

Certification of Consistency

Step 1 - Agency Profile

A. GOVERNMENT AGENCY: Local Agency
Government Agency: Department of Water Resources
Primary Contact: Ling Chu
Address: 3500 Industrial Blvd., 2nd Floor
City, State, Zip: West Sacramento, CA 95691
Telephone/Fax: (279) 789-0440
E-mail Address: ling-ru.chu@water.ca.gov

B. GOVERNMENT AGENCY ROLE IN COVERED ACTION: Will Approve

Step 2 - Covered Action Profile

A. COVERED ACTION PROFILE: Project

Title: Prospect Island Tidal Habitat Restoration

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

Proponent Name: Department of Water Resources
Address: 3500 Industrial Blvd., 2nd Floor
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 draft certification on your website and in the office for public review and comment, and mail the draft certification to all persons requesting notice?**

Yes

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 Covered Action is a tidal-habitat-restoration project located on Prospect Island, an undeveloped, uncultivated, and flooded island located in the Cache Slough Complex. The Delta Plan designates the Cache Slough Complex (including Prospect Island) as a Priority Habitat Restoration Area in which tidal-habitat restoration is necessary to achieve the Delta Stewardship Council's "vision of a restored Delta ecosystem." (See Delta Plan, Chapter 4, at pp. 4-45, 4.47, 4-48.) Prospect Island is a 1,684-acre property located in Solano County, in the northwestern part of the Sacramento – San Joaquin Delta (Delta). Historically, Prospect Island was a former tidal marsh, which was reclaimed as farmland. The project site is surrounded by restricted height levees designed to overtop during flood conditions. The island is divided by a cross-levee, with the southern portion receiving muted tidal exchanges through natural levee breaches. Additionally, both the north and south sides of the island receive water from seasonal rainfall, as well as limited groundwater inputs. With a long history of flooding, the project site is currently an undeveloped, flooded, uncultivated island. Prospect Island sits within the Cache Slough Complex at the downstream end of the Yolo Bypass and is bordered by the Sacramento Deepwater Ship Channel (DWSC) to the west, and Miner Slough to the east. As described in the Delta Plan (Delta Stewardship Council 2013, as amended), the Cache Slough Complex is one of six priority habitat restoration areas having the most promising restoration opportunities. Within the Cache Slough Complex, Prospect Island possesses several characteristics suitable for tidal wetland restoration. The modest land subsidence, hydrodynamic variability, and habitat variability have the potential to support a range of native species. (See Delta Plan, Chapter 4, at p. 4-45.) Prospect Island also benefits from natural flood pulse flows from its proximity to the Yolo Bypass and the distributary channels of the lower Sacramento River. This area can provide seasonal migration, spawning, and rearing habitats for adult and juvenile native anadromous fish. As detailed in the discussion of Best Available Science (G P1(b)(3)), the Covered Action includes several elements that will reestablish tidal connections to Prospect Island, as well as improve existing tidal habitat on the site. The main design features under the Covered Action include: • Two breaches of the Miner Slough – Prospect Island levee. • A high-stage overflow weir between Miner Slough and Prospect Island at the northern boundary of Prospect Island. • One breach in the internal cross-levee separating the north and the south properties, which comprise Prospect Island. • A levee toe berm (eastern toe berm) on the interior side of the eastern Prospect Island – Miner Slough levee. • An intertidal bench (eastern intertidal bench) on the north property. • Construction of interior subtidal channels (constructed channel network) and topographic features. The Covered Action will consist of a suite of activities, including levee repair work, dewatering, invasive vegetation control, construction of internal features and an overflow weir, levee breaching, and post-construction adaptive management and monitoring. Between existing and future conditions there would be an overall gain of approximately 123 ac of aquatic habitat, and tidal wetlands would increase by approximately 1,056 ac.

E. STATUS IN THE CEQA PROCESS: Final Certified Document

F. STATE CLEARINGHOUSE NUMBER:(if applicable) 2013052056

G. COVERED ACTION ESTIMATED TIME LINE:

ANTICIPATED START DATE: (If available) 04/15/2024

ANTICIPATED END DATE: (If available) 10/31/2026

H. COVERED ACTION TOTAL ESTIMATED PROJECT COST: \$38,000,000

I. IF A CERTIFICATION OF CONSISTENCY FOR THIS COVERED ACTION WAS N/A

PREVIOUSLY SUBMITTED, LIST DSC REFERENCE NUMBER ASSIGNED TO THAT CERTIFICATION FORM:

J. Supporting Documents:

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:

DWR has determined that the Covered Action is consistent with all relevant Delta Plan policies. DWR also has determined that the Covered Action is consistent with both coequal goals: it is consistent with the restored-ecosystem goal because the project is consistent with the Delta Plan's Coequal Goals through restoration of native ecosystem habitats and functions, protecting approximately 1,500 acres of tidal marsh associated subtidal habitat, and supports ecosystem health. The second of the Delta Plan's Coequal Goals, water supply reliability, is not significantly changed by the Proposed Project. Following completion of construction, the Proposed Project area would consist of native ecosystem which would not require application of water and would be resilient to

changes in precipitation. The tidal marsh plain would be constructed at elevations which would facilitate regular inundation by tidal waters, and the proposed tidal channel system would naturally convey water throughout the site. Therefore, after the Proposed Project's construction, on-site Delta waters would be sufficient for the designed habitat functions. Furthermore, DWR has determined that the Proposed Project would have minimal, if any, impact on water availability or water quality for nearby development.

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:

DWR has determined that the Covered Action is consistent with this policy because the Covered Action's mitigation measures are the same as all applicable mitigation measures in the Delta Plan or include substitute mitigation measures that are equally or more effective.

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:

DWR has determined that the Covered Action's design, environmental impact analysis, and Adaptive Management Monitoring Plan (AMMP) (Attachment 2) are based on the best available science (23 CCR Appendix 1A Best Available Science). The Covered Action's design is based on the best scientific and other information that is reasonably available, including consideration of special status species' capability to survive and reproduce, and any adverse impacts of the permitted take. This includes consideration of the life history and habitat requirements of special-status species, as well as an understanding of Delta ecosystem functions such as the role tidal wetlands play in Delta-wide productivity. Using the best available science, the projects are designed to provide habitat features that will likely benefit Delta Smelt, Chinook Salmon, Longfin Smelt, and their food resources, while minimizing potential negative effects. Together, science and adaptive management increase the likelihood that a project

will be successful. As set forth in the Delta Plan (see Chapter 2, page 35), specific criteria for identifying use of the Best Available Science include relevance, inclusiveness, objectivity, transparency and openness, timeliness, and peer review as discussed in Attachment 1. In addition, the FAST review team comprised of technical level representatives from each Fishery Agencies (USFWS, NMFS, and CDFW) and USBR, was consulted about the project and included representatives with specialties in the following areas: • Terrestrial Marsh Species (GGS) – USFWS • Section 7 ESA – NMFS • Section 7 ESA – USFWS • Long-Term Marsh Sustainability – CDFW • Delta Ecology – USFWS • Fisheries Ecology – DWR The outcome of consultation with FAST and the Technical Review Panel was incorporated into the project design.

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

DWR has determined that the project Covered Action is consistent with Delta Plan Policy G P1(b)(4)'s requirements. Project Adaptive management will primarily be achieved through DWR's implementation of the Adaptive Management and Monitoring Plan (AMMP) (Attachment 2). In addition to the AMMP, the Covered Action includes a Mitigation Monitoring and Reporting Program (MMRP) and a Revegetation Strategy. The Covered Action also is included within the existing Tidal Wetland Monitoring Framework for the Upper San Francisco Estuary (IEP TWM PWT 2017), which is prepared by the Interagency Ecological Program (IEP) to facilitate the development of site-specific monitoring plans to assess the effectiveness of tidal wetland restoration projects in the Upper San Francisco Estuary. DWR has determined that it has adequate resources and delineated authority to implement these adaptive-management processes.

Answer Justification:

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:

DWR has determined that this policy is not applicable because

water suppliers would not receive water as a result of the Covered Action.

[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:

DWR has determined that this Covered 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:

DWR has determined that the Covered Action is not proposed pursuant to a natural community conservation plant (NCCP) or habitat conservation plan (HCP).

[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:

DWR has determined that the Covered Action does not significantly impact the SWRCB's Water Quality Control Plan's flow objectives.

[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:

DWR has determined that the Covered Action is consistent with Appendix 3 and Appendix 4. Elevation was a key consideration in selecting the Proposed Project Site, which has an elevation profile such that the site would be subject to daily tidal inundation if not excluded from surrounding waters by levees. Prospect Island's intertidal elevation is the highest priority for habitat restoration under the Delta Plan and habitat restoration will be carried out in accordance with Section II of the Conservation Strategy.

[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:

DWR has determined that the Covered Action is consistent with this policy because its purpose is to restore tidal habitat in a priority habitat restoration area identified by the Delta Plan.

[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:

DWR has determined that the Covered Action will not construct new levees or substantially rehabilitate or reconstruct 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?

N/A

Answer Justification:

DWR has determined that this policy is not applicable because the Covered Action will not introduce any nonnative invasive species. The Covered Action is designed to create conditions that are favorable to native species and that discourage nonnative species. Before and during construction, the Covered Action will remove invasive species within the project area. The Covered Action will replant native species during construction. After construction is complete, DWR's AMMP will provide an appropriate level of monitoring and potential management responses for any invasive species which attempt to move into the project area. DWR will be responsible for ensuring management and monitoring activities meet the Covered Action's applicable performance standards; DWR's Fish Restoration Program, California's State Parks – Division of Boating and Waterways, and DWR contractors will conduct invasive plant monitoring and control on the project site.

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:

DWR has determined that the Covered Action does not involve any 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:

DWR has determined that the Covered Action is consistent with Delta Plan Policy DP P2. Consistent with Delta Plan Policy DP P2, subdivision (a), Prospect Island was a publicly owned site when it was acquired by DWR. Historically, Prospect Island was a tidal marsh. Currently, the project site, including

both the north and south properties, is flooded, uncultivated land that, prior to flooding, was used for agriculture. The site has not been in agricultural use for approximately 20 years and is mostly submerged. No portion of Prospect Island is designated as Prime, Unique or Important Agricultural Land, and the project site is not under a Williamson Act contract. The Project was designed, or changes were made to the design, to alleviate impacts to local land use and city and county general plans.

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:

DWR has determined that the Covered Action does not include Delta flood risk management, including levee operations, maintenance and improvements.

[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:

DWR has determined that the Covered Action does not involve new residential development of five or more parcels.

[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:

DWR has determined that the Covered Action is consistent with this policy. The Covered Action will encroach in a floodway that is not either a designated floodway or regulated stream. DWR has determined, however, that the encroachment will not unduly impede the free flow of water in the floodway or jeopardize public safety.

[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:

DWR has determined that the Covered Action is consistent with this policy. The Covered Action will encroach on the Yolo Bypass. DWR has determined, however, that the encroachment will not have a significant adverse impact on floodplain values and functions.

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