

Certification of Consistency

C20226

Step 1 - Agency Profile

A. GOVERNMENT AGENCY: **State Agency**
Government Agency: Central Valley Flood Protection Board
Primary Contact: Susie Real
Address: 3310 El Camino Ave
City, State, Zip: Sacramento, CA 95821
Telephone/Fax: (916) 973-3014
E-mail Address: susanna.real@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 Watershed Common Features, Sacramento River Erosion Contract 2 Project

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

Proponent Name: U.S. Army Corps of Engineers
Address: 1325 J Street
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.]? (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.) Yes

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.

[D - CVFPB August Informational Meeting Agenda.pdf](#), [E - CVFPB October Certification Meeting Agenda.pdf](#)

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

The primary design objective is to restore the structural stability of the Sacramento River east levee, at several locations between river miles 49 and 58, identified as Sites 1 through 6, and maintain public safety. The proposed rock bank protection is designed to prevent bank erosion and provide resistance against wavewash. Designs also include a launchable rock toe to provide resilience against river-bed scour. A secondary objective of the design is to shape the improvement footprints to reduce impacts to habitat, as well as provide habitat mitigation with bench plantings wherever possible. The project also incorporates instream woody material (IWM) into bank protection designs as required by the 2021 ARCF GRR EIS/EIR National Marine Fisheries Service (NMFS) Biological Opinion (BO) (NMFS 2021). IWM allows for the replacement of in-stream cover for listed fish species that are impacted due to construction. Lastly, the project will address improvements below the ordinary high-water mark, including replacing the remainder of the four pipes, replacing the headwall, and tying the improvements into the existing rock revetment both upstream and downstream of City of Sacramento Sump 63. For more details, please see the Sacramento River Erosion Contract 2 SEIR/EA. [C - Sac River Erosion C2 SEIR-EA ADA Final.pdf](#)

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

F. STATE CLEARINGHOUSE NUMBER:(if applicable) 2022040317

G. COVERED ACTION ESTIMATED TIME LINE:

ANTICIPATED START DATE: (If available) 10/31/2022

ANTICIPATED END DATE: (If available) 10/31/2024

H. COVERED ACTION TOTAL ESTIMATED PROJECT COST: \$75,000,000

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:

[A - SRC2 Consistency Certification Narrative.docx](#), [B - SRC2 Mitigation Measure Comparison.docx](#), [C - Sac River Erosion C2 SEIR-EA ADA Final.pdf](#), [D - CVFPB August Informational Meeting Agenda.pdf](#), [E - CVFPB October Certification Meeting Agenda.pdf](#), [F - Sac River Erosion C2 SEIR-EA Appendices ADA Final.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: See attached consistency certification narrative. [A - SRC2 Consistency Certification Narrative.docx](#)

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. [B - SRC2 Mitigation Measure Comparison.docx](#), [A - SRC2 Consistency Certification Narrative.docx](#)

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 U.S. Army Corps of Engineers (USACE) is implementing the proposed project, and the project was designed in accordance with USACE levee engineering standards, which constitute best practices. See attached Consistency Certification Narrative. [A - SRC2 Consistency Certification Narrative.docx](#), [B - SRC2 Mitigation Measure Comparison.docx](#)

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:

Riparian mitigation would be constructed at a 2:1 ratio for each impacted acre of riparian canopy. The Project design includes a riparian planting bench to provide on-site mitigation. The planting bench was designed in coordination with NMFS and USFWS. The bank protection design incorporates a low elevation planting bench into the channel at several locations. [A - SRC2 Consistency Certification Narrative.docx](#), [B - SRC2 Mitigation Measure Comparison.docx](#)

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 project 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 project 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 project site 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 project 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 planting bench was designed in coordination with NMFS and USFWS. The bank protection design incorporates a low elevation planting bench into the channel at several locations. The toe of the planting bench will slope upward at a 2H:1V slope towards upper quarry stone or soil filled stone revetment. The benches will be located at various elevations to provide suitable habitat for the targeted native riparian plant species. [A - SRC2 Consistency Certification Narrative.docx](#), [B - SRC2 Mitigation Measure Comparison.docx](#)

[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 projects 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: The levee improvements that are a part of the proposed project are directly adjacent to residential areas and the use of setback levees would be infeasible. Please refer to the attached Consistency Certification Narrative. [A - SRC2 Consistency Certification Narrative.docx](#), [B - SRC2 Mitigation Measure Comparison.docx](#)

[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:

Temporary access below the ordinary high-water mark (OHWM) of the river will be required to remove and replace structures associated with Sump 63. Temporary access would consist of dewatering the area with the use of a sandbag cofferdam. The SEIR/EA analysis concluded that there would be no long-term temporal or spatial loss of aquatic habitat. Disturbed areas would be re-seeded with native species. Please refer to the attached Consistency Certification Narrative and Mitigation Measure Comparison. [A - SRC2 Consistency Certification Narrative.docx](#), [B - SRC2 Mitigation Measure Comparison.docx](#)

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:

See attached Consistency Certification Narrative. [A - SRC2 Consistency Certification Narrative.docx](#), [B - SRC2 Mitigation Measure Comparison.docx](#)

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:

The proposed project is located in a "very high priority" area for levee improvements. See attached Consistency Certification Narrative. [A - SRC2 Consistency Certification Narrative.docx](#), [B - SRC2 Mitigation Measure Comparison.docx](#)

[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 project 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?

Yes

Answer Justification:

The proposed project would not encroach on floodways. [A -](#)

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

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

Yes

Answer Justification:

The proposed project would not encroach in floodplain areas. [A - SRC2 Consistency Certification Narrative.docx](#), [B - SRC2 Mitigation Measure Comparison.docx](#)

10/31/2022