

Certification of Consistency

C20223

Step 1 - Agency Profile

A. GOVERNMENT AGENCY: State Agency
Government Agency: Reclamation District 2093
Primary Contact: Dave Sutton
Address: 1107 9th Street, Suite 1050
City, State, Zip: Sacramento, CA 95814
Telephone/Fax: (415) 800-5305
E-mail Address: ashippey@res.us

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

Step 2 - Covered Action Profile

A. COVERED ACTION PROFILE: Project

Title: North Delta Fish Conservation Bank

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

Proponent Name: Liberty Island Holdings II, LLC
Address: 1400 16th Street Mall, Suite 320
City, State, Zip: Denver, CO 80202

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.

[North Delta_CEQA NOD.pdf](#), [North Delta_RD 2093 Public Mtg Notice.pdf](#), [North Delta_Covered Action Submittal.pdf](#)

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

The North Delta Fish Conservation Bank (project) is designed to restore, enhance, and create habitat for Delta native fish species in the Lower Yolo-Cache Slough area of Yolo County. Located at the northern tip of Liberty Island, the project is approximately 810 acres consisting of primarily emergent marsh and open water (project area). The project will include lowering of two stair-step levees, floodplains, and revegetating with native emergent marsh species. Upon completion, the project will provide habitat for Delta smelt (*Hypomesus transpacificus*), longfin smelt (*Spirinchus thaleichthys*), and salmonids; as well as provide benefits to the regional flood control system by allowing less restricted tidal action and flood waters within the project area. [Final ISMND and NOD.pdf](#), [North Delta_Consistency Summary_Mar 2022.pdf](#)

E. STATUS IN THE CEQA PROCESS: Final Certified Document

F. STATE CLEARINGHOUSE NUMBER:(if applicable) 2010122078

G. COVERED ACTION ESTIMATED TIME LINE:

ANTICIPATED START DATE: (If available) 05/23/2022

ANTICIPATED END DATE: (If available) 10/31/2023

H. COVERED ACTION TOTAL ESTIMATED PROJECT COST: \$12,000,000

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:

[Final ISMND and NOD.pdf](#), [North Delta_Consistency Summary Package.pdf](#)

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:

It has been determined the project will not have significant adverse impacts on the achievement of the coequal goals; however, implementation of the project is anticipated to have a positive impact through restoring and enhancing the Delta ecosystem.

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 project was subject to CEQA review and an IS/MND was prepared. As described in 23 CCR Section 5006, significant adverse impacts to restore habitats must be avoided or mitigated. Per the environmental analysis completed for the IS/MND, it was determined the project would not have a significant effect on the environment, including adverse effects, either individually or cumulatively. [North Delta_MMRP Comparison Table.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 project was designed using the Best Available Science and developed by an experienced technical team. An environmental review of the project was completed, including an impact analysis and mitigation measures were developed in accordance with CEQA requirements. The design of the project incorporated the surrounding areas and considered wildlife species within the project area, specifically Delta native fishes such as Delta smelt, longfin smelt (*Spirinchus thaleichthys*), and salmonids. In addition, an updated hydraulic model was obtained to incorporate recent changes within the Yolo Bypass, such as the implementation of other restoration projects, such as the Lower Yolo Ranch Restoration Project. [NDFCB_Flood Modeling Report_12_2021_CBEC.pdf](#), [Final ISMND and NOD.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

Implementation of the project would include restoring approximately 24.78 acres of tidal emergent marsh, improving tidal flushing within the system, and restoring habitat for Delta native fishes. Upon completion of construction, the project would be monitored to ensure it is achieving the performance standards developed for the project. Adaptive management, if needed, would be implemented consistent with the Habitat Development Plan developed for the project. Additionally, the project will be monitored long-term per the Long-term Management Plan developed for the project, which incorporates adaptive management if needed. [Habitat Development Plan.pdf](#), [Long-term Management Plan.pdf](#)

Answer Justification:

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:

This policy is not applicable. The project does not propose to act as a water supplier or to export water from, transfer water through, or use water in the Delta.

[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:

This policy is not applicable. The project does not involve water supply or water contracts from the State Water Project or the Central Valley Project.

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

Answer Justification:

This policy is not applicable. The project does not include a conservation measure proposed to be implemented pursuant to a natural community conservation plan or habitat conservation plan.

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

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

N/A

Answer Justification:

This policy is not applicable. The project does not include the diversion, impoundment, or otherwise utilization of water that would affect the Bay Delta Water Quality Control Plan flow objectives.

[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:

The proposed habitat restoration is consistent with Appendix 3, which is Section II of the Conservation Strategy for Restoration of the Sacramento-San Joaquin Delta, Sacramento Valley, and San Joaquin Valley Regions (drafted in 2011, final in 2014) (California Department of Fish and Wildlife 2014). Based on the elevation, the project is located within an area designated as “sea level rise accommodation” and “intertidal” according to the Conservation Strategy map. Areas designated as “intertidal” include emergent wetlands based on the habitat crosswalk provided as Appendix C of the aforementioned document. Additionally, areas designated as “sea level rise accommodation” are considered the highest priority for restoration in light of expected sea level rise. Implementation of the project will restore, enhance, and maintain habitats consistent with Appendix 3, including tidal emergent wetlands, open water, seasonal wetlands, and riparian habitat by lowering two east-west levees and floodplains to improve tidal connectivity and circulation. Native marsh grasses, such as tules, will be planted to provide habitat for Delta native species. The project will include the restoration of approximately 26 acres of tidal emergent marsh and the preservation/enhancement of approximately 782 acres of tidal emergent marsh, open water, riparian, seasonal wetlands, and upland refuge (levees). Upon completion of the restoration, the project will provide habitat for Delta native fish, including the Delta smelt (*Hypomesus transpacificus*), as well as habitat for other wildlife and plants. [North Delta Consistency Summary Package.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?

Yes

Answer Justification:

The project includes the restoration of tidal wetlands by lowering two east-west levees to increase tidal connectivity. Additionally, the installation of impervious surface area is not a component of the restoration activities for the project. The project does not have significant adverse impacts or otherwise interfere with the ability to restore habitats.

[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?

N/A

Answer Justification:

This policy is not applicable. The project does not include the construction or installation of levees and does not propose use of setback levees to increase floodplains and riparian habitats.

[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:

Implementation of the project will not increase the probability of introducing or improving habitat conditions for nonnative invasive species. Lowering of levees and floodplain will improve tidal circulation and increase flooding within the project area, which is anticipated to reduce cover of invasive aquatic weeds, including creeping water primrose (*Ludwigia peploides*). Additionally, monitoring of invasive aquatic species is included in the maintenance and monitoring of the restoration and active treatment, such as manual removal, will be implemented. Strategic planting of tule along the lowered levees will increase the shaded riverine aquatic habitat, which will provide refuge habitat for Delta native fish species by creating a more heterogeneous and natural ecosystem. [Habitat Development Plan.pdf](#), [Long-term Management Plan.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:

This policy is not applicable. The project does not involve new residential, commercial, or industrial development.

[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 project will not significantly alter the natural character of the site or its surroundings. Upon completion of the restoration, the project area will increase habitat for Delta native species. According to the County of Yolo 2030 Countywide General Plan, the project is within an area designated as Agricultural Intensive (A-N) Zone as well as in the Delta Protection Overlay Zone. The County Code describes the A-N Zone as being applied to preserve

lands that are best suited for intensive agriculture uses. Uses within these zones are primarily limited to intensive agricultural production and other activities compatible with agricultural uses, including agricultural-related support uses. Section 8-2.303 defines agricultural accessory uses to include cultivated or uncultivated lands used for wildlife habitat.

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?

N/A

Answer Justification: This policy is not applicable. The project does not involve discretionary State investments in Delta flood risk management including levee operation, maintenance, and/or improvements.

[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: This policy is not applicable. The project does not involve new residential 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: The project will not have an adverse impact on floodway conveyance within the Yolo Bypass, a designated floodway, based on the hydraulic model prepared for the project. A Central Valley Flood Protection Board Title 23 encroachment permit is currently being processed in conjunction with Section 408 of the U.S. Army Corps of Engineers Sacramento District. [NDFCB Flood Modeling Report_12 2021 CBEC.pdf](#)

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

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

Yes

Answer Justification: The project would convert areas of upland levees into tidal marsh but would not have significant adverse impacts to floodplain functions and values as these areas would be accessible to migrating fish during flood events in the Yolo Bypass. Additionally, the project would improve tidal function by lowering portions of the floodplain, increasing tidal connectivity, and circulation.

05/13/2022