

Certification of Consistency

C20224

Step 1 - Agency Profile

A. GOVERNMENT AGENCY: State Agency
Government Agency: Reclamation District 2028
Primary Contact: Dave Forkel
Address: 343 East Main St. Suite 815
City, State, Zip: Stockton, CA 95202
Telephone/Fax: (510) 693-9977
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B. GOVERNMENT AGENCY ROLE IN COVERED ACTION: Will Carry Out

Step 2 - Covered Action Profile

A. COVERED ACTION PROFILE: Project
Title: Bacon Island Levee Rehabilitation Project, Connection Slough And Santa Fe Cut Corridor

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

Proponent Name: Reclamation District 2028
Address: 343 East Main St. Suite 815
City, State, Zip: Stockton, CA 95202

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.

[2022-03-Agenda-RD_2028.PDF](#), [2022-06-Agenda-RD_2028.PDF](#)

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

Project Description: Reclamation District No. 2028 plans to rehabilitate the north and south sides of Bacon Island's levee system (Connection Slough and Santa Fe Cut), approximately 3.5 miles in length total, to sustainably achieve the minimum requirements of the Bulletin 192-82 standard. Levee rehabilitation consists of widening and raising the levee crest, armoring the raised portion of the levee crest, flattening the landside levee slope, and placing an all-weather surface on the finished levee crest. Soil fill material may be sourced from within Bacon Island (on-site borrow) or as import from regional off-site commercial locations. Existing levee encroachments or penetrations within the levee such as siphon pipes, drainpipes, and unused structures or remnants of structures may be removed or relocated to facilitate the levee rehabilitation. Pipes within the borrow site will be avoided. Attached are the Notice of Determination (NOD), the Final Initial Study/Mitigated Negative Declaration (IS/MND) and the Mitigation and Monitoring Reporting Program (MMRP) [RD 2028 - NOD \(signed\).pdf](#), [RD 2028 - Bacon Island IS-MND_Final \(signed\).pdf](#), [RD 2028 Bacon Island_MMRP.pdf](#)

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

F. STATE CLEARINGHOUSE NUMBER:(if applicable) 2022030744

G. COVERED ACTION ESTIMATED TIME LINE:

ANTICIPATED START DATE: (If available) 08/15/2022

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

H. COVERED ACTION TOTAL ESTIMATED PROJECT COST: \$10,000,000

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:

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:

The project is consistent with the declared goals set forth in the Delta Reform Act by improving flood protection by structural means to ensure an increased level of public health and safety.

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 is consistent with all applicable mitigation measures in the Delta Plan's Program EIR. The District has an IS/MND and MMRP, attached, that identifies all relevant mitigation measures. [RD 2028 - Bacon Island IS-MND_Final \(signed\).pdf](#), [RD 2028 Bacon Island_MMRP.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 District is using the best available science practices as relevant to the purpose and nature of the project. Engineering and construction techniques to rehabilitate the levee will follow

industry standards. Materials used will comply with specifications that are generally accepted for rehabilitation of Delta levees. Materials placed will be compacted according to the geotechnical engineer's recommendations. Compaction testing will provide confirmation that materials are placed in accordance with the specifications. Native grasses will be planted. [RD 2028 - Bacon Island IS-MND_Final \(signed\).pdf](#), [RD 2028 Bacon Island_MMRP.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?

N/A

Answer Justification:

The project is not an ecosystem restoration or water management covered action.

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:

The project does not involve water that is exported from, transferred through, or used 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:

The project does not involve entering into or amending water supply or water transfer contracts.

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:

The project is not located within a natural community conservation plan or a 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:

The project does not affect flow in the Delta.

[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?

N/A

Answer Justification:

This project does not restore habitat.

[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:

The covered action is outside of the priority habitat restoration areas depicted in 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?

N/A

Answer Justification:

It is not feasible to set back the levee in this area due to high costs of importing fill material and the project location in the central Delta.

[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?

N/A

Answer Justification:

Waterside habitat for fish is not being developed as part of this project. [RD 2028 Bacon Island_MMRP.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:

The project does not involve new residential, commercial, or industrial development, nor will it lead to new 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?

N/A

Answer Justification:

The project does not involve the siting of water management facilities, ecosystem restoration, or flood management infrastructure.

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:

This project is consistent with goals found in RR P1 (23 CCR Section 5012).

[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:

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?

N/A

Answer Justification:

The project is contained within the existing levee footprint and does not encroach within any floodway.

[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:

No encroachments are being built as a result of this project. [RD 2028 Bacon Island_MMRP.pdf](#)

07/06/2022