

Certification of Consistency

C20205

Step 1 - Agency Profile

A. GOVERNMENT AGENCY: **State Agency**

Government Agency: California Department of Water Resources

Primary Contact: See "DWR Contact Sheet" in Supporting Documents.

Address: See "DWR Contact Sheet" in Supporting Documents.

City, State, Zip: See "DWR Contact Sheet" in Supporting Documents., -- -----

Telephone/Fax: (000) 000-0000

E-mail Address: amargulies@natural-resources-group.com

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

Step 2 - Covered Action Profile

A. COVERED ACTION PROFILE: **Project**

Title: Wings Landing Tidal Habitat Restoration Project

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

Proponent Name: Natural Resources Group, Inc.

Address: 3002 Beacon Blvd

City, State, Zip: West Sacramento, CA 95691

C. OPEN MEETING LAWS

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

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

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

If your agency is 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.](#)]) **did your agency, at least 10 days prior to the submission of a certification of consistency to the Delta Stewardship Council, post the** Yes

draft certification on your website and in the office for public review and comment, and mail the draft certification 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.

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

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

The Proposed Project includes restoration of an approximately 267.02 acre Project Site within north-central Suisun Marsh, in Solano County, California. It is located adjacent to Peytonia Slough to the north, Suisun Slough to the east, and Boynton Slough to the south. The Project Site is currently, and has been historically, managed as a duck club. The Project Site contains managed marsh, managed channels, and uplands, which are regularly managed by disking, mowing, flooding, draining, and contouring to improve conditions for waterfowl and waterfowl hunting. The Proposed Project would reconnect the high order marsh-adjacent subtidal channels in Boynton, Peytonia, and Suisun Sloughs to the newly restored tidal and sub-tidal marsh within the Project Site. Returning the Project Site to natural tidal influence would restore previously inaccessible managed marsh into spawning, rearing, and/or food production habitat for Delta Smelt (*Hypomesus transpacificus*), Longfin Smelt (*Spirinchus thaleichthys*), North American Green Sturgeon (*Acipenser medirostris*), and salmonids including steelhead (*Oncorhynchus mykiss*), and Chinook Salmon (*Oncorhynchus tshawytscha*). The Proposed Project was designed to partially fulfill the 8,000-acre tidal restoration obligations of the Fish Restoration Program Agreement, satisfying the requirements of the USFWS 2008 Biological Opinion (BiOp) for Delta Smelt, the 2009 NMFS Biological Opinion for the Coordinated Operations of the State Water Project and the Federal Central Valley Project, and the Longfin Smelt Incidental Take Permit for the State Water Project. The 2008 USFWS BiOp and 2009 NMFS BiOp alternatives were carried forward as baseline conditions in the USFWS Biological Opinion for the Reinitiation of Consultation on the Coordinated Operations of the Central Valley Project and the State Water Project (2019 USFWS BiOp) and the NMFS Biological Opinion on Long Term Operation of the Central Valley Project and the State Water Project (2019 NMFS BiOp). In addition, Section 9.1.1 of the CDFW Incidental Take Permit for Long-Term Operation of the State Water Project in the Sacramento-San Joaquin Delta carries forward the 8,000-acre tidal habitat restoration requirement as compensatory mitigation for activities under the 2020 LTO ITP. For additional details see Attachment 1. SectionD_CA_Summary_PD. The Wings Landing Tidal Marsh Restoration Project is being completed by Natural Resources Group, Inc. (NRG), under contractor with California Department of Water Resources (DWR). NRG is submitting this DSC Consistency Determination on behalf of DWR, and all communication regarding this DSC Consistency Determination should be directed to Department of Water Resources. Contact info is provided in the attached supplemental document "DWR Contact Sheet". [1. SectionD_CA_Summary_PD.pdf](#), [DWR Contact Sheet ADA \(1\).pdf](#)

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

F. STATE CLEARINGHOUSE NUMBER:(if applicable) 2003113029

G. COVERED ACTION ESTIMATED TIME LINE:

ANTICIPATED START DATE: (If available)	09/09/2020
ANTICIPATED END DATE: (If available)	11/30/2021

H. COVERED ACTION TOTAL ESTIMATED PROJECT COST: \$6,183,000

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:

[CEQA Addendum_MR ADA w figures reduced.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?

N/A

Answer Justification:

The Proposed Project is consistent with all relevant regulatory policies in the delta plan, as described in this consistency determination and in Attachment 1. [SectionD_CA_Summary_PD. 1.](#)
[SectionD_CA_Summary_PD.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:

Attached are mitigation measures that the Proposed Project would follow and their consistency with Delta Plan mitigation measures. The Proposed Project prepared a CEQA addendum to the Suisun Marsh Habitat Management, Preservation, and Restoration Plan Environmental Impact Statement/Environmental Impact Report (SMP EIS/EIR) and will implement all applicable mitigation measures, best management practices, and environmental commitments approved in the SMP EIS/EIR. These measures are consistent with the Delta Plan mitigation measures, as demonstrated in the attached analysis 3. GP1_Mitigation_Consistency. Measures, including Revised Mammal Best Management Practices, are described in Attachment 3b. GP1_MMRP, as well as in Appendix A and detailed in Appendix F to the Wings Landing CEQA Addendum. [3b. GP1_MMRP-2 ADA.pdf](#), [3. GP1_Mitigation_Consistency ADA 22july2020.pdf](#), [Appendix F Wings Landing Revised Mammal BMPs Final.pdf](#), [Appendix A ECs and MMs 10july2020 ADA.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:

The Proposed Project included modeling and incorporated feedback from multiple technical experts. The attached analysis 2. MM_BAS_AM describes how the Proposed Project is based on Best Available Science. [2. MM_BAS_AM 16june2020 ADA.pdf](#)

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

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

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

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

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

Yes

Answer Justification:

The Proposed Project incorporates an Adaptive Management and Monitoring Plan, described in Attachment 2. MM_BAS_AM and included in full as Attachment 4. GP1C_AMMP. [4. GP1C_AMMP ADA.pdf](#), [2.](#)

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 covered action does not involve exporting, transferring, or using 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 covered action does not involve water supply or water transfer contracts from the State Water Project or the 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 Project does not include a natural community conservation plan or a habitat conservation plan.

[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 covered 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?

Yes

Answer Justification:

The existing elevations of the Proposed Project are predominantly within the intertidal range and require little grading. See Attachment 5. ERP2_Restoration_Elevations. [5. ERP2_Restoration_Elevations ADA.pdf](#)

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

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

Yes

Answer Justification:

The covered action is a restoration project within the priority area for restoration and is consistent with this policy. See Attachment 6. ERP3_Protect_Restoration_Opportunities. [6. ERP3_Protect_Restoration_Opportunities ADA.pdf](#)

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

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

N/A

Answer Justification:

The covered action does not include construction of new levees or significant rehabilitation or reconstruction of existing levees.

[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:

The Proposed Project contains monitoring and maintenance plans including adaptive management thresholds to avoid invasions of nuisance vegetation. Additionally, an Invasive Vegetation Management Plan has been prepared to address management needs and minimize colonization by invasive species. See Attachment 7. ERP5_Invasive_Species and the Adaptive Management and Monitoring Plan in Attachment 4. GP1C_AMMP. [4. GP1C_AMMP ADA.pdf](#), [7. ERP5_Invasive_Species ADA tables.pdf](#)

DELTA PLAN CHAPTER 5

[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 Project does not involve new residential, commercial, or industrial development.

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

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

Yes

Answer Justification:

The Proposed Project has not been used for agriculture since before the 1940's. See the attached analysis in Attachment 8. DPP2_Local_Land_Use. [8. DPP2_Local_Land_Use ADA.pdf](#)

DELTA PLAN CHAPTER 7

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

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

N/A

Answer Justification:

The covered action does not involve discretionary State investments in Delta flood risk management.

[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 covered action does not involve new 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 covered action does not involve encroachment in a floodway.

[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 Project would not encroach in any of the following specified floodplains: the Yolo Bypass within the Delta, the Consumnes River-Mokelumne River Confluence, or the Lower San Joaquin River Floodplain Bypass area.

08/17/2020