

# Covered Actions Checklist

This checklist is a discretionary tool for state and local agencies to use in determining whether a plan, program, or project is a “Covered Action” ([Delta Plan Chapter 2](#)), as defined in the Delta Reform Act ([Water Code section 85057.5\(a\)](#)).

Note: the responsibility for making this determination rests with the State and local agencies, subject to judicial review.

## Covered Action Title:

**STEP 1:** Determine if the plan, program, or project is exempt from the definition of a “covered action”.

### THE PLAN, PROGRAM OR PROJECT:

#### 1. Is the plan, project, or program exempt from the definition of a covered action?

For specific details on what is statutorily exempt from regulation as a “covered action” refer to:

([Water Code section 85057.5 \(b.\)](#)), included in (Appendix F of the [Delta Plan](#)) and (Chapter 2 of the Delta Plan)

☐ Yes ☐ No

If “YES”, the plan, program, or project is exempt from the Council’s regulatory authority – NO FURTHER STEPS REQUIRED.

If “NO”, the plan, program or project is not exempt from the definition of a covered action – PROCEED TO STEP 2.

**STEP 2:** Determine if the plan, program, or project meets all four “Screening Criteria” listed below.

### THE PLAN, PROGRAM OR PROJECT:

#### 1. Is this a plan, program, or project as defined pursuant to Public Resources Code section 21065;

This criteria would be met if the plan, program, or project meets the definition of a project under the California Environmental Quality Act (CEQA) Public Resources Code [section 21065](#) that defines the term “project” for purposes of potential CEQA review.

☐ Yes ☐ No

**2. Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh;**

This criteria would be met if, for example, water intended for use upstream of the statutory Delta or Suisun March were transferred through the statutory Delta or Suisun Marsh (pursuant for example, to a water transfer longer than 1 year in duration).

☐ Yes ☐ No

**3. Will be carried out, approved, or funded by the State or a local public agency;**

**This criteria would be met if the plan, program, or project is (a) an activity directly undertaken by any state or local public agency,**

(b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more state or local public agencies, or (c) An activity that involves the issuance to a person of lease, permit, license, certificate, or other entitlement for use by one or more state or local public agencies.

☐ Yes ☐ No

**4. Will have a significant impact on the achievement of one or both of the coequal goals or the implementation of a government-sponsored flood control program to reduce risks to people, property, and State interests in the Delta;**

“Significant Impact” means a substantial positive or negative impact on the achievement of one or both of the coequal goals or the implementation of a government-sponsored flood control program to reduce risks to people, property, and state interests in the Delta, that is directly or indirectly caused by a project on its own or when the project’s incremental effect is considered together with the impacts of other closely-related past, present, or reasonably foreseeable future projects. The coequal goals and government-sponsored flood control programs are further defined in Chapters 3, 4, and 7.

The following categories of projects will not have a significant impact for this purpose:

- Ministerial” projects exempted from CEQA, pursuant to Public Resources Code Section 21080(b)(1);
- “Emergency” projects exempted from CEQA, pursuant to Public Resources Code Section 21080(b)(2)-(4);
- Temporary water transfers of up to one year in duration. This provision shall remain in effect only through December 31, 2016, and as of January 1, 2017, is repealed, unless the Council acts to extend the provision prior to that date.;

- Other projects exempted from CEQA, unless there are unusual circumstances indicating a reasonable possibility that the project will have a significant impact under [Water Code Section 85057.5\(a\)\(4\)](#). Examples of unusual circumstances could arise in connection with, among other things:
  - Local government general plan amendments for the purpose of achieving consistency with the Delta Protection Commission's Land Use and Resource Management Plan; and,
  - Small-scale habitat restoration projects, as referred to in CEQA Guidelines 15333, proposed in important restoration areas, but which are inconsistent with the Delta Plan's policy related to appropriate habitat restoration for a given land elevation.

☐ Yes ☐ No

If "NO" to any in step 2 above, the plan, program, or project, for purposes of the Delta Plan, does not meet the definition of Covered Action, NO FURTHER STEPS REQUIRED.

If "YES" to all four in step 2 above, then the plan, program or project is considered, for purposes of the Delta Plan, a Proposed Action – PROCEED TO STEP 3.

**STEP 3:** Determine if the Proposed Action is covered by one or more Delta Plan regulatory policies below - the final Screening Criteria.

## THE PROPOSED ACTION:

### 1. Is covered by one or more of the regulatory policies contained in Chapters 3, 4, 5, and 7;

#### DELTA PLAN CHAPTER 3

[WR P1 / Cal. Code Regs., tit. 23, § 5003](#): This policy covers all Proposed Actions that would export water from, transfer water through, or use water in the Delta, but does not cover any such action unless one or more water suppliers would receive water as a result of the proposed action.

[WR P2 / Cal. Code Regs., tit. 23, § 5004](#): This policy covers all Proposed Actions that involve water supply or water transfer contracts from the State Water Project (SWP) and/or the Central Valley Project (CVP).

#### DELTA PLAN CHAPTER 4

[ER P1 / Cal. Code Regs., tit. 23, § 5005](#): This policy covers all Proposed Actions that could significantly affect flow in the Delta.

[ER P2 / Cal. Code Regs., tit. 23, § 5006](#): This policy covers all Proposed Actions that include habitat restoration.

[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.

[ER P4 / Cal. Code Regs., tit. 23, § 5008](#): This policy covers all Proposed Actions that would construct new levees or substantially rehabilitate or reconstruct existing levees.

[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.

## **DELTA PLAN CHAPTER 5**

[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 (page 63) and Appendix 7 (page 81). 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.

[DP P2 / Cal. Code Regs., tit. 23, § 5011](#): This policy covers all Proposed Actions that involve the siting of water management facilities, ecosystem restoration, and flood management infrastructure.

## **DELTA PLAN CHAPTER 7**

[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.

[RR P2 / Cal. Code Regs., tit. 23, § 5013](#): This policy covers all Proposed Actions that involve new residential development of five or more parcels that are not located within the following areas:

- (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 (page 81).

[RR P3 / Cal. Code Regs., tit. 23, § 5014](#): This policy covers all Proposed Actions that would encroach in a floodway that is not either a designated floodway or regulated stream.

[RR P4 / Cal. Code Regs., tit. 23, § 5015](#): This policy covers all Proposed Actions that would encroach in any of the floodplain areas described below:

- (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 Department of Water Resources or the U.S. Army Corps 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.

☐ Yes ☐ No

If “NO” to Step 3 above, the “proposed action” is not covered by any of the Delta Plan regulatory policies above and therefore exempt from the Council’s regulatory authority - NO FURTHER STEPS ARE REQUIRED.

If “YES” to Step 3 above, the “proposed action” is covered by one or more of the Delta Plan regulatory policies above and is therefore referred to as a “Covered Action”. A Certification of Consistency must be filed with the DSC - PROCEED TO NEXT STEP.

**STEP 4:** Review Delta Plan general regulatory policy in preparation for filing a Certification of Consistency.

In addition to the above policies, the Delta Plan includes a General Policy with four subdivisions that applies to the entire covered action. Note: policy G P1 does not on its own cause a plan, program, or project to be a covered action.

[G P1 / Cal. Code Regs., Tit. 23 SECTION 5002](#): This policy specifies what must be addressed in a certification of consistency and consists of four subdivisions:

[\(G P1 \(b\)\(1\) Cal. Code Regs., Tit. 23 SECTION 5002 \(b\), \(1\)\)](#): This subdivision specifies that in some cases, a covered action may be determined to be consistent with the Delta Plan on the whole, despite inconsistency with individual regulatory policies if the action is consistent with the coequal goals.

[G P1 \(b\) \(2\) Cal. Code Regs., tit. 23, § 5002, subd. \(b\)\(2\).](#): This subdivision specifies when a covered action must include either applicable, feasible mitigation measures (defined in the Delta Plan's Program EIR section 2.3) or equally effective substitute mitigation measures.

[G P1 \(b\) \(3\) Cal. Code Regs., tit. 23, § 5002, subd. \(b\)\(3\).](#): This subdivision requires that all covered actions must document use of best available science, as relevant to the purpose and nature of the project.

[G P1 \(b\) \(4\) Cal. Code Regs., tit. 23, § 5002, subd. \(b\)\(4\).](#) This subdivision requires that ecosystem restoration and water management covered actions must include adequate provisions, appropriate to the scope of the covered action, that include: (1) an adaptive management plan consistent with [Appendix 1B](#) (page 7) of the Delta Plan; and (2) documentation of access to adequate resources and authority to implement a proposed adaptive management process.

**FINAL STEP:** File a Certification of Consistency with detailed findings demonstrating consistency with the Delta Plan.

1. [Click here to file a Certification of Consistency with the Delta Stewardship Council](#), **with detailed findings, demonstrating that the covered action is consistent with the Delta Plan.**

The State or local agency that proposes to undertake a covered action, prior to initiating the implementation of that covered action, is required to file a Certification of Consistency with the Delta Stewardship Council using the online form found on the Delta Stewardship Council's website. Detailed findings must be included to demonstrate how the covered action is consistent with all relevant policies of the Delta Plan. The online form prompts the agency for the requirements to be included and may be uploaded to the form. Typically, the lead agency, for purposes of CEQA compliance, will file the Certification of Consistency with the Delta Stewardship Council.

## **ADDITIONAL CONSIDERATIONS:**

**Have the project proponent and/or the lead agency consulted with the Delta Stewardship Council on the covered action? (Not required, but recommended)**

Consulting with Delta Stewardship Council staff during the early development phases of the covered action is a valuable tool to public agencies in preparing the required Certification of Consistency.

## **Was the DRAFT Certification of Consistency posted on the Agency website for public review, and were comment and notifications sent prior to submission to the Delta Stewardship Council?**

At least 10 days prior to the submission of a Certification of Consistency to the Council, 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.](#)]) with regard to its certification must post for public review and comment, their draft certification on their website and in their office, mail to all persons requesting notice, and include any public comments received in the record submitted to the council in the case of an appeal.

Any state or local public agency that is subject to open meeting laws with regard to its certification is encouraged to take those actions as described in Delta Plan Appendix D (Administrative Procedures Governing Appeals, Part 1, para. 3).

## **Has CEQA been completed at the time of filing a Certification of Consistency with the Delta Stewardship Council?**

The timing of filing the Certification of Consistency with the Delta Stewardship Council is project specific but should occur after filing of the Notice of Determination and prior to project implementation. When other permits are required for implementation, project proponents should consult with Council staff on appropriate timing for filing the Certification of Consistency. Filing a Certification of Consistency prior to finalizing the design and operational elements of the project may result in a proposed covered action that is significantly altered through the CEQA or other processes. If, after filing a certificate of consistency, the project is significantly changed, a new Certification of Consistency will need to be filed with the Delta Stewardship Council.

## **Implementation of the covered action may not proceed until the appeals process is complete.**

Once the State or local agency has filed a Certification of Consistency for a covered action, the Certification of Consistency is displayed on the Delta Stewardship Council's website for public view. [Water Code 85225.10. \(a\)](#): Any person who claims that a proposed covered action is inconsistent with the Delta Plan and, as a result of that inconsistency, the action will have a significant adverse impact on the achievement of one or both of the coequal goals or implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta, may file an appeal within 30 calendar days of the filing of a Certification of Consistency with the Delta Stewardship Council.

If a valid appeal is filed with the Delta Stewardship Council within 30 calendar days of Certification filing, the Council will hear the appeal within 60 days of the filing of the appeal. The Council will adopt written findings, either upholding the appeal or denying it, within 60 days of the hearing. If multiple appeals are filed on the same covered action,



the Council may consolidate the appeals into a single hearing (Administrative Procedures Governing Appeals).

**Has the state or local agency prepared the record upon which the Certification of Consistency is based?**

If the Certification of Consistency is appealed, the State or local agency must submit the complete record that was before the agency at the time it made its Certification of Consistency to the Delta Stewardship Council within 10 days of being notified of the appeal (Administrative Procedures Governing Appeals, Section 4.b). The Delta Stewardship Council encourages the agency to prepare this record prior to filing its Certification of Consistency. Failure to submit the record in a timely manner is grounds for the Council to affirm the appeal (Administrative Procedures Governing Appeals, Section 4.c).

**THANK YOU FOR USING THE COVERED ACTIONS CHECKLIST.**

**YOU MAY SAVE THE CHECKLIST TO YOUR COMPUTER OR PRINT FOR YOUR RECORDS.**