

Certification of Consistency

C20172

Step 1 - Agency Profile

A. GOVERNMENT AGENCY: State Agency

Government Agency: Reclamation District No. 2028: Bacon Island
Primary Contact: David Forkel, Chairman
Address: 343 East Main Street, Suite 815
City, State, Zip: Stockton, CA 95202
Telephone/Fax: 209 943-5551 / 209 943-0251
E-mail Address: anderson@mbkengineers.com

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: Reclamation District No. 2028: Bacon Island Levee Rehabilitation Project

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

Proponent Name: Reclamation District No. 2028: Bacon Island, David
Address: 343 East Main Street, 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 No subject to open meeting laws. Select "No" if your agency or organization is not subject to open meeting laws.)

If your agency is 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.]) **did your agency, at least 10 days prior to the submission of a certification of consistency to the Delta Stewardship**

Council, post the draft certification on your website and in the office for public review and comment, and mail the draft certification 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.

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

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

Project Description: 4.7 miles of levee along Bacon Island’s western side is currently at or below the Hazard Mitigation Plan (HMP) cross-section criteria, which requires levee crown elevations to be one foot above the 100-year flood elevation. Bacon Island’s levee is substandard due to settlement of the levee from consolidation of the underlying peat foundation. The levee lacks the required stability to support the minimum HMP standard and an all-weather access road required by the District, and continued settlement over time increases potential for overtopping and catastrophic levee failure. The Project includes landside and minor waterside work entirely above Mean High Water. Landside work involves raising the levee crown and stabilizing the slope by placing fill material on the levee toe, slope, and crown. Aggregate base will be placed on the levee crown to create an all-weather roadway. Waterside work involves armoring newly placed fill along the waterside of the levee. The Project will compensate for future settlement of the peat foundation as well as sea level rise and ensure a sustainable HMP cross-section standard by incorporating the recommended design cross section, which includes a toe berm and a wider levee crown. Findings: An Initial Study has been prepared to assess the Project’s potential effects on the environment and the significance of those effects. Based on the Initial Study, Reclamation District No. 2028 has determined that the Project will not have any significant effects on the environment once mitigation measures included in the Project design are implemented. This conclusion is supported by the following findings: • The Project will result in no impacts on: land use and planning, mineral resources, population and housing, public services, recreation, transportation and traffic, and utilities/service systems. • The Project will result in less-than-significant impacts on: aesthetics, agricultural and forest resources, air quality, geology and soils, greenhouse gas emissions, and noise. • Mitigation is included in the Project design to reduce potentially significant impacts to less-than-significant levels for biological resources, cultural resources, hazards/hazardous materials, and hydrology/water quality. • The Project will result in net environmental benefit.

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

F. STATE CLEARINGHOUSE NUMBER:(if applicable) 2017012062

G. COVERED ACTION ESTIMATED TIME LINE:

ANTICIPATED START DATE: (If available) 05/01/2018
ANTICIPATED END DATE: (If available) 10/01/2019

H. COVERED ACTION TOTAL ESTIMATED PROJECT COST: 10000000

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

[Bacon-Old River IS-MND Final 051117 clean.pdf](#), [Bacon Reveg Habitat Plan Draft 101817 clean.pdf](#), [Bacon Island Reveg Plan Appendices.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 12 Revised: July 2019 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?

Answer Justification:

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.

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

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

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, monitored, and maintained in general accordance with the Delta Levees Habitat Program Guide to Planting Native Grassland Habitat on a Reconstructed Landside Levee Slope (CDFW and DWR, unpublished memo).

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

The District has adopted a management plan for the project. [Bacon Island Reveg Plan Appendices.pdf](#), [Bacon Reveg Habitat Plan Draft 101817 clean.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

The covered action 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 covered action does not involve entering into or amending water supply or water transfer contracts subject to DWR Guideline 03-09 and/or 03-10 (each dated July 3, 2003), (Appendix 2A).

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?

Answer Justification:

[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 covered action does not significantly 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: The covered action does not include habitat restoration.

[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: The covered action does not construct new levees or substantially rehabilitate or reconstruct existing levees.

[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: Preparation of the waterside of the levee for armoring the newly placed fill along the levee crown may require removing ruderal weeds and non-native annual plants. The invasive plant giant reed (*Arundo donax*) will be removed from both the landside and waterside of the Project footprint. All cleared material will be disposed of outside the Project footprint on the landside of the levee or moved

offsite. After levee rehabilitation is complete, native grasses will be planted on the landside slope for erosion protection as well as to provide habitat for wildlife and pollinators. Soil preparation, seeding, and monitoring and maintenance will be conducted in general accordance with the Delta Levees Habitat Program Guide to Planting Native Grassland Habitat on a Reconstructed Landside Levee Slope (CDFW and DWR, unpublished memo), or other similar methods approved by CDFW. The native grass seed mix will be appropriate to soil conditions. Planting at the end of construction and prior to or during the rainy season will help minimize erosion during the wet months and naturally provide irrigation to support seed germination. Depending on levee slope steepness, seeding may be via drill-seeding or seed broadcasting. Another seeding method may be to incorporate the seeds into the ground (e.g., using a harrow), and then covering the seeded area by means of hydroseeding with mulch and tackifier; this method is different than typical hydroseeding where the seeds are sprayed with the mulch and tackifier. To ensure the permanency of the native grasses, regular maintenance—primarily weed maintenance—will be implemented. If funding is available, management during the first year will include monitoring to ensure germination success, supplemental watering if dry periods develop, mowing with a minimum prescribed blade height from the ground, and, if appropriate, selectively using herbicides at the appropriate time for best weed control. The District will maintain and monitor the plantings for the duration of the funding agreement. The District has preliminarily identified four levee-compatible habitat enhancement areas on the landside of the levee, totaling 4.3 ac, where scrub-shrub and riparian forest will be created or enhanced, using nursery plants, cuttings, or seed. These areas are outside the levee prism and can be utilized for habitat enhancement without conflicting with levee maintenance or operations. The adjacent toe ditch provides a natural barrier preventing farming activities from encroaching into and disturbing the habitat area. The landowner will maintain these proposed habitat enhancement areas according to a future management agreement with the California Department of Water Resources (DWR) and CDFW. The terms of the management agreement will be finalized as a part of habitat enhancement planning and implementation. These habitat enhancement areas are incorporated into the Project design to comply with funding requirements to integrate levee improvement with habitat enhancement; in this case, landside levee vegetation features that provide habitat for native plants and wildlife in support of a healthy ecosystem. These habitat features are not intended as mitigation to offset any potential project impacts. [Bacon-Old River_IS-MND_Final_051117_clean.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 covered action 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?

N/A

Answer Justification:

The covered action 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 is a sustainable HMP project and consistent with goals 1, 2 and 3 as found in RR P1 (23 CCR Section 5012). [Bacon-Old River_IS-MND_Final_051117_clean.pdf](#)

[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 covered action does not involve new residential development of five or more parcels.

[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 covered action 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:

The covered action does not encroach in any of the following floodplain areas:

- (1) The Yolo Bypass within the Delta;
- (2) The Cosumnes River-Mokelumne River Confluence, as defined by the North Delta Flood Control and Ecosystem Restoration Project (McCormack-Williamson), or as modified in the future by the California Department of Water Resources or the U.S. Army Corps of Engineers (California Department of Water Resources 2010); and
- (3) The Lower San Joaquin River Floodplain Bypass area, located on the Lower San Joaquin River upstream of Stockton immediately southwest of Paradise Cut on lands both upstream and downstream of the Interstate 5 crossing. This area is described in the Lower San Joaquin River Floodplain Bypass Proposal, submitted to the California Department of Water Resources by the partnership of the South Delta Water Agency, the River Islands Development Company, Reclamation District 2062, San Joaquin Resource Conservation District, American Rivers, the American Lands Conservancy, and the Natural Resources Defense Council, March 2011. This area may be modified in the future through the completion of this project.

11/17/2017