

Brannan-Andrus Levee Maintenance District

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DELTA STEWARDSHIP COUNCIL DELTA PLAN CONSISTENCY - SACRAMENTO RIVER EROSION CONTROL AND HABITAT ENHANCEMENT PROJECT

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The Brannan-Andrus Levee Maintenance District (BALMD) submits the following documentation to demonstrate consistency with the Delta Plan of 2013. BALMD examined the Delta Plan policies pertaining to consistency certification and believe this submittal and the supporting documents provided, will satisfy the Delta Plan requirements for a certification of consistency for the Sacramento River Erosion Control and Habitat Enhancement Project (Project).

BALMD acknowledges the following:

1. The proposed work meets the definition of a project under the California Environmental Quality Act (CEQA) Public Resources Code section 21065.
2. The Project will occur within the Delta legal boundary in the Primary Zone.
3. The Project has been made possible through a State grant by the Department of Water Resources and will be carried out by BALMD, a local public agency.

BALMD understands the intent of the Delta Reform Act of 2009 and establishment of the self-certification process for demonstrating consistency with the Delta Plan. Furthermore, BALMD believes that the proposed Project does not have any significant adverse impacts on the co-equal goals and meets the definition of a covered action (Water Code section 85057.5(a) pursuant to Section 21065 of the Public Resources Code).

BALMD consultants engaged in communications with DSC staff and participated in an early consultation meeting to discuss the consistency certification in more detail. This submittal has been prepared following guidance provided to BALMD by DSC staff.

PROJECT DESCRIPTION

BALMD is proposing the Sacramento River Erosion Control/Habitat Enhancement Project to resolve erosion issues on the left bank of the Sacramento River, on Brannan Island, at approximate River Miles (RM) 14.60 to 15.18, 16.36 to 17.00 and 17.13 to 17.34 (Figure 1). Once completed, the project would provide: suitable levee erosion control on approximately 1.2

nautical miles (NM) of levee; fish-friendly habitat through the creation of wetland and riparian benches on the Sacramento River channel margin; and minimize long-term maintenance and repair costs by repairing existing areas of erosion using stable and effective erosion control methodologies.

MEETING CEQA

BALMD prepared an Initial Study and Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program (Attached) for the project in accordance with the California Environmental Quality Act (CEQA) Guidelines. Based on the Initial Study, it has been determined that the proposed project would not have any significant adverse effects on the physical environment after implementation of mitigation measures. This conclusion is supported by the following findings:

- The Project would have no impacts on agriculture and forestry resources; land use and planning; mineral resources; and population and housing.
- The Project would have less-than-significant impacts on aesthetics; energy; greenhouse gas emissions; hazards and hazardous materials; hydrology and water quality; public services; recreation; transportation; utilities and service systems; and wildfire.
- Proposed mitigation measures would avoid or reduce to less-than-significant levels the Project's otherwise potentially significant impacts on air quality; biological resources; cultural resources; geology and soils; noise; and tribal cultural resources.
- The proposed Project, as mitigated, would not make a cumulatively considerable incremental contribution to any significant cumulative impact.

PERMITS

BALMD has applied for all necessary federal and State permits including.

- River and Harbors Act Section 10/408– U.S. Army Corps of Engineers
- Clean Water Act Section 401 Water Quality Certification - State Water Resources Control Board
- Notification of Lake or Streambed Alteration – California Department of Fish and Wildlife
- State Lands Commission Lease

Figure 1 Project Location and Area



DELTA PLAN POLICIES

The following paragraphs examine various policies related to the consistency certification identified in the DSC IS/MND comment letter received on November 16, 2020.

DELTA PLAN CHAPTER 3

WR Policy 1: Reduce Reliance on the Delta through Improved Regional Water Self-Reliance

WR P1 / Cal. Code Regs., tit 23, §5003: This policy provides that water shall not be exported from, transferred through, or used in the Delta if: one or more water suppliers that would receive water as a result of the export, transfer or use have failed to adequately contribute to reduced reliance on the Delta and improved regional self-reliance consistent with all of the requirements in section 5003©(1); that failure has significantly caused the need for the export, transfer, or use; and the export, transfer, or use would have a significant adverse environmental impact in the Delta.

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

WR Policy 2: Transparency in Water Contracting

WR P2 / Cal. Code Regs., tit 23, §5004: This policy provides that the contracting process for water from the State Water Project (SWP) and/or the Central Valley Project (CVP) must be done in a publicly transparent manner consistent with applicable policies of the Department of water resources and the Bureau of reclamation.

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

DELTA PLAN CHAPTER 4

ER Policy 1: Delta Flow Objectives

ER P1 / Cal. Code Regs., tit 23, §5005: This policy provides that the State Water Resources Control Board's Bay Delta Water Quality Control Plan Flow objectives shall be used to determine consistency With the Delta Plan. If and when the flow objectives are revised by the State Water Resources Control Board, the revised flow objectives shall be used to determine consistency with the Delta Plan.

RESPONSE: The project will not violate the water quality objectives established by the State Water Resources Control Board. BALMD is in the process of obtaining State Water Resources Control Board approval for a Clean Water Act Section 401 Water Quality Certification. BALMD will adhere to the water quality conditions established in the 401-certification, including implementing all measures described in the National Pollutant Discharge Elimination System

(NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities. In addition, BALMD will retain professionals experienced in all elements of the Storm Water Pollution Prevention Plan (SWPPP) monitoring during and after the construction. BALMD understands that dischargers shall ensure that all inspection, maintenance repair and sampling activities at the project location shall be performed or supervised by a Qualified SWPPP Practitioner (QSP). Implementation of erosion control and pollution prevention BMPs would avoid and minimize construction-related erosion and contaminant discharges. In addition to the BMPs, the SWPPP would include BMP inspection and monitoring activities, and identify responsibilities of all parties, contingency measures, agency contacts, and training requirements and documentation for those personnel responsible for installation, inspection, maintenance, and repair of BMPs.

ER Policy 2: Restore Habitats at Appropriate Elevations

ER P2 / Cal. Code Regs., tit. 23, §5006: This policy provides that habitat restoration must be carried out consistent with Appendix 3, which is Section II of the Draft Conservation Strategy For Restoration of the Sacramento San Joaquin Delta Ecological Management Zone and the Sacramento And San Joaquin Valley Regions (Department of Fish and Wildlife 2011). The elevation map as attached as Appendix 4 should be used as a guide for determining appropriate habitat restoration actions based on an area's elevation if a proposed habitat restoration action is not consistent with appendix for the proposal shall provide rationale for the deviation based on best available science. See the policy for the specific language in appendix three and four which are referenced in this policy.

RESPONSE: Per the California Water Code §12300 et seq., the California Department of Fish and Wildlife (CDFW) is the authority on no net loss of habitat and net gain of habitat. CDFW is a project sponsor and oversaw the progress and development of this element of the project. A principal guiding document was CDFW's level planting zones guidance¹, which was used in the development of a Planting and Monitoring Plan for the project (and will be provided to the DSC). The plan describes the physical characteristic of the proposed sites; describes a planting plan with a suitable species palette; and addresses maintenance and monitoring of the habitat features for at least 3 years after completion. The habitat when established will be a source of organic matter inputs through leaf litter, which would provide nutrient inputs for invertebrates and other small organisms that in turn serve as food sources for higher order organisms in the food web. In addition, fallen waterside vegetation can provide large woody material that act as habitat and cover for fish and other aquatic organisms. The enhanced habitat is also expected to create additional rearing habitat as well as provide hydraulic and predation refuge for migrating salmonids. The proposed enhancements may also provide additional spawning habitat for Delta smelt; as well as spawning, cover, and forage habitat for other delta fish species including the longfin smelt, green sturgeon, white sturgeon, pacific lamprey, and river lamprey.

¹ CDFW and DWR (California Dept of Fish and Wildlife and Department of Water Resources). 2020. Delta Levees Planting Zones. CDFW, Stockton, California

ER Policy 3: Protect Opportunities to Restore Habitat

ER P3 / Cal. Code Regs., tit. 23 §5007: This policy covers all Proposed Actions in the priority habitat restoration areas depicted in Appendix 5. It does not cover actions outside those areas.

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

ER Policy 4: Expand Floodplains and Riparian Habitats in Levee Projects

ER P4 / Cal. Code Regs., tit. 23, §5008: requires levee projects to evaluate and, where feasible incorporate alternatives, including the use of setback levees to increase floodplains and riparian habitats.

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

ER Policy 5: Avoid Introductions of and Habitat for Invasive Nonnative Species

ER P5 / Cal. Code Regs., tit. 23, §5009: This policy covers all Proposed Actions that have the reasonable probability of introducing or improving habitat conditions for nonnative invasive species.

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

DELTA PLAN CHAPTER 5

DP Policy 1: Locate New Urban Development Wisely

DP P1 / Cal. Code Regs., tit. 23, §5010: This policy covers all Proposed Actions that involve new residential, commercial, and industrial development that is not located within the areas described in Appendix 6 and Appendix 7. In addition, this policy covers any such action on Bethel Island that is inconsistent with the Contra Costa County general plan effective as of the date of the Delta Plan's adoption. This policy does not cover commercial recreational visitor-serving uses or facilities for processing of local crops or that provide essential services to local farms, which are otherwise consistent with this chapter.

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

DP Policy 2: Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats

DP P2 / Cal. Code Regs., tit. 23, §5011) reflects one of the Delta Plan's charges to protect the Delta as an evolving place by requiring that the siting of water management facilities, ecosystem restoration, and flood management infrastructure to avoid or reduce conflicts with existing or planned future land uses, described or depicted in city and county general plans for their jurisdictions or spheres of influence, when feasible, considering comments from local agencies and the Delta Protection Commission.

RESPONSE: The BALMD has a cooperative relationship with the adjacent agricultural landowners and is coordinating improvements to private structures in the project footprint including an existing dock structure and pump intake facility, thus improving existing uses, or those uses described or depicted in city and county general plans for their jurisdictions or spheres of influence.

DELTA PLAN CHAPTER 7

RR Policy 1: Prioritization of State Investments in Delta Levees and Risk Reduction

RR P1 / Cal. Code Regs., tit. 23, §5012: This policy covers all Proposed Actions that involve discretionary State investments in Delta flood risk management, including levee operations, maintenance, and improvements.

RESPONSE: The proposed project falls under all three categories of benefit for priorities for state investment in Delta integrated flood management (i.e. Localized Flood Protection, Levee Network Ecosystem Conservation) in the priority table and achieves the following:

- It protects small communities (City of Isleton and Walnut Grove) and critical infrastructure of statewide importance (State Hwy 160).
- It protects water quality and water supply in the Delta by maintaining the functionality of the water supply corridor.
- It protects flood water conveyance by fortifying the levee system along the Sacramento River, which is consistent with the State Plan of Flood Control for project levees.

- The proposed project design protects existing, and provides for net enhancement of floodplain habitat and wetlands.
 - The project protects agriculture and local working landscapes through ensuring there are no future levee failures.
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RR Policy 2: Require Flood Protection for Residential Development in Rural Areas

RR P2 / Cal. Code Regs., tit. 23, §5013: This policy provides that new residential development of five or more parcels Shelby protected through flood proofing to a level 12 inches above the 100-year base flood elevation, plus sufficient additional elevation to protect against a 55 inch rise in sea level at the Golden Gate, unless development is located within:

- (1) Areas that city or county general plans, as of the date of the Delta Plan's adoption, designate for development in cities or their spheres of influence;*
- (2) Areas within Contra Costa County's 2006 voter-approved urban limit line, except Bethel Island;*
- (3) Areas within the Mountain House General Plan Community Boundary in San Joaquin County; or*
- (4) The unincorporated Delta towns of Clarksburg, Courtland, Hood, Locke, Ryde, and Walnut Grove, as shown in Appendix 7.*

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

RR Policy 3: Protect Floodways

RR P3 / Cal. Code Regs., tit. 23, §5014: This policy provides that no encroachment shall be allowed or constructed in a floodway, unless it can be demonstrated by appropriate analysis that the encroachment will not unduly impede the free flow of water in the floodway or jeopardize public safety.

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

RR Policy 4: Floodplain Protection

RR P4 / Cal. Code Regs., tit. 23, §5015: this policy provides that no encroachment shall be allowed or constructed in any of the following floodplains unless it can be demonstrated by appropriate analysis that the encroachment will not have a significant adverse impact on floodplain values and functions:

- 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 McCormick Williamson or as modified in the future by the Department of water resources or the US army core of engineers (Department of Water Resources 2010a); 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 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.*

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

General Policy 1: Coequal Goals

G P1(b)(1) / Cal. Code Regs., tit. 23, § 5002 specifies what must be addressed in a Certification of Consistency by a project proponent of a project that is a covered action. The following is a subset of policy requirements which a project shall fulfill to be considered as consistent with the Delta Plan:

RESPONSE: N/A. The proposed project – a multi benefit flood system improvement project is not inconsistent with the co-equal goals of the Delta Plan.

G P1(b)(2) / Cal. Code Regs., tit. 23, § 5002(b)(2) requires covered actions not exempt from the CEQA must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 26, 2018 (unless the measures 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 finds are equally or more effective.

RESPONSE: The proposed action was subject to the California Environmental Quality Act (CEQA) review as described in the Final IS/MND adopted for the project. Avoidance and Minimization Measures (AMM's) along with Mitigation Measures (MM's) were identified and adopted as part of the project. Mitigation measures required for each project impact are consistent with and at least as effective as relevant mitigation measures included in the Mitigation, Monitoring, and Reporting Program (MMRP) for the Delta Plan (Delta Stewardship Council 2019). Please see mitigation comparison table and final adopted MMRP attached.

G P1(b)(3) / Cal. Code Regs., tit. 23, § 5002(b)(3) states that actions subject to Delta Plan regulations must document use of best available science as relevant to the purpose and nature of the project. The Delta Plan defines best available science as “the best scientific

information and data for informing management and policy decisions.” (Cal. Code Regs., tit. 23, § 5001 (f).) Best available science is also required to be consistent with the guidelines and criteria in Appendix 1A of the Delta Plan.

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

G P1(b)(4) / Cal. Code Regs., tit. 23, § 5002(b)(4) requires that ecosystem restoration covered actions include adequate provisions for continued implementation of adaptive management, appropriate to the scope of the action. This requirement is satisfied through: a) the development of an adaptive management plan that is consistent with the framework described in Appendix 1 B of the Delta Plan

RESPONSE: An ecologist retained by BALMD would conduct inspections of the waterside habitat areas quarterly during the 3-year establishment period. During these inspections, the ecologist would record observations on plant establishment success, including trends and patterns in plant survival and health, new native vegetation recruitment, observable beaver damage, any site erosion problems, and noxious weed infestations that may threaten success of native vegetation establishment. Quarterly field visit observations will be shared with BALMD and CDFW along with the ecologist’s maintenance recommendations.

In the spring or summer of each monitoring year, the monitoring ecologist will collect quantitative monitoring data, as described below, and take photographs from permanently established photo-points for visual documentation of project progress. Riparian Forest, Scrub-Shrub, SRA Habitat. Surviving riparian forest and scrub-shrub plants will be counted each monitoring year to assess woody plant density within the riparian bench and on the vegetated slope. Wetland/freshwater tidal marsh bench vegetative cover. Freshwater marsh vegetation cover will be assessed by BALMD’s consulting ecologist by collecting plant cover data within 1-m² quadrats placed every 100-200 feet along the wetland/freshwater tidal marsh bench each monitoring year. If wetland/tidal marsh vegetation (e.g., tules and cattails) becomes too tall or dense to access and assess via quadrats, ocular estimates of tidal marsh cover will be made every 100-200 feet as viewed from the riparian bench or vegetated slope above.

At the end of the three-year establishment, riparian forest and scrub-shrub plant habitat will be considered successful if a 60 percent survival rate is achieved. Similarly, the freshwater tidal marsh habitat zone will be considered successful if native vegetative cover exceeds 60 percent absolute cover. At the end of the first- and second-year following planting, BALMD would provide an email summary of monitoring observations, quantitative monitoring results, representative site photographs, and maintenance and/or remedial/adaptive management actions (including replanting or additional weed management) taken and proposed, to DWR and CDFW. At the end of the 3-year establishment period, a letter report would be submitted to CDFW and DWR, which would include a description of site conditions, qualitative assessment of vegetation composition and health, quantitative monitoring data by monitoring year, annual site progress photographs. The report would also summarize any applicable “lessons learned” from the Sacramento River Erosion Control and Habitat Enhancement Project. Please see attached ‘Mitigation and Habitat Enhancement Planting and Monitoring Plan’. Funding for maintaining and monitoring the habitats through establishment will be provided through assessments collected by BALMD and also reimbursements provided through DWR’s levee subventions program.