

# **Delta Levee Special Flood Control Projects**

**Draft  
Near-Term Guidelines  
For  
Providing Funding to Local Public Agencies**

**Department of Water Resources  
Delta Suisun Marsh Office  
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## I. INTRODUCTION

The Delta Levee Special Flood Control Projects Program (the “Program” or “Special Projects”) was established in 1988 by Senate Bill 34. It continues to operate under subsequent legislation that extended and provided funding for the program. Originally, the Program was authorized to address flooding on the eight Western Delta Islands and in the towns of Thornton and Walnut Grove. In 1996, Assembly Bill 360 expanded the Program to include the entire Delta and to portions of Suisun Marsh (approximately 12 miles of levees on islands bordering the Northern Suisun Bay from Van Sickle Island westerly to Montezuma Slough) as outlined in Section 12311 of the California Water Code. Today, any Local Agency with a Project or Non-Project levee in the Primary Zone of the Delta or a Non-Project levee in the Secondary Zone of the Delta is eligible to apply for the Special Projects Program.

The State has invested over \$200 million in flood control and Habitat Projects carried out by Local Agencies in the Delta. This includes funds that have been provided to Local Agencies through the subventions and Special Projects programs. Department of Water Resources (“Department” or “DWR”) funding has been dedicated to maintaining and improving the aging Delta levees. Under California Water Code Section 12314, the Program must not only mitigate the habitat impacts of each Project it funds, but must also ensure that the Program creates result in a net improvement of habitat in the Delta. With the passage of Proposition 1E and Proposition 84 in November 2006, the amount of money potentially available for levee projects in the Delta has significantly increased.

In January 2009, the Department published the Interim Guidelines for Providing Funding to Local Public Agencies (“Interim Guidelines”) for expenditure of Proposition 1E and 84 funds. Those Guidelines governed work to be initiated before the commencement of winter rains in late 2009.

This document contains the Department’s “Near-Term” Special Projects *Guidelines*. The Near-Term *Guidelines* represent the next phase in the Guidelines process and govern Special Projects expenditure of funds appropriated through Senate Bill 2X1 during budget years 2009-2010 and 2010-2011.<sup>1</sup> After that time, the Department anticipates issuing Long-Term Guidelines which will govern Special Projects funding for the duration of Proposition 1E and 84.

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<sup>1</sup> The Near-Term *Guidelines* only cover funding of competitive proposals the Department solicits from Local Agencies through a Special Projects Solicitation letter. The Department will also directly expend funds for Special Projects in cooperation with Local Agencies. The internal policies the Department will apply to “direct expenditure” Projects are discussed in these Guidelines at section XV. In addition, the Department reserves the right to increase the funding for previously approved Projects with executed Project Funding Agreements by amending the Funding Agreement *after* reassessing those Projects to determine continuing consistency with these *Guidelines* in order to complete those Projects in a timely manner.

Finally, Senate Bill 2X1 authorizes \$100 million of Proposition 1E funds for flood emergency and preparedness, of which \$20 million will be authorized through these guidelines. The remaining \$80 million will be expended by the Flood Operations Center. The Department expects that additional funds will be available through the State budget process for this program in Fiscal Years 2009-2010 and 2010-2011.

These Near-Term Guidelines implement several important DWR priorities, including, but not limited to

- protecting statewide interests through raising most delta levees to HMP;
- protecting life and infrastructure through other levee improvements, such as selectively funding construction of levees that offer advanced (PL 84-99) levels of protection;
- funding studies and research that help to characterize the Delta levees, deepen the Department's understanding levee stability issues, or further the goals of subsidence reversal;
- funding habitat mitigation and enhancement Projects to benefit the Delta ecosystem and statewide interests; and
- funding subsidence reversal work.

The implementing legislation and these priorities reflect a variety of potential Projects. As a result, each application must meet certain common eligibility and other requirements, but will have category-specific (i.e. HMP, PL 84-99, Habitat, etc.) eligibility requirements, ranking systems and cost-share formulae.

Proposals submitted under a generic Special Projects Solicitation Package (SPSP) will, upon submission, be sorted into one of five categories: HMP, PL 84-99, Delta Studies and Research, Delta Aqueduct and Habitat. Proposals that respond to a specific SPSP \*e.g. and SPSP that only solicits Habitat Projects) will not require sorting.

All completed applications will be reviewed, scored and cost-shared according to the requirements common to all Projects and the dictates of the category to which they belong.

The Department will not fund Projects that do not meet the minimum requirements of Water Code Sections 12310 - 12318. Projects funded under these *Guidelines* may include construction, design, study and/or engineering work.

## **II. DEFINITIONS AND ACRONYMS**

**“Alternative State Cost Share:”** Refers to the State cost share determined by the Local Agency's Local Agency Benefits Assessment ('LABA').

**“Applicant:”** Refers to the agency submitting an application under these *Guidelines*. Also referred to as “Local Agency.”

**“Base State Cost Share:”** Is the amount the State will pay in a given cost share arrangement assuming the Local Agency does not qualify for an Alternative Cost Share and has not proposed a Project with any qualifying Enhanced Cost Sharing.

**"Beneficial Reuse:"** Refers to the practice of making beneficial use of dredged materials.

**"CEQA:"** The California Environmental Quality Act.

**"Corps:"** The United States Army Corps of Engineers.

**"Cost Share Recommendation and Report:"** Refers to the recommendation and report regarding cost sharing that the Applicant must include in its Special Projects application.

**"Delta:"** The area of the Sacramento-San Joaquin Delta as defined in Section 12220 of the Water Code. Also referred to as the "Legal Delta."

**"Delta Levee Special Flood Control Projects" or "Special Projects:"** Refers a Project(s) funded under these *Guidelines* -- a Delta Levee Special Flood Control Project, one of the components of the Department's Delta Levees Program codified at Sections 12300 -12318 of Water Code.

**"Delta Primary Zone" or "Primary Zone:"** Is the Delta land and water area of primary State concern and statewide significance situated within the boundaries of the Delta, as described in Section 12220 of the Water Code, but is not within either the urban limit line or sphere of influence line of any local government's general plan or studies existing as of January 1, 1992. The precise boundary lines of the Primary Zone includes the land and water areas as shown on the map titled "Delta Protection Zones" on file with the California State Lands Commission. Where the boundary between the Primary Zone and Secondary Zone is a river, stream, channel, or waterway, the boundary line shall be the middle of that river, stream, channel, or waterway. The Primary Zone consists of approximately 500,000 acres. Cal. Pub. Resources Code Section 29728.

**"Delta Secondary Zone" or "Secondary Zone:"** is the Delta land and water area within the boundaries of the legal Delta not included within the Primary Zone, subject to the land use authority of local government, and that includes the land and water areas as shown on the map referenced above. The Secondary Zone consists of approximately 238,000 acres. Cal. Pub. Resources Code Section 29731

**"Department:"** The Department of Water Resources.

**“Direct Expenditures” or “Directed Activities:”** Project expenditures made by the Department that are not necessarily in response to a competitive proposal from a Local Agency, but rather are made to implement Department priorities.

**"Eligible Projects:"** Refers to Projects eligible for funding under these Guidelines.

**"Eligible Project Costs:"** The reasonable and necessary actual costs associated with an Eligible Project.

**"Eligible Real Estate Capital Outlays:"** Refers to real estate costs that are eligible under these Guidelines. In the Special Projects program, real estate costs are generally the responsibility of the Local Agency. For certain Projects, however, particularly Habitat Enhancement Projects, the Department will fund Eligible Real Estate Capital Outlay Costs. Only reasonable real estate costs for land that has been assessed and deemed suitable for its intended purposes by the Department will be eligible.

**"Enhanced Cost sharing:"** Refers to increased State cost sharing (above the Base State Cost-Share or Alternative State Cost-Share) which an Applicant earns by offering Project aspects that qualify it for a higher cost share under Section XIV, below.

**"Financial Plan:"** Refers to the plan required by these *Guidelines* that describes, in detail, how the Applicant will fund design, construction, and maintenance of the proposed Project.

**"Five-Year Plan" or "Plan:"** The Five-Year Plan is a document that describes, in detail, an Applicant's integrated work plan to repair and improve flood protection infrastructure for the next five to ten years in the geographic area controlled by the Applicant.

**"Funding Agreement" or "Agreement:"** An Agreement entered into by a successful Applicant and the State to provide funds for the Project.

**"Habitat Projects:"** Refers to a Project under these *Guidelines* that supports net habitat improvement or habitat banking. This category includes planning and on-going management where appropriate.

**“HMP Design Standards:”** See Attachment C.

**"Local Agency:"** Means a reclamation district or levee district or other public agency responsible for the maintenance of a Non-Project levee as defined in Water Code Section 12980(e) or a Project Levee as defined in Water Code Section 12980(f).

**“Local Agency Benefits Assessment (LABA):”** Is the benefits assessment a Local Agency may perform or have performed to derive an Alternative State Cost Share based on the benefits the proposed Project will provide to the Local Agency, separate from the benefits that the Project offers statewide or to other nearby beneficiaries.

**“Local Agency Emergency Response Plan:”** Refers to an Emergency Response Plan developed by or for Applicant for emergency response in a particular Reclamation District or area.

**“Non-Construction Costs:”** Costs associated with engineering, design, permitting, environmental compliance, Eligible Real Estate Capital Outlays and other aspects of the Project that do not include actual construction.

**"Non-Eligible Projects:"** Projects not eligible for funding under the Special Projects Program.

**"Non-Project Levee:"** Means a local Delta levee that is not a project facility under the State Water Resources Law of 1945, as shown on page 38 of the Department of Water Resources "Sacramento-San Joaquin Delta Atlas," dated 1993. Section 12980(e) of Water Code.

**“No Regrets Projects:”** Are Projects that meet the No Regrets requirements outlined in these Guidelines. Generally, these are Projects that the Department sees an imperative to build even if they are built out of sequence or before all long-term planning has concluded. These Projects will not create Stranded Investments.

**"OMRR&R:"** Operation, maintenance, repair, replacement, and rehabilitation.

**“PL 84-99 Design Standards:”** See Attachment C.

**"Project:"** Means a proposal for work to be cost-shared by the State under these *Guidelines*.

**"Project Description:"** Is the document each Applicant must include with their application that describes the proposed Project in detail. The Project Description must offer as much detail and documentation about the Project as possible, as the eligibility criteria, selection criteria, and cost-share formulae established in these *Guidelines* require significant specific information to be properly implemented.

**"Project Levee:"** Is a federal flood control levee, as shown on page 40 of the Department of Water Resources "Sacramento-San Joaquin Delta Atlas," dated 1993, that is a project facility under the State Water Resources law of 1945 (Chapter 1 (commencing with Section 12570) and Chapter 2 (commencing with Section 12639 of Part 6)).

**"Scope of Work:"** After a Project is selected and before a Project Funding Agreement is signed, the Applicant must develop a Scope of Work that provides detailed plans and information about how the Project will be implemented.

**"Setback Levee:"** A new levee constructed behind an existing levee which allows for removal of a portion of the existing levee and creation of additional floodplain connected

to the stream. In the Delta, a Setback Levee may not necessarily result in removal of the existing levee.

**"Special Projects Solicitation Package:"** Refers to the solicitation package the Department will issue to inform Local Agencies that the Department is accepting Special Projects applications. This package also offers Applicants specific information about deadlines and more information regarding how to apply for Special Project funding.

**"State:"** The State of California, acting by and through the Department of Water Resources.

**"Stranded Investments:"** Are funds committed to Projects that do not eventually contribute to the overall flood protection system or, at very least, provide lasting benefits that are greater than the Project cost.

### III. "NO-REGRETS" PROJECTS

The Department is developing a long-term levee policy in the Delta that will be adapted as the Delta Risk Management Strategy (DRMS) and a number of other planning processes are finalized, including, but not limited to the Delta Vision Strategic Plan, the Bay Delta Conservation Plan, the CALFED Ecosystem Restoration Program strategic plan, the Central Valley Flood Protection Plan, and the Strategic Plan of the State Water Resources Control Board.

Like the 2009 Interim Special Projects Guidelines, the Department issues these Near - Term *Guidelines* to continue critical flood protection work in the Delta while Delta-wide planning progresses. As a result these *Guidelines* require all Projects to be "No-Regrets," meaning all work funded under these *Guidelines* must be a strategic action that can be taken immediately to take advantage of Senate Bill 2X1 funding or any other Special Projects funding available during the Near-Term period. These actions must not conflict with the current knowledge within the plans (and draft plans) referenced above and will not foreclose future habitat restoration opportunities. Such Projects must not be likely to lead to Stranded Investments.

No-Regrets Projects include levee and habitat works that:

- Are clearly legislatively authorized; and
- Protect assets of statewide importance; and
- Ensure no net loss of habitat and are consistent with a net long-term habitat enhancement program; and

In addition to these three required components, No Regrets Projects must include one of the following characteristics:

- Repair or improve critical sections of levees; or;

- Improve the levee up to HMP or the Delta specific PL 84-99 standard as provided for in these *Guidelines*; or
- Support needed urgent repairs to prevent levee breach or failure; or
- Study or research critical to Delta flood protection issues; or
- Meet the Special Projects Program's habitat enhancement priorities.

In addition, if a Local Agency has any interaction with ongoing flood protection programs it must consider that relationship and detail how it is coordinating this Project with those programs.

#### **IV. AVAILABLE FUNDING**

Senate Bill 2X1 authorized DWR to spend \$100 million of Proposition 84 funds for levee works with a priority on Delta smelt and other native fish. It also provides DWR with \$35 million in Proposition 1E funds for levee works to protect aqueducts crossing the Delta. Finally, \$20 million of the \$100 million of Proposition 1E funds dedicated to emergency response and preparedness are authorized by Senate Bill 2X1 to be allocated to the Delta Levees Special Projects to be spent on emergency repairs. The remaining \$80 million will be allocated to the Flood Operations Center for emergency response. The Department expects that additional funds be available through the State budget process for this program in Fiscal Year 2009-2010 and 2010-2011. Senate Bill 2X1 funded Projects are subject to the approval of the Secretary of the Natural Resources Agency.

#### **V. ELIGIBLE PROJECTS**

Eligible Projects include levee evaluation, repair and/or improvement and habitat enhancement. Acceptable work is not limited to construction but includes engineering, studies, research and design. Under these *Guidelines*, Eligible Projects must meet the "No Regrets" requirements discussed in Section III, the eligibility requirements, and any additional category-specific requirements discussed in Section XIII.

Eligible Projects include, but are not limited to:

- Field Investigations, including electromagnetic survey, geodetic survey, or other testing research needed to formulate the Scope of Work;
- Habitat Projects, including restoration and protection that meets program mandates to ensure no net loss of habitat and net habitat enhancement. This includes planning, management, and monitoring.
- Setback Levees, to reduce flood risk for the Local Agency;
- Levee Improvement, to reduce flood risk for the Local Agency;

- Levee Repair, as needed to improve the levee integrity and provide additional flood risk reduction benefits to the Local Agency;
- Emergency Response Planning and Preparedness, planning efforts and flood preparation efforts (such as stockpiling flood fight materials) to support ongoing FloodSAFE Program actions to improve emergency response. Such work should be consistent with the Department's developing Delta Specific Flood Emergency Operation Plan that is currently under development.
- Engineering Analysis and Design work, needed to pursue a Project;
- Environmental Permitting and Planning work. This work includes preparing CEQA or NEPA documents, obtaining other environmental permits (e.g., USACE, FWS, or DFG permits), preparing and filing environmental documents related to a specific project or developing programmatic documents for future projects;
- Planning Studies, to better understand the future flood control needs of the Local Agency;
- Scientific Studies and Research, to assist the Department and Local Agency to better understand Delta characteristics such as subsidence or ecosystem restoration related to improvement of levees to HMP or PL 84-99 standards;
- Beneficial Reuse Projects, to assist federal, State, and Local Agencies to promote the Beneficial Reuse of clean dredged materials for levee rehabilitation and habitat enhancement projects as appropriate, related to improvement of levees to HMP or PL 84-99 standards;
- Water Projects, to protect water supply and quality, to the extent that such Projects are a component of a larger Project intended to raise a levee to HMP or PL 84-99 standards or protect Delta aqueducts; and
- Development of a Five-Year Plan, for rehabilitation, repair or improvement of a Local Agency's facilities to a desired level of protection.

## **VI. INELIGIBLE PROJECTS**

Ineligible Projects include projects which do not meet eligibility requirements and those directly related to work on agricultural, water supply and waste disposal facilities. Such Projects generally do not meet the primary purpose of the Special Projects and the intent of California Water Code Section 12311: "the [flood] protection of discrete and identifiable public benefits, including the protection of public highways and roads, utility lines and conduits, and other public facilities, and the protection of urbanized areas, water quality, recreation, navigation, and fish and wildlife habitats, and other public benefits."

Under these *Guidelines* Ineligible Projects might also include Projects that do not meet the "No Regret" requirements, but might otherwise be eligible. To the extent a Project appears ineligible but actually may meet the intent of Water Code Section 12311, the Department retains discretion to approve the Project. Examples of Projects that are not eligible include, but are not limited to:

- Drainage projects when the scope of the proposed Project is the responsibility of the Local Agency as part of its routine maintenance work;
- Irrigation projects;
- Projects that support agricultural operations, such as repair of pumping stations, or routine maintenance activities, such as maintaining drainage ditches that are the responsibility of the Local Agency;
- Water supply projects to develop or repair facilities for the purpose of water delivery within the jurisdiction of the Local Agency (Projects increasing protection of water supply facilities are eligible);
- Projects that do not meet the "No Regrets" requirements discussed above; and
- Waste disposal projects to develop or repair conveyance facilities for the purpose of waste disposal within the jurisdiction of the Local Agency.

## **VII. ELIGIBLE COSTS**

Eligible Project Costs are the reasonable and necessary actual costs associated with an Eligible Project incurred after November 7, 2006 (date of passage of Propositions 84 and 1E). Reimbursement will not be provided for Eligible Project Costs incurred before a Project Funding Agreement is executed, except in extraordinary circumstances when the Local Agency has obtained written authorization from the Department prior to incurring the cost. Credit may normally be provided for Eligible Project Costs incurred prior to execution of a Funding Agreement with written approval from the Department prior to incurring the cost. Eligible Project Costs may include, but are not limited to, the following:

- Project engineering, design, and construction costs;<sup>2</sup>
- Costs of planning and implementing (including operations and monitoring during the planting period) habitat mitigation and enhancement associated with the project

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<sup>2</sup> For construction Projects, the State will only pay its State share of Non-Construction Costs up to 30% of the total Project cost.

- Costs of obtaining environmental permits and associated environmental mitigation costs including the costs of preparing CEQA and NEPA documents (if applicable) that are directly related to and necessary for the proposed Project;
- Costs of obtaining necessary federal or state governmental approvals;
- Reasonable legal fees associated with incurring Eligible Project Costs, such as those listed above;
- A proportionate share of reasonable overhead costs;
- Cost of conducting a Project Review, if required by the Department; and
- Eligible Real Estate Capital Outlays. Special Projects real estate costs are generally the responsibility of the Local Agency. For some Projects, such as Habitat and Setback Levee projects, the Department may fund a portion of real estate costs. Only the fair market value of real estate costs for land that has been appraised and deemed suitable for its intended purposes by the Department will be considered Eligible Costs.

### **VIII. INELIGIBLE COSTS**

Costs that are not eligible may include, but are not limited to, the following:

- Operation, maintenance, repair, replacement, and rehabilitation costs of the completed levee works, including the cost to maintain the HMP level of protection once it has been achieved through a Project funded under the Special Projects program;
- Purchase of equipment that is not an integral part of the Project;
- Replacement of existing funding sources for ongoing projects;
- Support of existing Local Agency requirements and mandates;
- Purchase of land in excess of the minimum required acreage or at a price in excess of its market value, unless the Local Agency provides evidence demonstrating the cost effectiveness of the transaction. The Project Funding Agreement will detail the terms and conditions of such an exception. For purposes of Special Projects, the minimum required acreage is determined by the amount of acreage an agency purchases to acquire the land it actually needs. For example, if an agency needs a 1 acre piece of land inside a 5 acre parcel and the landowner is only willing to sell the 5 acres as a whole, the minimum required acreage is the 5 acres, not the 1 necessary acre;

- Costs that the State does not authorize as part of final accounting; i.e. works not related to flood protection and/or habitat.
- Costs incurred as part of any and all necessary response and cleanup activities required under CERCLA, RCRA, Hazardous Substances Control Act or other applicable law; and
- Costs, including engineering and environmental expenses, associated with preliminary studies that are not directly related to the proposed Project, unless approved in writing by the Department prior to incurring the cost.

## IX. FIVE-YEAR PLANS

Under these *Guidelines*, Local Agencies in the Delta continue to have the opportunity to develop a Five-Year Plan. The Five-Year Plan assesses the current conditions of a Local Agency's levees and sets out a strategy for rehabilitation, repair and/or improvement of its facilities to meet a desired level of protection.

**All Applicants for construction-oriented Special Projects will eventually be required to provide, with their application, a complete Five-Year Plan. For this reason the Department strongly urges all Local Agencies that have not completed a Five-Year Plan to request funding for, and complete such a Plan before applying for other Special Projects.**

The State will fund 100% of the first \$50,000 spent on the preparation of Five-Year Plan, 75% of any costs between \$50,000 and \$100,000 and will not share any costs related to the Five-Year Plan beyond \$100,000. The Five-Year Plan must provide an assessment of the district's existing levee system and a strategic plan to meet a desired level of protection. These plans must identify risks to island assets, assets of statewide importance and provide a long-term funding strategy. Plans must also describe how habitat impacts from proposed levee work will be avoided or mitigated, what enhancement activities are planned, and how the planned projects will address CEQA and other permitting requirements. The final plan should be approved by DWR. An outline of what is required in the Five-Year Plan is attached as Exhibit A.

## X. APPLICATION PROCESS

The Department anticipates that it will issue multiple Special Projects Solicitation Packages (SPSP) under the Near-Term *Guidelines*.

SPSPs will be sent out to all Local Agencies that qualify for Special Project Funding. These SPSPs will also be posted on the Special Projects website. They will describe all application requirements (as more fully set forth in these *Guidelines*) and will establish the application and selection timeline.

Again, **Five-Year Plans will eventually be required of all Applicants** seeking funding for construction-oriented Special Projects. As a result, any Local Agency that has not

yet completed a Five-Year Plan should apply to complete a Plan in response to the Department's first SPSP.

## **XI. REQUIRED APPLICATION MATERIALS:**

Applications must include the following when submitting a Project proposal:<sup>3</sup>

- An application cover sheet that provides an overview of the Project;
- A statement identifying the Applicant's representatives;
- A resolution signed by the Local Agency authorizing submission of the application and designating a representative to sign the application, entering into a contract with the State of California, implementing a flood protection program, and providing the local cost share;
- A detailed Project Description; including maps, drawings and a statement explaining the assets the Project will protect and justification for the project. The level of detail provided in the Project Description is at the discretion of the Applicant, but it is in the Applicant's interest to offer as much detail and documentation as possible, as the eligibility and ranking criteria in these Guidelines require a great deal of specific information;
- A statement from a professional civil engineer who has reviewed the Project Description discussing the benefits of the project to flood protection and/or habitat;
- A detailed statement of expected Project costs and detailed Financial Plan;
- A detailed description of the impact the Project has on habitat and the environment, a detailed discussion of the environmental permits required for the Project and a schedule for permit completion;
- A detailed description of how Project will meet the requirements of Water Code Sections 12314, which require no net loss of habitat and net habitat improvement;
- A Cost Share Recommendation and Report detailing the amount of State cost-sharing to which the Local Agency believes it is entitled and A Local Agency Benefits Assessment if the Local Agency intends to request an Alternative Cost-Share;

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<sup>3</sup> Not all of these are required for Five-Year Plan proposals. Applicants with questions about what to provide should consult with the Department. Also, typical FloodSAFE require an economic justification. Projects eligible under these guidelines, however, do not need to provide any economic justification since the California Water Code includes specific mandates for the Delta Special Projects Program.

- A statement of loans from other sources or bonds that are associated with the Financial Plan and a statement of repayment method and loan security for such other financing sources; and
- A checklist of the materials required for a complete application is presented in Section XI.

All participants are subject to State and federal conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, will result in the application being rejected and any subsequent contract being declared void. Other legal action may also be taken. Applicable statutes include, but are not limited to, Government Code, Section 1090, and Public Contract Code, Sections 10410 and 10411, for State conflict of interest requirements.

In addition, the Applicants will be required to keep informed of and take all measures necessary to ensure compliance with applicable California Labor Code requirements, including but not limited to Section 1720 *et seq.* of the California Labor Code regarding public works, limitations on use of volunteer labor (California Labor Code Section 1720.4), labor compliance programs (California Labor Code Section 1771.5) and payment of prevailing wages for work done under a Funding Agreement.

For Projects that receive funding pursuant to the provisions of Prop. 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, Cal. Pub. Res. Code § 75076 *et seq.*, the Local Agency will be required to maintain a labor compliance program that meets the requirements of California Labor Code Section 1771.5. Written evidence of the Labor Compliance Program will need to be submitted to the State before the project is funded.

## **XII. SUBMITTAL DEADLINE**

Project Proposals that do not meet the deadline established in the Special Projects Solicitation Package will not be reviewed. The Department will review all timely submittals for completeness after proposals are submitted. Proposals that are not substantially complete will not be further reviewed. The Department may contact Proponents of proposals that are substantially complete but missing some items. If a Local Agency is contacted by the Department with a request for more materials, it will have one week to provide all requested information.

## **XIII. PROJECT ELIGIBILITY CRITERIA**

Under these *Guidelines*, applications will be solicited for work that improves Delta levees to HMP or Delta specific PL 84-99 standards, Delta Levee Studies or Research related to improvement of levees to HMP or PL 84-99 standards, work that improves protection of aqueducts that cross the Delta and/or work that provides significant habitat enhancements. Eligible Projects also include stand-alone engineering and design Projects. Review of stand-alone applications for engineering and design, or studies, will assume that the Project is actually built and will measure the strength of the application

based on how it meets the criteria of the category (HMP, PL 84-99 etc.) into which it would fall if it were an actual construction Project.

Applications must meet the Eligibility Criteria and other general requirements described in these *Guidelines*. Where applicable, applications must also meet category-specific Eligibility Criteria.

1. Project must be intended to: (a) research, study, design or construct work that will bring levee system up to HMP or Delta-Specific PL 84-99 standards, (b) conduct Delta Levee Studies or Research related to improvement of levees to HMP or PL 84-99 standards, (c) create, restore, enhance or protect habitat, or (d) complete a Five-Year Plan.
2. Project must not significantly impair the functionality of the levee system.
3. Where and when applicable, Department must approve of the level of protection the Local Agency seeks to achieve through build-out of its Five-Year Plan.
4. Project must take into account the impact of climate change on design and include features that allow accommodation or adaptation to future moderate changes.
5. Project must not induce growth.
6. Project proposal must include a Project Description, Financial Plan and schedule.
7. Application should identify all potential beneficiaries of the proposed Project, including population estimates, infrastructure and other improved property.
8. Projects must meet the requirements of California Water Code Section 12310 *et seq.*

## Chart 1: Project Eligibility Requirements

### HMP Eligibility Requirements:

Specific Requirements	Notes
<p>Project must be consistent with the Local Agency's Five-Year Plan (if a Plan has been completed).</p> <p>Local Agency must provide proof that successful construction of this Project will result in a flood protection facility that meets HMP standards.</p> <p>Local Agency should demonstrate that the proposed HMP Project is consistent with the Department's objective of improving all levees in a district to HMP.</p> <p>A design upgrade (overbuild) may be proposed in a HMP project to add up to 0.5 foot of extra crest elevation. An additional 0.5 foot may be added if the levee crest includes a state or county paved road.</p>	<p>The State's goal is to raise nearly all Delta Levees to HMP for the following reasons.</p> <p>1) HMP is a key first-step improvement to many of the existing Delta levees. Many Local Agencies desire to improve their systems beyond this level, but HMP is an important building block.</p> <p>2) Levees that are HMP rated meet FEMA standards for disaster assistance. Raising levees to HMP may help to ensure the State or Local Agencies can secure federal funds for disaster relief in case of a significant Delta flood event.</p> <p>Local Agencies should, generally, propose to raise all levees to HMP before considering work that raises a portion of the levees in the RD to a higher level of protection. That said, Local Agencies may propose work to increase flood protection beyond HMP, particularly when completing an HMP and PL 84-99 improvement at the same time is more efficient and cost effective.</p>

## Chart 1: Project Eligibility Requirements

### PL 84-99 Eligibility Requirements:

Specific Requirements	Notes
<p>Project must be consistent with Local Agency's DWR-approved Five-Year Plan (if a Plan has been completed).</p> <p>Project must raise the length of levee addressed to the Delta-Specific PL 84-99 criteria (with additional improvements responsive to Bulletin 192-82 non-urban criteria).</p> <p>Local Agency's Financial Plan demonstrates plan to achieve PL 84-99 compliance for the entire protected area by FY 15-16 (assuming needed state funding is available).</p> <p>A design upgrade (overbuild) may be proposed in a PL 84-99 project to add up to 0.5 foot of extra crest elevation. An additional 0.5 foot may be added if the levee crest includes a state or county paved road, for a total of up to 1.0 foot.</p>	<p>The Department is committed to improving most facilities to HMP, but it actually intends to allocate more funds over the course of these <i>Guidelines</i> to Projects seeking to raise their level of protection to the Delta Specific PL-84 99 Standard.</p>

## Chart 1: Project Eligibility Requirements

### Habitat Project requirements:

Specific Requirements	Notes
<p>Project establishes a habitat mitigation area (&gt;50 acres) in advance of habitat impacts that can be used by any eligible Local Agency within the Program. Such a “habitat bank” must be consistent with guidance provided by DWR and DFG.</p> <p>Project helps to carry out large-scale habitat restoration that has programmatic benefits and benefits the larger Delta and Suisun Marsh ecosystems consistent with the net habitat improvement (“enhancement”) mandate.<sup>4</sup></p> <p>Project is a multi-benefit levee and habitat project that includes habitat features that contribute significantly to the extent and quality of habitats that have been impacted by current or past work undertaken through the Delta Levees Program or otherwise supports Delta-wide restoration priorities.</p>	<p>The Department intends to fund Habitat Projects that mitigate the identified habitat impacts of multiple levee Projects <i>and</i> Habitat Projects that meet the larger goal of improving Delta-wide habitat on a programmatic basis.</p>

<sup>4</sup> Such as the Meins Landing and Dutch Slough tidal marsh restoration efforts.

## Chart 1: Project Eligibility Requirements

### Delta Aqueducts Requirements:

Specific Requirements	Notes
Project must be for work to reinforce levees that have the highest potential to suffer breaches or failure and cause harm to municipal and industrial water supply aqueducts that cross the Delta which are vulnerable to flood damage.	Projects that qualify for Delta Aqueduct funding will be ranked against other Delta Aqueduct Projects using a modified version of ranking criteria for HMP or PL 84-99, depending on the level of protection sought in the Project.

## XIV. PROJECT SELECTION CRITERIA

As discussed above, the Special Projects program covers a variety of work. As a result, Projects will be categorized for ranking purposes. This will ensure that applications compete with like applications. Local agency should offer sufficient information to meet the required criteria. Department retains discretion to check for reasonableness and accuracy of submitted materials. The following are Project selection charts:

To the extent that funding is limited, Eligible Projects will be ranked using category-specific Selection Criteria.

### Chart 2: Project Selection Criteria

#### HMP Project Selection Criteria:

Selection Criteria	Notes
The Department intends to allow Local agencies the opportunity to achieve HMP. If the amount of money available for HMP Projects is insufficient to fund qualified HMP proposals, the Department will rank proposals based on the size of geographic area to be protected by the proposed Project, the extent to which the Project protects life and safety and the likelihood that the Project will be completed in the current construction season.	HMP Project proponents should be aware that Local Agencies seeking to raise a levee beyond HMP status must demonstrate that <i>all</i> of the levees and flood protection facilities in their jurisdiction have been raised to HMP.

## Chart 2: Project Selection Criteria

### Delta Specific PL 84-99 Project Selection Criteria:

Selection Criteria	Notes
Life Safety (Number of People Protected)	This criterion rates each Project based on the total number of people the Project would protect at the Delta Specific PL 84-99 level.
Infrastructure (Highways)	This criterion rates each Project based on whether and how much it will increase protection to one or more state highway systems.
Infrastructure (Emergency)	This criterion rates each Project based on whether it increases protection of utilities, roads, services, fuel center, food centers, etc.  No “double counting” is allowed.
Infrastructure (Local Assets)	This criterion rates each Project based on whether it increases protection to local assets, such as local businesses, agricultural operations and facilities, etc.
Infrastructure (Water Conveyance, Water Supply Reliability)	This criterion rates each Project based on whether it increases protection to water conveyance structures.
Water Quality	This criterion rates each Project based on whether it increases protection of Delta water quality.
Habitat Impacts and Mitigation	<p>This criterion rates each Project based on how well it meets both the “no net loss” and “net enhancement” habitat goals of the Special Projects program.</p> <p>Projects that avoid or mitigate habitat impacts at the time of construction and contribute to program wide net habitat improvement by incorporating habitat enhancement or ecosystem restoration features in the immediate Project area will be favored. Priority will be given to Projects that can demonstrate a benefit for Delta smelt and other native fish consistent with Delta Levees Program habitat enhancement priorities.</p> <p>Projects that will simply avoid or mitigate habitat impacts at or prior to construction will be less favored.</p> <p>Projects that will merely accurately describe unavoidable habitat impact and describes how these impacts will be mitigated at a future date will be least favored.</p>

## Chart 2: Project Selection Criteria

### Delta Specific PL 84-99 Project Selection Criteria (cont.):

	Local Agency to offer sufficient information to meet this criterion, including documentation of any consultation with the California Department of Fish and Game to substantiate the assertions in their application.
Project description and permits	This criterion evaluates the completeness of the Project Description and thoroughness of Local Agency's plan to obtain the required permits (e.g., an identification of all required permits with corresponding budget and timeline).
Partnerships	This criterion evaluates how much (if any) of the Eligible Project cost is being shared by a partner.

## Chart 2: Project Selection Criteria

### Delta Aqueduct Project Selection Criteria:

Selection Criteria	Notes
Levee proximity to aqueduct	Projects will be favored if the increase in the level of protection a levee will offer the aqueduct begins close to the aqueduct and continues out from the aqueduct to a distance of 1000 feet.
Life Safety (Number of People Protected)	This criterion rates each Project based on the total number of people the Project would protect at the Delta Specific PL 84-99 level.
Infrastructure (Highways)	This criterion rates each Project based on whether and how much it will increase protection to one or more state highway systems.
Infrastructure (Emergency)	This criterion rates each Project based on whether it increases protection of utilities, roads, services, fuel center, food centers, etc.  No "double counting" is allowed.
Infrastructure (Local Assets)	This criterion rates each Project based on whether it increases protection to local assets, such as local businesses, agricultural operations and facilities, etc.
Infrastructure (Water Conveyance, Water Supply Reliability)	This criterion rates each Project based on whether it increases protection to water conveyance structures.

## Chart 2: Project Selection Criteria

### Delta Aqueduct Project Selection Criteria (cont.):

Water Quality	<p>This criterion rates each Project based on whether it increases protection of Delta water quality.</p> <p>Local Agency to offer sufficient information to meet this criterion. Department retains discretion to check for reasonableness and accuracy of submitted materials.</p>
Habitat Impacts and Mitigation	<p>This criterion rates each Project based on how well it meets both the “no net loss” and “net enhancement” habitat goals of the Special Projects program.</p> <p>Projects that avoid or mitigate habitat impacts at the time of construction and contribute to program wide net habitat improvement by incorporating habitat enhancement or ecosystem restoration features in the immediate Project area will be favored. Priority will be given to Projects that can demonstrate a benefit for Delta smelt and other native fish consistent with Delta Levees Program habitat enhancement priorities.</p> <p>Projects that simply avoid or mitigate habitat impacts at or prior to construction will be less favored.</p> <p>Projects that merely accurately describe unavoidable habitat impact and how these impacts will be mitigated at a future date will be least favored.</p> <p>Local Agency to offer sufficient information to meet this criterion, including documentation of any consultation with the California Department of Fish and Game to substantiate the assertions in their application. Department retains discretion to check for reasonableness and accuracy of submitted materials.</p>
Project description and permits	<p>This criterion evaluates the completeness of the Project Description and thoroughness of Local Agency’s plan to obtain the required permits (e.g., an identification of all required permits with corresponding budget and timeline).</p>
Partnerships	<p>This criterion evaluates how much (if any) of the Eligible Project cost is being shared by a partner.</p>

## Chart 2: Project Selection Criteria

### Habitat Project Selection Criteria:

Selection Criteria	Notes
<p>Projects will be ranked based on a qualitative evaluation that focuses substantially on the magnitude to which the Project meets each habitat-specific eligibility criteria, consistent with the objectives of DWR and DFG.</p> <p>Priority shall be given to projects that meet the eligibility criteria listed in Chart 1 at a high magnitude and provide habitat for Delta smelt and other native fish species consistent with SB 2X1.</p> <p>Priority may also be given to Local Agencies that have demonstrated evidence of communicating Project intentions to the Department of Fish and Game.</p> <p>For projects that protect an area of similar size and quality, the Department will consider factors including consistency with its own evaluations of areas with a high likelihood of ecological success, Delta-wide habitat goals, and how likely the Applicant is to complete the construction proposed in the Project in the current construction season.</p>	<p>The Department is committed to funding Habitat Projects that mitigate the habitat impacts of multiple levee Projects (Habitat Banking Projects) <i>and</i> Habitat Projects that meet the larger goal of improving Delta-wide habitat on a programmatic basis.</p>

## XV. COST SHARE FORMULA

The state share of the Project cost will be limited to no more than \$5 million to achieve economies of scale yet maintain the ability to complete the Project in one construction season.<sup>5</sup> For the Delta Specific PL 84-99 work, the State share of the cost in excess of \$5 million will only be at 50 percent subject to availability of funds. The State will not pay its state share of Non-Construction Costs over 20% of the overall Project cost.<sup>6</sup>

State cost share is determined by Project category. The Local Agency must submit, along with the rest of its application, a Cost Share Recommendation and Report that makes its claim to the amount of cost-sharing the State should offer for its proposed Project. The following chart describes the cost-sharing approach by category:

### Chart 3: Project Cost-Sharing

#### HMP Project Cost-Sharing:

Category	Cost Sharing
HMP	The State will cost share HMP Projects at a minimum of 90%. <sup>7</sup> HMP Project proponents may qualify for Enhanced Cost Sharing, as described below (Delta Specific PL-84-99 Cost Sharing). Cost-sharing of HMP Projects will be capped at 95%.

### Chart 3: Project Cost-Sharing

#### Delta Specific PL 84-99 Project Cost-Sharing:

Category	Cost Sharing
Delta Specific PL 84-99	Delta Specific PL 84-99 Projects will be cost-shared in accordance with the following three steps:  <b>Base State Share</b> – The Base State Share will be set at 50%. This share is the amount the State will contribute towards the Project before Enhanced Cost Sharing is considered (assuming that the Local Agency Benefits Assessment (LABA) does not raise the State Share). If the State or Local Agency identifies specific, discrete third-party beneficiary to the Project (such as a utility company whose transmission or gas lines will experience increased flood protection as a result of the project) and that

<sup>5</sup> The Department may, in unique circumstances, fund projects with a State share of costs of more than \$5 million.

<sup>6</sup> This only applies to Projects that include actual construction.

<sup>7</sup> Because the minimum State cost share for HMP work is 90%, Local Agencies submitting an HMP Project proposal may choose not to conduct a LABA for this round of funding.

### Chart 3: Project Cost-Sharing

#### Delta Specific PL 84-99 Project Cost-Sharing (cont.):

	<p>third-party beneficiary refuses to contribute its fair share to funding the Project, the State reserves the right not to raise its share above this base level or otherwise restrain or withdraw its support for the Project.</p> <p><b>Alternative State Share</b> – The Base State Share may be increased to an Alternative State Share, based on the Local Agency’s Local Agency Benefits Assessment (“LABA”). The LABA must be performed according to Delta Levees Program methodology. See Exhibit B.<sup>8</sup> The maximum State share established by this step will be 90%, unless, at the sole discretion of the Department, it is waived.</p> <p><b>Enhancement of State Cost Share:</b> After the State Share is determined (it is either the Base State Share or an Alternative State Share), that share may be increased further, by as much as 20%, if the proposed Project achieves a significant contribution to specific public purposes as described below. Applicants seeking to enhance their state cost-share must provide documentary information sufficient to demonstrate, to the Department’s satisfaction, that the specific public purposes are significant and an Enhanced State Cost Share is merited. Enhanced Cost Sharing cannot qualify a Project for a 100% State Share. The ceiling for the overall State share (including Enhanced Cost Sharing) is generally 95%.<sup>9</sup></p> <p>Eligible Enhanced Cost Sharing includes the following:</p> <p><u>Emergency Response Measures</u> – The Local Agency should demonstrate how its proposed Project contributes to emergency response and/or preparedness. The State may increase its cost share of the Project by the amount (expressed as a percentage of the overall Eligible Projects costs) that the emergency response aspect of the Project increases the total cost. The emergency response measures may be separable (emergency-response only) costs or emergency response-allocable costs. This increase will be capped at 10%.</p> <p><u>Habitat</u> – The State may enhance its cost share for Projects that fully mitigate habitat impacts prior to or at the time of construction and contribute to program-wide net habitat improvement by incorporating habitat enhancement or ecosystem restoration features in the immediate Project area.</p>
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<sup>8</sup> As an example, if a Local Agency’s LABA indicates that the benefits the Local Agency will receive (locally) from the Project are 15% of the State Share will generally be raised to 85%.

<sup>9</sup> DWR may, at its sole discretion, waive this ceiling for projects that have primarily statewide or program-wide benefits, such as a habitat enhancement project.

### Chart 3: Project Cost-Sharing

#### Delta Specific PL 84-99 Project Cost-Sharing (cont.):

	<p>Habitat enhancement points will also be provided to Projects that can demonstrate a benefit to Delta smelt and other native fish consistent with Delta Levees Program habitat enhancement priorities. The State will increase its cost share of the Project by the amount (expressed as a percentage of the overall Eligible Projects costs) that the Habitat (including Delta Smelt or other native fish work) aspects of the Project increase the total cost. The Habitat aspects of the Project may be separable (Habitat-only) costs or Habitat-allocable costs. This increase will be capped at 10%.</p> <p><u>Subsidence Control or Reversal</u> – The Local Agency should demonstrate how its proposed Project contributes to subsidence control or reversal. The State may increase its cost share of the Project by the amount (expressed as a percentage of the overall Eligible Projects costs) that the subsidence reduction aspect of the Project increases the total cost. The subsidence reduction measures may be separable (subsidence reduction only) costs or subsidence reduction-allocable costs. This increase will be capped at 10%.</p> <p><u>Statewide Interests</u> – The State may increase its cost share for Projects that increase flood protection to statewide interests. Statewide interests may include water quality protection, water supply reliability, or public transportation or other public infrastructure. The State's cost share of the Project may be increased up to a maximum of 10%.</p> <p><u>Beneficial Reuse</u> -- The State may increase its Cost Share for Projects that beneficially reuse dredged material. The Local Agency must demonstrate the savings that use of existing dredged material will create. The State will match these savings (as a percentage of Eligible Project Costs) with an increase in cost share up to 10% of the Eligible Project Costs.</p> <p><u>Cost-Share Partners</u> – Local Agencies may receive a cost-share enhancement for securing outside funding for their Projects. Specifically, the State will increase its cost-share of overall Eligible Project Costs as follows:</p> <p>Habitat enhancement points will also be provided to Projects that can demonstrate a benefit to Delta smelt and other native fish consistent with Delta Levees Program habitat enhancement priorities. The State will increase its cost share of the Project by the amount (expressed as a percentage of the overall Eligible Projects costs) that the Habitat (including Delta Smelt or other native fish work) aspects of the Project increase the total cost.</p>
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### Chart 3: Project Cost-Sharing

#### Delta Specific PL 84-99 Project Cost-Sharing (cont.):

	<p>The Habitat aspects of the Project may be separable (Habitat-only) costs or Habitat-allocable costs. This increase will be capped at 10%.</p> <p><u>Subsidence Control or Reversal</u> – The Local Agency should demonstrate how its proposed Project contributes to subsidence control or reversal. The State may increase its cost share of the Project by the amount (expressed as a percentage of the overall Eligible Projects costs) that the subsidence reduction aspect of the Project increases the total cost. The subsidence reduction measures may be separable (subsidence reduction only) costs or subsidence reduction-allocable costs. This increase will be capped at 10%.</p> <p><u>Statewide Interests</u> – The State may increase its cost share for Projects that increase flood protection to statewide interests. Statewide interests may include water quality protection, water supply reliability, or public transportation or other public infrastructure. The State's cost share of the Project may be increased up to a maximum of 10%.</p> <p><u>Beneficial Reuse</u> -- The State may increase its Cost Share for Projects that beneficially reuse dredged material. The Local Agency must demonstrate the savings that use of existing dredged material will create. The State will match these savings (as a percentage of Eligible Project Costs) with an increase in cost share up to 10% of the Eligible Project Costs.</p> <p><u>Cost-Share Partners</u> – Local Agencies may receive a cost-share enhancement for securing outside funding for their Projects. Specifically, the State will increase its cost-share of overall Eligible Project Costs as follows:</p> <table border="1" data-bbox="711 1356 1317 1856"> <thead> <tr> <th>Project cost incurred by partner</th> <th>Enhancement of State cost-share of the cost not incurred by partner</th> </tr> </thead> <tbody> <tr> <td>3-5%</td> <td>2%</td> </tr> <tr> <td>6-10%</td> <td>4%</td> </tr> <tr> <td>11-15%</td> <td>6%</td> </tr> <tr> <td>16-20%</td> <td>8%</td> </tr> <tr> <td>21% and above</td> <td>10%</td> </tr> </tbody> </table>	Project cost incurred by partner	Enhancement of State cost-share of the cost not incurred by partner	3-5%	2%	6-10%	4%	11-15%	6%	16-20%	8%	21% and above	10%
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16-20%	8%												
21% and above	10%												

### Chart 3: Project Cost-Sharing

#### Delta Aqueduct Project Cost-Sharing:

Category	Cost Sharing
Delta Aqueduct	Delta Aqueduct Projects will be cost-shared based on the level of protection they achieve. If HMP, then they will be cost-shared like HMP Projects, discussed above. If Delta Specific PL 84-99, they will be cost shared like a Delta Specific PL 84-99 Project, as discussed above.

### Chart 3: Project Cost-Sharing

#### Habitat Project Cost-Sharing:

Category	Cost Sharing
Habitat	<p>Projects that enhance habitat on a Delta-wide basis consistent with the goals of the Program may receive an increased cost share of 40% over base funding.</p> <p>Projects that provide habitat consistent with the interagency cooperative mitigation banking program for Delta levees may receive an increase of up to 40% over base funding.</p> <p>Projects that are multi-benefit levee and habitat project that include habitat features that contribute significantly to the extent and quality of habitats that have been impacted by current or past work undertaken through the Delta Levees Program or otherwise support Delta-wide restoration priorities may receive an increase of up to 45% over base funding.</p>

## **XVI. DIRECTED ACTIVITIES**

The Department reserves the right to develop and support Projects through a collaborative process between the Department and Local Agencies.

Such Projects will be called “Direct Expenditures” or “Directed Activities.” The Department will apply these *Guidelines*, as it deems applicable and appropriate, to such Directed Activities. The Department will also seek guidance from Propositions 1E and 84, California Water Code Section 12310 *et. seq.*, California Water Code Section 83000 *et seq.* and prevailing California law in determining how it will direct its expenditures.

The types of Projects that DWR may implement directly are likely to be subsidence reversal and habitat Projects, but may include other kinds of Projects. DWR may implement these Directed Expenditure Projects directly or through agreements with Local Agencies.

## **XVII. RESERVE FUND**

No less than \$6 million of the funds made available for the Delta Special Projects Program during the Fiscal Years governed by these *Guidelines* will be reserved for emergency repairs until after the flood season (April 15) each year. If any of this money is unspent, it will be used to fund additional Eligible Projects in the Delta.

## **XVIII. PROJECT ADMINISTRATION**

Selected Projects will not be funded until a Funding Agreement is executed between the State and Local Agency. This Funding Agreement is comprehensive and will cover reporting requirements, work plans, progress reports, statements of cost, State hold-backs, and more. Five-Year Plan Projects will be governed by a streamlined Funding Agreement, but will still require a Funding Agreement.