

Certification of Consistency

C20212

Step 1 - Agency Profile

A. GOVERNMENT AGENCY: **Local Agency**
Government Agency: Central Valley Flood Protection Board
Primary Contact: Miles Claret
Address: 3464 El Camino Ave, Suite 200
City, State, Zip: Sacramento, CA 95821
Telephone/Fax: (916) 574-0251
E-mail Address: miles.claret@water.ca.gov

B. GOVERNMENT AGENCY ROLE IN COVERED ACTION: **Will Approve / Will Fund**

Step 2 - Covered Action Profile

A. COVERED ACTION PROFILE: **Project**
Title: American River Common Features, Water Resources Development Act Of 2016 Project, Sacramento River Erosion
Contract 1: River Mile 55.2 Left Bank Protection

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

Proponent Name: U.S. Army Corps of Engineers
Address: 1325 J St
City, State, Zip: Sacramento, CA 95814

C. OPEN MEETING LAWS

Agencies whose actions are not subject to open meeting laws (Bagley-Keene Open Meeting Act [[Gov. Code sec 11120 et seq.](#)] or the Brown Act [[Gov. Code sec 54950 et seq.](#)]) must post their draft certification on their website and in their office for public review and comment, and mail to all persons requesting notice (Administrative Procedures Governing Appeals, Rule 3). A state or local public agency that is subject to open meeting laws is encouraged to post the draft certification on their website and in the office for public review and comment and to mail to all persons requesting notice.

Any state or local public agency that is subject to open meeting laws with regard to its certification is also encouraged to take those actions. It is encouraged to upload any evidence that the project, plan or program went through for public review and comment as part of a Bagley-Keene or Brown Act meeting.

Is your agency subject to open meeting laws (Bagley-Keene Open Meeting Act [[Gov. Code sec 11120 et seq.](#)] or the Brown Act [[Gov. Code sec 54950 et seq.](#)])? Yes
(Note: Select "Yes" if your agency or organization is subject to open meeting laws. Select "No" if your agency or organization is not subject to open meeting laws.)

Please attach any supporting evidence of the public review and comment period by clicking the upload button. Such evidence

could include but is not limited to: a meeting agenda and attachment demonstrating that this certification was made publicly available, a screenshot with date and link to a website where the materials were posted, or other similar documentation.

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

[October-2020-CVFPB-Agenda.pdf](#)

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

Construct levee improvements consisting of approximately 1,150 feet of erosion repairs along the left bank waterside slope of the Sacramento River at approximately river mile 55.2 in Sacramento, CA. Most of the levee improvements included in the Proposed Action were analyzed in the American River Watershed Common Features General Reevaluation Report (ARCF GRR) Environmental Impact Statement/Environmental Impact Report (EIS/EIR). Analysis was supplemented and updated in the Supplemental Environmental Assessment/Environmental Impact Report (SEA/EIR) for the ARCF 2016 Project, Sacramento River Erosion Contract 1: River Mile 55.2 Left Bank Protection (Project). See "Covered Action Summary" in attached Consistency Certification Narrative for a detailed covered action summary. [FINAL ARCF GRR EISEIR.pdf](#), [ARCF2016_Sac-55.2-Left-Bank_SEAEIR_Final.pdf](#), [A_Consistency Certification Narrative_SacC1_508_21Jan21.pdf](#)

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

F. STATE CLEARINGHOUSE NUMBER:(if applicable) 2020070269

G. COVERED ACTION ESTIMATED TIME LINE:

ANTICIPATED START DATE: (If available) 03/01/2021

ANTICIPATED END DATE: (If available) 11/30/2022

H. COVERED ACTION TOTAL ESTIMATED PROJECT COST: \$6,500,000

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

J. Supporting Documents:

[FINAL ARCF GRR EISEIR.pdf](#), [Appendix I - Habitat Mitigation Monitoring and Adaptive Management Plan.pdf](#), [ARCF2016_Sac-55.2_Appendices_ABCEF.pdf](#), [ARCF2016_Sac-55.2-Left-Bank_SEAEIR_Final.pdf](#), [A_Consistency Certification Narrative_SacC1_508_21Jan21.pdf](#), [B_Mitigation Measure Comparison_SacC1_508_21Jan21.pdf](#), [ARCF2016_Sac-55.2_Appendix-D.pdf](#)

Step 3 - Consistency with the Delta Plan

DELTA PLAN CHAPTER 2

[G P1/Cal. Code Regs., tit. 23, § 5002](#) - Detailed Findings to Establish Consistency with the Delta Plan.

G P1/Cal. Code Regs., tit. 23, § 5002 identifies what must be addressed in a certification of consistency filed by a State or local public agency with regard to any covered action and only applies after a "proposed action" has been determined by a State or local public agency to be a covered action because it is covered by one or more of the regulatory policies listed under Delta Plan Chapters 3, 4, 5, and 7 of this form. Inconsistency with this policy may be the basis for an appeal.

A certification of consistency must include detailed findings that address each of the regulatory policies identified in Cal. Code Regs., tit. 23, §§ 5002-5013 and listed on this Form that is implicated by the covered action.

As outlined in Cal. Code Regs., tit. 23, § 5002 (b)(1), the Delta Stewardship Council acknowledges that in some cases, based upon the nature of the covered action, full consistency with all relevant regulatory policies may not be feasible. In those cases, the agency that files the certification of consistency may nevertheless determine that the covered action is consistent with the Delta Plan because, on whole, that action is consistent with the coequal goals. That determination must include a clear identification of areas where consistency with relevant regulatory policies is not feasible, an explanation of the reasons why it is not feasible, and an explanation of how the covered action nevertheless, on whole, is consistent with the coequal goals. That determination is subject to review by the Delta Stewardship Council on appeal.

Specific requirements of this regulatory policy:

a. [G P1\(b\)\(1\)/Cal. Code Regs., tit. 23, § 5002, subd. \(b\)\(1\)](#) - Coequal Goals

As outlined in **Cal. Code Regs., tit. 23, § 5002 (b)(1)**, the Delta Stewardship Council acknowledges that in some cases, based upon the nature of the covered action, full consistency with all relevant regulatory policies may not be feasible. In those cases, the agency that files the certification of consistency may nevertheless determine that the covered action is consistent with the Delta Plan because, on whole, that action is consistent with the coequal goals. That determination must include a clear identification of areas where consistency with relevant regulatory policies is not feasible, an explanation of the reasons why it is not feasible, and an explanation of how the covered action nevertheless, on whole, is consistent with the coequal goals. That determination is subject to review by the Delta Stewardship Council on appeal.

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

Yes

Answer Justification:

See attached consistency certification narrative. [A Consistency Certification Narrative SacC1_508_21Jan21.pdf](#), [B Mitigation Measure Comparison SacC1_508_21Jan21.pdf](#)

b. [G P1\(b\)\(2\)/Cal. Code Regs., tit. 23, § 5002, subd. \(b\)\(2\)](#) - Mitigation Measures

G P1(b)(2)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(2) provides that covered actions not exempt from CEQA, must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 26, 2018, (unless the measure(s) are within the exclusive jurisdiction of an agency other than the agency that files the certification of consistency), or substitute [mitigation measures](#) that the agency that files the certification of consistency finds are equally or more effective. For more information, see Cal. Code Regs., tit. 23, § 5002, and Delta Plan Appendix O, Mitigation Monitoring and Reporting Program, which are referenced in this regulatory policy.

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

Yes

Answer Justification:

Delta Plan Mitigation Measures and the Project-specific Environmental Commitments and/or Mitigation Measures for the Proposed Action demonstrate compliance with, or effective substitution for, the Delta Plan Mitigation Measures. See attached Mitigation Measure Comparison. [FINAL ARCF GRR EISEIR.pdf](#), [ARCF2016 Sac-55.2-Left-Bank SEAEIR Final.pdf](#), [B Mitigation Measure Comparison SacC1_508_21Jan21.pdf](#)

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

G P1(b)(3)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(3) provides that, relevant to the purpose and nature of the project, all covered actions must document use of best available science. For more information, see [Appendix 1A](#), which is referenced in this regulatory policy.

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

Yes

Answer Justification: See attached Consistency Certification Narrative. [FINAL ARCF GRR EISEIR.pdf](#), [ARCF2016_Sac-55.2-Left-Bank_SEAEIR_Final.pdf](#), [A_Consistency Certification Narrative_SacC1_508_21Jan21.pdf](#)

d. [G P1\(b\)\(4\)/Cal. Code Regs., tit. 23, § 5002, subd. \(b\)\(4\)](#) - Adaptive Management

G P1(b)(4)/Cal. Code Regs., tit. 23, § 5002, subd. (b)(4) provides that an ecosystem restoration or water management covered action must include adequate provisions, appropriate to its scope, to assure continued implementation of adaptive management. For more information, see [Appendix 1B](#), which is referenced in this regulatory policy. Note that this requirement may be satisfied through both of the following:

(A) An adaptive management plan that describes the approach to be taken consistent with the adaptive management framework in Appendix 1B; and

(B) Documentation of access to adequate resources and delineated authority by the entity responsible for the implementation of the proposed adaptive management process.

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

N/A

Answer Justification: The Proposed Action is neither a water management nor an ecosystem restoration project. The purpose of the Proposed Action is to reduce flood risk. Therefore, this policy does not apply to the Proposed Action. [FINAL ARCF GRR EISEIR.pdf](#), [ARCF2016_Sac-55.2-Left-Bank_SEAEIR_Final.pdf](#)

DELTA PLAN CHAPTER 3

[WR P1 / Cal. Code Regs., tit. 23, § 5003](#) - Reduce Reliance on the Delta through Improved Regional Water Self-Reliance

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

N/A

Answer Justification: The Proposed Action does not export water from, transfer water through, or use water in the Delta.

[WR P2 / Cal. Code Regs., tit. 23, § 5004](#) - Transparency in Water Contracting

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

N/A

Answer Justification: The Proposed Action does not involve water supply or water transfer contracts from the State Water Project or Central Valley Project.

DELTA PLAN CHAPTER 4

[Cal. Code Regs., tit. 23, § 5002, subd. \(c\)](#) - Conservation Measure

Cal. Code Regs., tit. 23, § 5002, subd. (c) provides that a conservation measure proposed to be implemented pursuant to a natural community conservation plan or a habitat conservation plan that was: (1) Developed by a local government in the Delta; and (2) Approved and permitted by the California Department of Fish and Wildlife prior to May 16, 2013 is deemed to be

consistent with the regulatory policies listed under Delta Plan Chapter 4 of this Form (i.e. sections 5005 through 5009) if the certification of consistency filed with regard to the conservation measure includes a statement confirming the nature of the conservation measure from the California Department of Fish and Wildlife.

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

N/A

Answer Justification:

The Proposed Action is not within a Habitat Conservation Plan and/or Natural Communities Conservation Plan area.

[ER P1 / Cal. Code Regs., tit. 23, § 5005](#) - Delta Flow Objectives

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

N/A

Answer Justification:

The Proposed Action does not significantly affect flow in the Delta.

[ER P2 / Cal. Code Regs., tit. 23, § 5006](#) - Restore Habitats at Appropriate Elevations

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

N/A

Answer Justification:

The Proposed Action is neither a water management nor an ecosystem restoration project. The Purpose of the Proposed Action is to reduce flood risk. Therefore, this policy does not apply to the Proposed Action.

[ER P3 / Cal. Code Regs., tit. 23, § 5007](#) - Protect Opportunities to Restore Habitat

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

N/A

Answer Justification:

This policy covers all Proposed Actions in the priority habitat restoration areas depicted in Figure 4-6 of the Delta Plan. It does not cover actions outside those areas. The project site is not in a priority habitat restoration area.

[ER P4 / Cal. Code Regs., tit. 23, § 5008](#) - Expand Floodplains and Riparian Habitats in Levee Projects

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

Yes

Answer Justification:

See attached Consistency Certification Narrative. [FINAL ARCF GRR EISEIR.pdf](#), [ARCF2016_Sac-55.2-Left-Bank_SEAEIR_Final.pdf](#), [A_Consistency Certification Narrative_SacC1_508_21Jan21.pdf](#), [B_Mitigation Measure Comparison_SacC1_508_21Jan21.pdf](#)

[ER P5 / Cal. Code Regs., tit. 23, § 5009](#) - Avoid Introductions of and Habitat for Invasive Nonnative Species

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

Yes

Answer Justification:

See attached Consistency Certification Narrative and Mitigation Measure Comparison. [FINAL ARCF GRR EISEIR.pdf](#), [ARCF2016_Sac-55.2-Left-Bank_SEAEIR_Final.pdf](#), [A_Consistency Certification Narrative_SacC1_508_21Jan21.pdf](#), [B_Mitigation Measure Comparison_SacC1_508_21Jan21.pdf](#)

[DP P1 / Cal. Code Regs., tit. 23, § 5010](#) - Locate New Urban Development Wisely

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

N/A

Answer Justification:

The Proposed Action does not include new residential, commercial, or industrial development.

[DP P2 / Cal. Code Regs., tit. 23, § 5011](#) - Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats

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

Yes

Answer Justification:

See attached Consistency Certification Narrative. [FINAL ARCF GRR EISEIR.pdf](#), [ARCF2016_Sac-55.2-Left-Bank_SEAEIR_Final.pdf](#), [A_Consistency Certification Narrative_SacC1_508_21Jan21.pdf](#)

DELTA PLAN CHAPTER 7

[RR P1 / Cal. Code Regs., tit. 23, § 5012](#) - Prioritization of State Investments in Delta Levees and Risk Reduction

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

Yes

Answer Justification:

See attached Consistency Certification Narrative. [A_Consistency Certification Narrative_SacC1_508_21Jan21.pdf](#)

[RR P2 / Cal. Code Regs., tit. 23, § 5013](#) - Require Flood Protection for Residential Development in Rural Areas

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

N/A

Answer Justification:

The Proposed Action does not include residential development.

[RR P3 / Cal. Code Regs., tit. 23, § 5014](#) - Protect Floodways

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

N/A

Answer Justification:

The Proposed Action would not encroach on floodways.

[RR P4 / Cal. Code Regs., tit. 23, § 5015](#) - Floodplain Protection

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

N/A

Answer Justification:

The Proposed Action would not encroach in floodplain areas.

01/29/2021