cal. Code Regs., tit. 23, § 5002, subd. \(b\)\(1\)](#) - Coequal Goals

As outlined in **Cal. Code Regs., tit. 23, § 5002 (b)(1)**, the Delta Stewardship Council acknowledges that in some cases, based upon the nature of the covered action, full consistency with all relevant regulatory policies may not be feasible. In those cases, the agency that files the certification of consistency may nevertheless determine that the covered action is consistent with the Delta Plan because, on whole, that action is consistent with the coequal goals. That determination must include a clear identification of areas where consistency with relevant regulatory policies is not feasible, an explanation of the reasons why it is not feasible, and an explanation of how the covered action nevertheless, on whole, is consistent with the coequal goals. That determination is subject to review by the Delta Stewardship Council on appeal.

Is the covered action consistent with this portion of the regulatory policy?

Yes

Answer Justification: N/A. The proposed project – a multi benefit flood system improvement project - is not inconsistent with the co-equal goals of the Delta Plan. [Final Adopted BALMD IS with Appendices 12.10.20 .pdf](#)

b. [G P1\(b\)\(2\)/Cal. Code Regs., tit. 23, § 5002, subd. \(b\)\(2\)](#) - Mitigation Measures

G P1(b)(2)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(2) provides that covered actions not exempt from CEQA, must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 26, 2018, (unless the measure(s) are within the exclusive jurisdiction of an agency other than the agency that files the certification of consistency), or substitute [mitigation measures](#) that the agency that files the certification of consistency finds are equally or more effective. For more information, see Cal. Code Regs., tit. 23, § 5002, and Delta Plan Appendix O, Mitigation Monitoring and Reporting Program, which are referenced in this regulatory policy.

Is the covered action consistent with this portion of the regulatory policy?

Yes

Answer Justification: The proposed action was subject to the California Environmental Quality Act (CEQA) review as described in the Final IS/MND adopted for the project. Avoidance and Minimization Measures (AMM's) along with Mitigation Measures (MM's) were identified and adopted as part of the project. Mitigation measures required for each project impact are consistent with and at least as effective as relevant mitigation measures included in the Mitigation, Monitoring, and Reporting Program (MMRP) for the Delta Plan (Delta Stewardship Council 2019). Please see mitigation comparison table and final adopted MMRP and Mitigation and Habitat Enhancement Planting, Monitoring and Adaptive Management Plan attached. [BALMD MMRP Sac Erosion Project 12102020 Final.pdf](#), [BALMD DSC Mitigation Measure Comparison 02032021.pdf](#), [BALMD Sac Erosion Project Planting, Monitoring & Adaptive Mgmt Plan_02082021.pdf](#)

c. [G P1\(b\)\(3\)/Cal. Code Regs., tit. 23, § 5002, subd. \(b\)\(3\)](#) - Best Available Science

G P1(b)(3)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(3) provides that, relevant to the purpose and nature of the project, all covered actions must document use of best available science. For more information, see [Appendix 1A](#), which is referenced in this regulatory policy.

Is the covered action consistent with this portion of the regulatory policy?

Yes

Answer Justification:

The proposed action was designed in accordance with current engineering standards and based on an alternative's evaluation, where three alternatives were considered including: a no project alternative; a setback levee alternative; and an erosion protection without habitat features alternative. Impact analyses were conducted, and mitigation measures were developed in accordance with CEQA and National Environmental Policy Act (NEPA) requirements. As a result of comments received during the public review process for the IS/MND, some analyses and mitigation measures were slightly adjusted or modified. Habitat designs and features were informed by the California Departments of Water Resources and Fish and Wildlife environmental staffs and requirements contained under AB 360 (no net long-term loss of riparian, fisheries, or wildlife habitat) and guidance identified as 'CDFW and DWR Delta Levees Planting Zones' (attached). Pages 73 to 82 in the IS/MND provides an analysis and scientific rationale for the construction of the proposed habitat benches. References associated with the analysis and literature that was considered in habitat design (including recovery plans for listed species) can be found on pages 123-133 of the latter identified document. [Final Adopted BALMD IS with Appendices_12.10.20 .pdf](#), [CDFW-DWR Levee Planting Zones 2020.pdf](#), [Alternative Description - Sacramento River Erosion Control and Habitat Enhancement Project.pdf](#)

d. [G P1\(b\)\(4\)/Cal. Code Regs., tit. 23, § 5002, subd. \(b\)\(4\)](#) - Adaptive Management

G P1(b)(4)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(4) provides that an ecosystem restoration or water management covered action must include adequate provisions, appropriate to its scope, to assure continued implementation of adaptive management. For more information, see [Appendix 1B](#), which is referenced in this regulatory policy. Note that this requirement may be satisfied through both of the following:

(A) An adaptive management plan that describes the approach to be taken consistent with the adaptive management framework in Appendix 1B; and

(B) Documentation of access to adequate resources and delineated authority by the entity responsible for the implementation of the proposed adaptive management process.

Is the covered action consistent with this portion of the regulatory policy?

Yes

Answer Justification:

An ecologist retained by BALMD would conduct inspections of the waterside habitat areas quarterly during the 3-year establishment period. During these inspections, the ecologist would record observations on plant establishment success, including trends and patterns in plant survival and health, new native vegetation recruitment, observable beaver damage, any site erosion problems, and noxious weed infestations that may threaten success of native vegetation establishment. Quarterly field visit observations will be shared with BALMD and CDFW along with the ecologist's maintenance recommendations. In the spring or summer of each monitoring year, the monitoring ecologist will collect quantitative monitoring data, as described below, and take photographs from permanently established photo-points for visual documentation of project progress. Riparian Forest, Scrub-Shrub, SRA Habitat. Surviving riparian forest and scrub-shrub plants will be counted each monitoring year to assess woody plant density within the riparian bench and on the vegetated slope. Wetland/freshwater tidal marsh bench vegetative cover. Freshwater marsh vegetation cover will be assessed by BALMD's consulting ecologist by collecting plant cover data within 1-m2 quadrats placed

every 100-200 feet along the wetland/freshwater tidal marsh bench each monitoring year. If wetland/tidal marsh vegetation (e.g., tules and cattails) becomes too tall or dense to access and assess via quadrats, ocular estimates of tidal marsh cover will be made every 100-200 feet as viewed from the riparian bench or vegetated slope above. At the end of the three-year establishment, riparian forest and scrub-shrub plant habitat will be considered successful will be considered successful if a 60 percent survival rate is achieved. Similarly, the freshwater tidal marsh habitat zone will be considered successful if native vegetative cover exceeds 60 percent absolute cover. At the end of the first and second year following planting, BALMD would provide an email summary of monitoring observations, quantitative monitoring results, representative site photographs, and maintenance and/or remedial/adaptive management actions (including replanting or additional weed management) taken and proposed, to DWR and CDFW. At the end of the 3-year establishment period, a letter report would be submitted to CDFW and DWR, which would include a description of site conditions, qualitative assessment of vegetation composition and health, quantitative monitoring data by monitoring year, annual site progress photographs. The report would also summarize any applicable “lessons learned” from the Sacramento River Erosion Control and Habitat Enhancement Project. Please see attached Mitigation and Habitat Enhancement Planting, Monitoring and Adaptive Management Plan. Funding for maintaining and monitoring the habitats through establishment will be provided through assessments collected by BALMD and also reimbursements provided through DWR’s levee subventions program. [BALMD Sac Erosion Project Planting, Monitoring & Adaptive Mgmt Plan_02082021.pdf](#)

DELTA PLAN CHAPTER 3

[WR P1 / Cal. Code Regs., tit. 23, § 5003](#) - Reduce Reliance on the Delta through Improved Regional Water Self-Reliance

Is the covered action consistent with this portion of the regulatory policy?

N/A

Answer Justification: N/A. The proposed project is not a water export/transport project.

[WR P2 / Cal. Code Regs., tit. 23, § 5004](#) - Transparency in Water Contracting

Is the covered action consistent with this portion of the regulatory policy?

N/A

Answer Justification: N/A. The proposed project does not involve the sale/contracting of water resources.

DELTA PLAN CHAPTER 4

[Cal. Code Regs., tit. 23, § 5002, subd. \(c\)](#) - Conservation Measure

Cal. Code Regs., tit. 23, § 5002, subd. (c) provides that a conservation measure proposed to be implemented pursuant to a natural community conservation plan or a habitat conservation plan that was: (1) Developed by a local government in the Delta; and (2) Approved and permitted by the California Department of Fish and Wildlife prior to May 16, 2013 is deemed to be consistent with the regulatory policies listed under Delta Plan Chapter 4 of this Form (i.e. sections 5005 through 5009) if the certification of consistency filed with regard to the conservation measure includes a statement confirming the nature of the conservation measure from the California Department of Fish and Wildlife.

Is the covered action consistent with this portion of the regulatory policy?

N/A

Is a statement confirming the nature of the conservation measure from the California Department of Fish and Wildlife available? N/A

Answer Justification: Project was not mandated by a NCCP or HCP.

[ER P1 / Cal. Code Regs., tit. 23, § 5005](#) - **Delta Flow Objectives**

Is the covered action consistent with this portion of the regulatory policy?

Yes

Answer Justification:

The project will not violate the water quality objectives established by the State Water Resources Control Board. BALMD is in the process of obtaining State Water Resources Control Board approval for a Clean Water Act Section 401 Water Quality Certification. BALMD will adhere to the water quality conditions established in the 401-certification, including implementing all measures described in the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities. In addition, BALMD will retain professionals experienced in all elements of the Storm Water Pollution Prevention Plan (SWPPP) monitoring during and after the construction. BALMD understands that dischargers shall ensure that all inspection, maintenance repair and sampling activities at the project location shall be performed or supervised by a Qualified SWPPP Practitioner (QSP). Implementation of erosion control and pollution prevention BMPs would avoid and minimize construction-related erosion and contaminant discharges. In addition to the BMPs, the SWPPP would include BMP inspection and monitoring activities, and identify responsibilities of all parties, contingency measures, agency contacts, and training requirements and documentation for those personnel responsible for installation, inspection, maintenance, and repair of BMPs.

[ER P2 / Cal. Code Regs., tit. 23, § 5006](#)- **Restore Habitats at Appropriate Elevations**

Is the covered action consistent with this portion of the regulatory policy?

Yes

Answer Justification:

Per the California Water Code §12300 et seq., the California Department of Fish and Wildlife (CDFW) is the authority on no net loss of habitat and net gain of habitat. CDFW is a project sponsor and oversaw the progress and development of this element of the project. A principal guiding document was CDFW's level planting zones guidance*, which was used in the development of a Planting and Monitoring Plan for the project (and will be provided to the DSC). The plan describes the physical characteristic of the proposed sites; describes a planting plan with a suitable species palette; and addresses maintenance and monitoring of the habitat features for at least 3 years after completion. The habitat when established will be a source of organic matter inputs through leaf litter, which would provide nutrient inputs for invertebrates and other small organisms that in turn serve as food sources for higher order organisms in the food web. In addition, fallen waterside vegetation can provide large woody material that act as habitat and cover for fish and other aquatic organisms. The enhanced habitat is also expected to create additional rearing habitat as well as provide hydraulic and predation refuge for migrating salmonids. The proposed enhancements may also provide additional spawning habitat for Delta smelt; as well as spawning, cover, and forage habitat for other delta fish species including the longfin smelt, green sturgeon, white sturgeon, pacific lamprey, and river lamprey. *CDFW and DWR (California Dept of Fish and Wildlife and Department of Water Resources). 2020. Delta Levees

Planting Zones. CDFW, Stockton, California [BALMD Sac Erosion Project Planting, Monitoring & Adaptive Mgmt Plan_02082021.pdf](#), [CDFW-DWR Levee Planting Zones 2020.pdf](#)

[ER P3 / Cal. Code Regs., tit. 23, § 5007](#) - **Protect Opportunities to Restore Habitat**

Is the covered action consistent with this portion of the regulatory policy?

N/A

Answer Justification: N/A. The proposed project does not occur in the priority habitat restoration areas per Appendix 5.

[ER P4 / Cal. Code Regs., tit. 23, § 5008](#) - **Expand Floodplains and Riparian Habitats in Levee Projects**

Is the covered action consistent with this portion of the regulatory policy?

Yes

Answer Justification: N/A. The proposed project is located outside of the identified setback levee evaluation areas. See Delta Plan, Appendix 8, Figure 8-1.

[ER P5 / Cal. Code Regs., tit. 23, § 5009](#) - **Avoid Introductions of and Habitat for Invasive Nonnative Species**

Is the covered action consistent with this portion of the regulatory policy?

Yes

Answer Justification: While there is always some potential for invasive species to colonize a new disturbance, the proposed project does not increase or change the probability of introducing or improving habitat conditions for nonnative invasive species. Experience has shown that the project design and design criteria including soil mixes, plant species and maintenance regime selected (identified in the attached planting and monitoring plan) will lead to rapid establishment of native plant species, thereby limiting the opportunity for invasive species to colonize and establish. The project will considerably improve existing conditions and provide a net benefit/enhancement of native habitat that will be monitored and maintained to allow the native habitat to become established which will include maintenance actions targeted toward managing and eliminating invasive plants. While the project may cause some minor, incremental opportunities for bass species in this reach of the river, creation of new floodplain habitat (in a reach largely devoid of this condition) afforded by the proposed habitat benches will provide important cover and refuge to juvenile salmonids as they return to the ocean in this important migration corridor. [BALMD Sac Erosion Project Planting, Monitoring & Adaptive Mgmt Plan_02082021.pdf](#)

DELTA PLAN CHAPTER 5

[DP P1 / Cal. Code Regs., tit. 23, § 5010](#) - **Locate New Urban Development Wisely**

Is the covered action consistent with this portion of the regulatory policy?

N/A

Answer Justification: N/A. The proposed project does not involve new residential, commercial, or industrial development, nor is it located in the areas described in Appendix 6 or 7.

[DP P2 / Cal. Code Regs., tit. 23, § 5011](#) - **Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats**

Is the covered action consistent with this portion of the regulatory policy?

Yes

Answer Justification: The BALMD has a cooperative relationship with the adjacent agricultural land

owners and is coordinating improvements to private structures in the project footprint including an existing dock structure and pump intake facility, thus improving existing uses, or those uses described or depicted in city and county general plans for their jurisdictions or spheres of influence.

DELTA PLAN CHAPTER 7

[RR P1 / Cal. Code Regs., tit. 23, § 5012](#) - **Prioritization of State Investments in Delta Levees and Risk Reduction**

Is the covered action consistent with this portion of the regulatory policy?

Yes

Answer Justification:

The proposed project falls under all three categories of benefit for priorities for state investment in Delta integrated flood management (i.e. Localized Flood Protection, Levee Network Ecosystem Conservation) in the priority table and achieves the following: • It protects small communities (City of Isleton and Walnut Grove) and critical infrastructure of statewide importance (State Hwy 160). • It protects water quality and water supply in the Delta by maintaining the functionality of the water supply corridor. • It protects flood water conveyance by fortifying the levee system along the Sacramento River, which is consistent with the State Plan of Flood Control for project levees. • The proposed project design protects existing, and provides for net enhancement of floodplain habitat and wetlands. • The project protects agriculture and local working landscapes through ensuring there are no future levee failures.

[RR P2 / Cal. Code Regs., tit. 23, § 5013](#) - **Require Flood Protection for Residential Development in Rural Areas**

Is the covered action consistent with this portion of the regulatory policy?

N/A

Answer Justification:

N/A. The proposed project does not involve new residential, commercial, or industrial development.

[RR P3 / Cal. Code Regs., tit. 23, § 5014](#) - **Protect Floodways**

Is the covered action consistent with this portion of the regulatory policy?

Yes

Answer Justification:

N/A. RR P3 covers actions that would encroach in a floodway that is not considered a designated floodway or regulated stream. The proposed project is along the Sacramento River and as such, is located within a designated floodway, therefore the policy does not apply.

[RR P4 / Cal. Code Regs., tit. 23, § 5015](#) - **Floodplain Protection**

Is the covered action consistent with this portion of the regulatory policy?

N/A

Answer Justification:

N/A. The proposed project does not occur in the identified floodplains.

02/08/2021