

Certification of Consistency

C20195

Step 1 - Agency Profile

A. GOVERNMENT AGENCY: State Agency

Government Agency: Contra Costa County Flood Control District
Primary Contact: Claudia Gemberling
Address: 255 Glacier Drive
City, State, Zip: Martinez, CA 94553
Telephone/Fax: (925) 313-2192
E-mail Address: amerrill@americanrivers.org

B. GOVERNMENT AGENCY ROLE IN COVERED ACTION:

Will Approve / Will Carry Out / Will Fund

Step 2 - Covered Action Profile

A. COVERED ACTION PROFILE: Program

Title: Lower Marsh Creek Stream Corridor Restoration Program

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

Proponent Name: Claudia Gemberling
Address: 255 Glacier Drive
City, State, Zip: Martinez, CA 94553

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.

[Section2C_Open_Mtg_Pubic_Agenda_Item_01.pdf](#), [Section2C_Open_Mtg_Pubic_Agenda_Item_02.pdf](#)

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

The Lower Marsh Creek Stream Corridor Restoration Program (Program) is a creek restoration and flood risk reduction Program proposed by the Contra Costa County Flood Control and Water Conservation District (“CCCFCFCD” or “District”) and American Rivers, a national nonprofit organization that protects wild rivers, restores damaged rivers, and conserves clean water for people and nature. Implementation of the proposed Program will result in: 1) improved habitat conditions for fish, birds, reptiles, and amphibians by providing a mosaic of riparian, floodplain, wetland, and aquatic habitat types for these species to utilize, 2) expanded channel capacity to meet or exceed flood channel conveyance capacity, 3) improved local water quality by shading the creek and reducing mobilization of fine sediments, and 4) improved public recreational opportunities. This Program will also complement three existing conservation planning efforts: the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan (Jones & Stokes Associates 2006) (HCP/NCCP), the CCCFCFCD’s 50 Year Plan: Channel to Creeks (2009), and American Rivers’ Lower Marsh Creek Stream Corridor Master Plan (2015) (Master Plan). The goal of the Program is to incentivize willing landowners and developers to work with the CCCFCFCD and other local partners to transition the existing 75-foot stream setbacks on Marsh Creek and 50-foot stream setbacks on Deer and Sand creeks (referred to collectively hereafter as stream corridors), as required by the HCP/NCCP for parcels and development activities subject to compliance with the HCP/NCCP, into ecologically functioning riparian habitat corridors. As such, this CEQA document has been developed to put in place the environmental compliance mechanism necessary to alleviate uncertainty and complexity associated with implementing creek restoration projects, which would further incentivize landowners and developers to participate. Primary Program objectives include: • Enable restoration of riparian vegetation, both woody and herbaceous, within the expanded stream corridors; • Improve aquatic and wetland habitats within the stream corridors; • Improve water quality and lower water temperatures within the stream corridors; • Provide enhanced flow capacity within the stream reaches that are either meeting or exceeding critical flood conveyance targets; • Reduce the need for and impact of routine channel maintenance by reducing local stream velocities/sheer stress and resulting bank erosion, and allowing riparian trees to grow and shade out nuisance nonnative plants in restoration areas; and • Enhance local recreational experiences along existing and future creek trails by creating shaded woodland areas throughout the trail system. While the 2015 Lower Marsh Creek Stream Corridor Restoration Master Plan identified a number of discrete parcels that would be appropriate for implementing multi-benefit restoration projects, this Program expands the limits of the Master Plan to include all streamside parcels in the Program area. The Lower Marsh Creek Stream Corridor Restoration Program Initial Study/Mitigated Negative Declaration (CEQA document) is attached in Section J (Final_ISMND) and the Program Summary is located on pages 1-31 of the full CEQA document, and attached as SectionD_CA_Program_Summary. [Final_ISMND.pdf](#), [Section2D_CA_Program_Summary.pdf](#)

E. STATUS IN THE CEQA PROCESS: In Process

F. STATE CLEARINGHOUSE NUMBER:(if applicable) 2019049002

G. COVERED ACTION ESTIMATED TIME LINE:

ANTICIPATED START DATE: (If available) 01/01/2020

ANTICIPATED END DATE: (If available) 01/01/2036

H. COVERED ACTION TOTAL ESTIMATED PROJECT COST: 81400

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

[Final_ISMND.pdf](#), [Section2C_NOD.pdf](#), [Section2C_Open_Mtg_Pubic_Agenda_Item_01.pdf](#),
[Section2C_Open_Mtg_Pubic_Agenda_Item_02.pdf](#), [Section2D_CA_Program_Summary.pdf](#),
[Section3_DPChap4C_Elevation_Map.pdf](#), [Section3_DPChap5_LOS_FOMCW.pdf](#), [Section3_DPChap5_LOS_Oakley.pdf](#),
[Section3b_MM_MM RP.pdf](#), [Section3B_MM_Comparison.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:

Mitigation measures for a project developed within the Marsh Creek Program area are explicitly described in the Final Lower Marsh Creek Stream Corridor Restoration Program Initial Study/Mitigated Negative Declaration Final Mitigation, Monitoring and Reporting Program prepared for this program and attached to this certification application (Section 3b_MM_MMRP). As stated on page 30 of the attached Lower Marsh Creek Stream Corridor IS/IMD (Final_ISMND), projects implemented under the Lower Marsh Creek Stream Corridor IS/IMD document have been specifically developed to be consistent with the Delta Plan as they are all multi-benefit projects that will reduce flood risk associated with a changing climate, improve Delta water quality, restore denuded stream-side habitat, and enhance the Delta as a place. In addition, the Delta Plan's 2013 MMRP has been reviewed and cross-referenced with the MMRP for the Program and two documents are generally consistent across resources areas. In addition, this Program directly supports the Delta Plan's co-equal goals as well as the following policies: o General Policy 1 (G P1): Detailed Findings to Establish Consistency with the Delta Plan- This has been done through review of the MMRP, use of best available science in future restoration and flood management planning, and development of an adaptative management framework. A comparison of the Delta Plan's 2018 MMRP and the Lower Marsh Creek Program MMRP is attached (Section3b_MM_Comparison) and shows the mitigation measures for the Lower Marsh Creek Program are equal or more effective than the mitigation measures for the Delta Plan's 2018 MMRP. [Section3b_MM_MMRP.pdf](#), [Section3B_MM_Comparison.pdf](#)

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

Answer Justification:

As stated on page 30 of the attached Lower Marsh Creek Stream Corridor IS/IMD (Final_ISMND), projects implemented under the Lower Marsh Creek Stream Corridor IS/IMD document have been specifically developed to be consistent with the Delta Plan as they are all multi-benefit projects that will reduce flood risk associated with a changing climate, improve Delta water quality, restore denuded stream-side habitat, and enhance the Delta as a place. In addition, this Program directly supports the Delta Plan's co-equal goals as well as the following policies: o General Policy 1 (G P1): Detailed Findings to Establish Consistency with the Delta Plan- This has been done through review of the MMRP, use of best available science in future

restoration and flood management planning, and development of an adaptive management framework. The attached Adaptive Management and Maintenance Plan Framework (AMMP) for the Marsh Creek Restoration Program contains best available science and an extensive review of all monitoring data for the Marsh Creek Watershed and associated scientific literature. The Program has used best available science by incorporating restoration science into the program, including framing current and future restoration projects of floodplain restoration in the functional framework developed for DRERIP (Opperman 2008) and new information published since then. Best available science from published literature and relevant gray literature was used in developing current project designs and monitoring methods. In addition, the Lower Marsh Creek Program for water quality monitoring is building off of 15 yrs of water quality monitoring at seven to ten sites, where sampling has been conducted in partnership with the EPA and CVRWQB as detailed in a Quality Assurance Project Plan (QAPP) that requires EPA and CVRWQB reviewed technical field sampling and data management methods. Other aspects of the Lower Marsh Creek Program AMMP were developed to guide specific monitoring and adaptive management plans within this Program and includes 40 citations of published scientific literature and direct data sources. Future projects within this Program will use best available science in the project goal setting, design, monitoring and adaptive management. [AMMP LMC Programmatic_FINAL.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:

As stated on page 30 of the attached Lower Marsh Creek Stream Corridor IS/IMD (Final_ISMND), projects implemented under the Lower Marsh Creek Stream Corridor IS/IMD document have been specifically developed to be consistent with the Delta Plan as they are all multi-benefit projects that will reduce flood risk associated with a changing climate, improve Delta water quality, restore denuded stream-side habitat, and enhance the Delta as a place. In addition, this Program directly supports the Delta Plan's co-equal goals as well as the following policies: o General Policy 1 (G P1): Detailed Findings to Establish Consistency with the Delta Plan- This has been done through review of the MMRP, use of best available science in future restoration and flood management planning, and development of an adaptive management framework. We attach an AMMP Framework for individual projects developed within the program area and that can be included in the Programmatic IS/MND for the Lower Marsh Creek Stream Corridor

Restoration Program. The AMMP attached gives clear guidance and specific examples for projects within the Program Area. The particular metrics, thresholds and response actions listed in Table 3 of the AMMP will need to be tailored to specific project goals, actions, and site conditions. As each project within the Program Area is developed and undergoes environmental review, project proponents will need to engage with the Delta Stewardship Council to certify those projects and their project-specific AMMPs, developed using the attached programmatic AMMP. If future restoration projects are under 5-ac and excluded from CWA Section 404 reporting based on Categorical Exclusion 15333, we understand they will not need additional certification from the Delta Stewardship Council and will therefore not be required to submit a project-specific AMMP. Attachments include: (1) The Adaptive Management and Maintenance Plan Framework for the Marsh Creek Restoration Program (2) Three Creeks Parkway Restoration Project DRAFT Adaptive Management and Monitoring Plan [AMMP LMC Programmatic FINAL.pdf](#), [AMMP 3 Creeks Marsh Creek DRAFT.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:

This is not applicable because this Program will improve fresh water quality entering the Delta at Big Break but is not expected to impact human local water use, transfer, or export in or from 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 is not applicable because 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).

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:

This is not applicable because this Program is not expected to significantly affect flow in the Delta since it involves setting back channel banks and

planting native riparian vegetation. Local hydrological impacts specific to Marsh Creek (not the greater Delta) might affect flow timing by accommodating high flows in wider floodplains of this relatively small tributary to the Delta. No significant affects on water flow in the Delta will occur through this Program other than local improvements to water quality.

[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 Program is located within the Marsh Creek Watershed in eastern Contra Costa County approximately 40 miles northeast of San Francisco, and includes the cities of Brentwood and Oakley, and unincorporated areas. Marsh Creek Watershed is an important link between the Delta and the Diablo Range. Individual projects that would be covered under this Program are anticipated to occur primarily on undeveloped lands adjacent to Marsh, Deer, and Sand creek corridors. The Program Area in its entirety includes the Marsh Creek corridor from Balfour Road in Brentwood in the south, to the Contra Costa Canal in Oakley in the north. It also includes Sand Creek from Highway 4 in Brentwood to its confluence with Marsh Creek, and Deer Creek from the Deer Creek Detention Basin to its confluence with Marsh Creek. For more information on the regional and program setting and the program area location and ownership, see pages 3-6 of the attached Lower Marsh Creek Stream Corridor IS/MND (Final_ISMND). Per the Map provided in Appendix 4 linked above, the Program Area is within the Legal Delta and on land classified as 'City Sphere of Influence' and 'Uplands' (>15 feet) (see attachment Section3_DPChap4C_Elevation_Map). Thus, the Program area is not in the lowest priority areas according to the Delta Conservation Strategy, which are those areas that are most subsided and expected to become deep water habitat with sea level rise of approximately 55 inches in the coming 50 to 100 yrs. Rather, the Program area is in one of the highest priority areas for restoration, which includes floodplains that can be seasonally inundated. These areas are valued because they can support a diversity of habitats, and therefore wildlife, and important ecological processes, such as contributing organic material to the foodweb (Final ERP Conservation Strategy 2013, p. 40). The Program will help forward Strategy 3.2 in the Delta Conservation Strategy: "Establish migratory corridors for fish, birds, and other animals along selected Delta river channels". By incentivizing restoration of native riparian habitat and wider floodplains along Lower Marsh Creek, the Program is expected to extend and improve the quality of critical migratory corridors for fish, birds and other wildlife, helping rebuild an important link between the open natural lands of Mount Diablo's west slope and Big Break in the Delta. The goals of the Program are to restore aquatic habitats including seasonally inundated floodplain and seasonal wetlands, and terrestrial habitats including riparian areas and perennial grasslands, all of which are appropriate for upland area elevations and will create a mosaic of different upland habitat types. The Program will help meet all Stage 2 Actions for Upland Areas including acquiring land and easement interests from willing sellers, and working with willing landowners, to restore seasonal floodplain areas to accommodate future sea level rise (Action 1), and restoring large-scale riparian vegetation along waterways (Action 5). The Policy is at the heart of the Program as the Program proposes to implement

process domain restoration. Lower Marsh Creek was historically a floodplain with a braided meandering channel - basically creating a large sediment deposition zone in the alluvial valley. Flood control actions and channel hardening have modified these sections into transport and erosion (bank and bed) zones - a major change to process domain. The Program, if implemented, will restore a small bit of this historic function by creating inset floodplain at the proper relative elevations for frequent flooding (0.5 to 2 yr return intervals) and creating low sloping banks to allow for stage resilient restoration - again this is all about recreating proper relative elevations for habitats to form and be sustained. The Biological Resources section on page 48-65 of the attached IS/MND (Final_IS/MND) uses best available science to describe existing conditions within the Program Area: "existing conditions within the Program Area primarily consist of anthropomorphic habitats, ruderal, nonnative annual grassland and freshwater marsh habitats. There is little to no woody riparian vegetation along the stream corridors and wetland vegetation in some areas is limited to a narrow 1–3-foot wide fringe along the low flow channel. Though the Program Area is generally degraded it does provide habitat for several common and special- status species including, but not limited to, western pond turtle, occasional adult Chinook salmon, western burrowing owl and periodic foraging California river otters" and provides a brief description of habitat types within the Program Area. In one example of a planned restoration project along Marsh Creek, the Three Creeks Parkway Restoration Project, the elevation of the Project site ranges from approximately 57-80 feet above sea level. There are other opportunities for restoration just downstream of this Project site at a similar elevation. Figure 3 - Typical Creek Cross-sections Showing 50' and 75' HCP/NCCP Stream Setbacks from Top of Bank, Existing Conditions (Top) and Example of Widened Channel with Riparian Vegetation (Bottom) is on page 6 of the attached IS/MND (Final_ISMND) and shows the restoration of seasonally inundated floodplain and the elevation of a typical widened channel.

[Final_ISMND.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:

This section is not applicable because the Program Area is not within any of the Priority Habitat Restoration Areas depicted in Appendix 5. Priority Habitat Restoration Areas are large areas within which specific sites may be identified for habitat restoration based on assessments of land use and other issues addressed through further feasibility analysis. According to the Appendix 5 map (a clear version was provided to us by the Council) the priority Habitat Restoration Area in Oakley adjacent to Marsh Creek identified on the map is the Dutch Slough Tidal Marsh Restoration Project. The Program Area stops at the Contra Costa Canal and does not include the Dutch Slough Project area, as stated in the Program Area Location section of the attached IS/MND (Final_ISMND) on page 4: "The Program Area in its entirety includes the Marsh Creek corridor from Balfour Road in Brentwood in the south, to the Contra Costa Canal in Oakley in the north."

[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 is not applicable because the Program Area does not include levees or any levee projects.

[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

As stated on page 30 of the IS/MND (attached as Final_ISMND): Projects implemented under this CEQA document have been specifically developed to be consistent with the Delta Plan as they are all multi-benefit projects that will reduce flood risk associated with a changing climate, improve Delta water quality, restore denuded stream-side habitat, and enhance the Delta as a place...This Program directly supports the Delta Plan's co-equal goals as well as the following policies: o Ecosystem Restoration Policy 5 (ER P5): Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species- Each project implemented under the Program will follow best management practices (BMPs) to avoid introductions during construction and will have a Management Plan with specific triggers for vegetation management and control/eradication of invasive plants from within the project site. BMPs for construction include activities to avoid introducing invasive seeds or propagules in the restoration site: Upland soils exposed due to construction activities will be stabilized using native or noninvasive seed and, if necessary to control erosion, straw mulch; Any fertilizer required for erosion control will be low nitrogen to avoid favoring invasive species, Cut-and-fill slopes will be revegetated with native, noninvasive nonnative, or nonreproductive (i.e., sterile hybrids) plants suitable for the altered soil conditions (pages 24 -26, 62 of attached IS-MND). The AMMP includes methods for monitoring sites for invasive plant species with trigger thresholds for action to remove invasive species (see Table 3 of attached Lower Marsh Creek Program AMMP). The proposed threshold for action in the Program AMMP is invasive plant species cover exceeding 10% in year 5 following site planting. More detailed intermediate action thresholds are recommended, such as below 20% in year 2, below 15% in year 3, and below 10% in year 5, will help ensure that managers are adaptively managing the project towards success by year 5. Similarly, minimum requirements for native plant cover suggested in the Program AMMP will push managers to create a robust plant community of natives, the best means of combating invasive plant species (see Table 4 in the attached Program AMMP). Avoiding introductions and managing to prevent spread of invasive species is a top priority for the Three Creeks Parkway Restoration Project, an example of a project that could be implemented under the Program. Although there is little chance of eradicating most established nonnative species, Project partners are very concerned about the potential for invasive species establishment, and are working to develop a post- implementation management plan, the primary purpose of which is to control invasive species. The project landscape plans were developed to restore riparian and seasonal wetland habitat while minimizing invasive plant species. [Final_ISMND.pdf](#), [AMMP](#) [LMC_Programmatic_FINAL.pdf](#)

Answer Justification:

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

N/A

Answer Justification:

This is not applicable because 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?

Yes

Answer Justification:

As stated on page 30 of the attached IS/MND (Final_IS/MND): Projects implemented under this CEQA document have been specifically developed to be consistent with the Delta Plan as they are all multi-benefit projects that will reduce flood risk associated with a changing climate, improve Delta water quality, restore denuded stream-side habitat, and enhance the Delta as a place...This Program directly supports the Delta Plan's co-equal goals as well as the following policies: o Delta as Place Policy 2 (DP P2): Respect Local Land Use when Siting Water or Flood Facilities or Restoring Habitats - This Program has been explicitly developed in collaboration with the Contra Costa County and both the cities of Brentwood and Oakley. Public comments and agency comments were considered through the CEQA process. The Draft Program Description was distributed to local and regional stakeholders including the City of Oakley, City of Brentwood, Friends of Marsh Creek Watershed (FOMCW), the East Bay Regional Park District, and the East Contra Costa County Habitat Conservancy. The Program received positive feedback and comments were incorporated into the Final IS/MND. The City of Oakley and FOMCW wrote letters of support (see attached Section3_DPChap5_LOS_Oakley and Section3_DPChap5_LOS_FOMCW) supporting the development of the Lower Marsh Creek Stream Corridor Restoration Program developed with funding from the Delta Conservancy Marsh and Sand Creek Planning grant. Previous ecosystem restoration projects implemented in the lower Marsh Creek watershed, which will serve as examples for future ecosystem restoration projects developed as part of this Program, have all considered sites and implemented projects on existing public lands including city parks and Weed Abatement Areas. Before implementation of any ecosystem restoration project, cities and public agencies will require permits and approvals to avoid or reduce conflicts with existing uses or those uses described or depicted in city and county general plans. The "Potential Permits and Approvals from Public Agencies" section of the IS/MND on pages 27-31 (Final_ISMND) lists all potential permits and approvals from public agencies, including the local cities and the Contra Costa County Flood Control and Water Conservation District, who owns the Marsh, Sand and Deer Creek stream corridors in the Program Area. The Program and the previous reports upon which it is founded have been developed explicitly in collaboration with the City of Brentwood, City of Oakley, Contra Costa County, and the East County HCP/NCCP. The entities drive land-use decision making and the Program does not supersede any local agencies land-use discretion and decision- making. The cities of Brentwood and Oakley have several plans and policies that mention restoration and protection of Marsh Creek. Brentwood, in particular, has specific policies referring to restoration and protection of Marsh Creek. The City of Brentwood adopted a new General Plan in 2014 (<http://brentwood.generalplan.org>) The General Plan identifies the community's vision for the future and provides a framework

that will guide decisions on growth, development, and conservation of open space and resources in a manner that is consistent with the quality of life desired by the city's residents and businesses. The General Plan's Conservation and Open Space (COS) element contains several goals, policies and actions emphasizing the restoration of Marsh Creek: • Goal COS 4: Protect and enhance water resources in local creeks, riparian habitat, wetlands, the Marsh Creek Watershed, and aquatic habitat • Policy COS 4-3: Where feasible, restore existing channelized waterways to a more natural condition. Restoration efforts should provide for naturalized hydraulic functioning. Restoration should also promote the growth of riparian vegetation to effectively stabilize banks, screen pollutants from runoff entering the channel, enhance fisheries, and provide other opportunities for natural habitat restoration. • Policy COS 4-6: Where feasible, new development adjacent to creeks and streams should include opportunities for beneficial uses, such as flood control, ecological restoration, public access trails, and walkways. • Action COS 4f: Explore revising Title 17 (Zoning) of the Brentwood Municipal Code to include standards for creek setbacks and the protection of riparian habitat along creek corridors. The standards should include minimum setback requirements, site design standards, and requirements for the ongoing maintenance of creek and riparian habitat on public and private lands. • Action COS 4g: Update the Creek Trails and Revegetation Master Plan (1991). Solicit public input during the preparation of the update, and include outreach efforts to community organizations with knowledge of and interest in key issues associated with local creeks, trails, and habitat restoration. One of the goals of the Program is to "improve public recreational opportunities" (page 1, Final_IS/MND, attached) and one of the primary objectives of the Program is to "Enhance local recreational experiences along existing and future creek trails by creating shaded woodland areas throughout the trail system" (page 2, Final_IS/MND, attached). The attached IS/MND states on page 8 that "The overarching purpose of the Program is to help implement a 21st century vision of flood management that focuses on working collaboratively with landowners on creekside parcels to widen the existing corridors to provide the community with both high levels of flood protection, restored aquatic and riparian habitats, and improved recreational experiences." As stated in the "Recreational Conditions" section on page 12 of the attached IS/MND (Final_ISMND), "the Marsh Creek corridor is an integral part of both local and regional trail systems. The EBRPD owns and maintains the Marsh Creek Regional Trail, which follows the mainstem of Marsh Creek approximately 6.5 miles from Big Break in Oakley to Concord Avenue in Brentwood. EBRPD has proposed an expansion of the trail that would link it to the future Marsh Creek State Park, providing a link by Briones Creek to the proposed Deer Creek State Park, and to Round Valley Regional Preserve upstream of the Marsh Creek Reservoir. Connecting the Marsh Creek Regional Trail to Round Valley provides further connections to Los Vaqueros Watershed, Morgan Territory, and Mount Diablo State Park. The current Marsh Creek Trail also links to the Mokelumne Coast to Crest Trail at Sunset Road in Brentwood, the Big Break Regional Trail along the Delta to the north, and the Delta De Anza Regional Trail near Cypress Road in Oakley. In addition to these regional trail linkages, the Marsh Creek Regional Trail links a number of small community parks or pocket parks in Brentwood and Oakley. In its current condition, the existing trail is heavily used and run along the creek segment for much of its

length. Unfortunately, the trail lacks shade, greatly impeding it's utility and safety for users during the warmer months. The existing recreational experience could be greatly improved with riparian woodlands providing both shade for recreational users and habitat for a wealth of bird species. While Sand Creek currently supports a small recreational trail that extends from Fairview Avenue to Minnesota Avenue and Deer Creek has a trail from Fairview Avenue to San Jose Avenue, neither of these trails currently have a formal connection to the larger Marsh Creek Trail. This condition is expected to change soon. In February of 2019, the City of Brentwood adopted an Updated Parks, Trails and Recreation Master Plan that includes a detailed and updated Trail Map. This map specifically identifies existing and future planned segments of the Sand Creek and Deer Creek Trails within the City Limits and creating connections to the Marsh Creek Trail." [Final_ISMND.pdf](#)

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 is not applicable because this program does not involve discretionary State investments for levees for levee failure. It also does not involve developing emergency response and recovery to flooding other than providing flood accommodation along a regulated floodway. Nothing in this Program will negatively effect State investments in Delta Levees and Delta Risk Reduction. The Program, if implemented, should reduce risk reduction from flooding in areas of Brentwood and Oakley.

[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 is not applicable because the covered action 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?

N/A

Answer Justification:

This is not applicable because this policy covers a proposed action that would encroach in a floodway that is not either a designated floodway or regulated stream. Marsh Creek is a designated floodway zone on the FEMA portal (<https://msc.fema.gov/portal/home>) and on page 82, the IS/MND states "FEMA online floodmaps reviewed in August of 2018 illustrate that the entire Program Area is within a Regulatory Floodway designated as Zone AE, an area subject to inundation with a 1.0 percent annual-chance of flood (FEMA 2018)." Nothing in this Program will negatively effect floodways. The Program, if implemented, should reduce risk from flooding in areas of Brentwood and Oakley and increase cross sectional area of existing floodways.

[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:

This is not applicable because 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.

11/29/2019