

JULY 2025

Council Appeals Process Overview



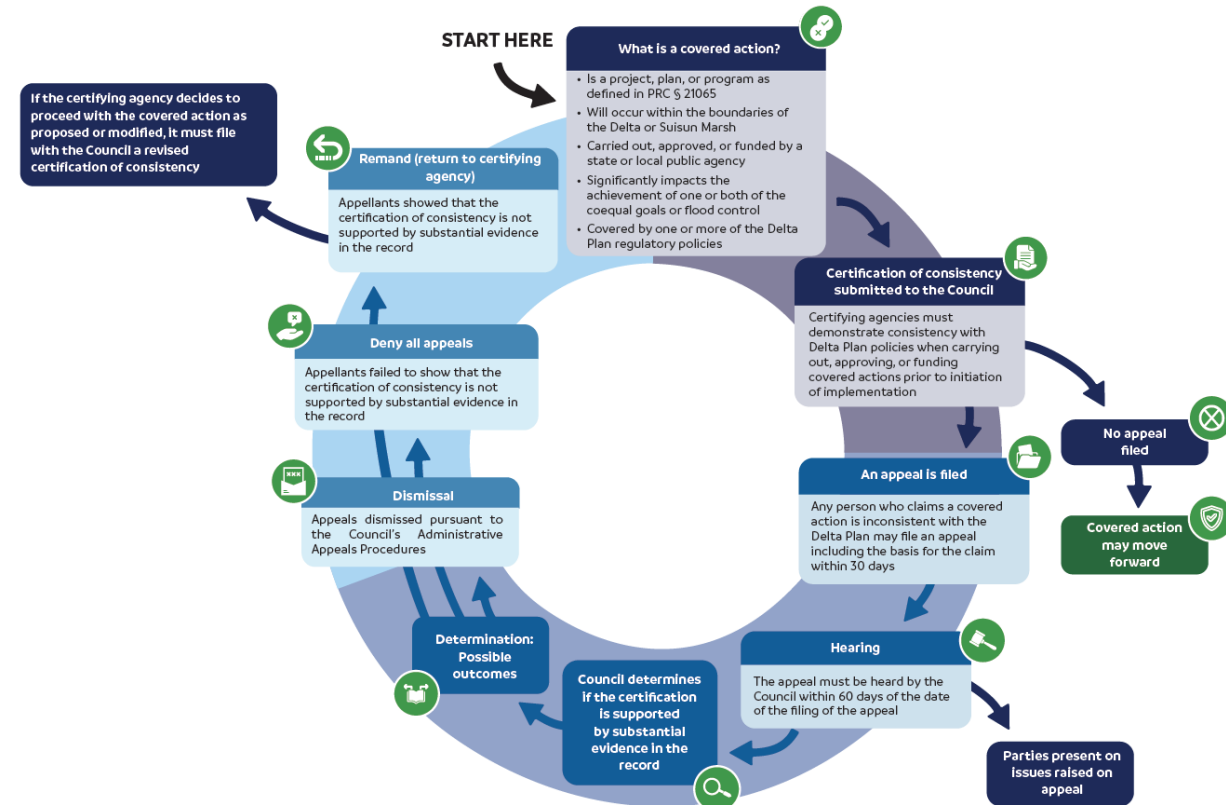
**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

Overview

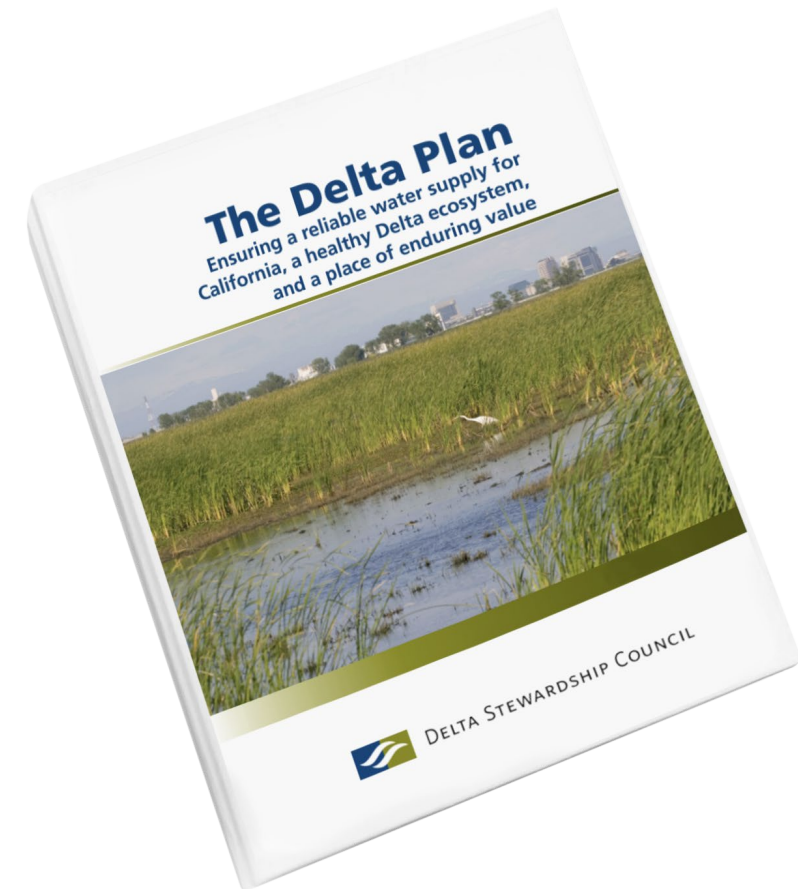
- Covered Actions
- Certifications of Consistency
- Appeals
- Hearing
- Decision

Certification & Appeal Process



What is a Covered Action?

- Delta Reform Act established Council
- Legislature directed Council to develop and implement *legally enforceable* Delta Plan
- Regulatory and appellate role in certain state and local agency proposed actions – “covered actions”
- Agencies determine if proposed action is *covered* by one or more of 14 regulatory Delta Plan policies
- If covered, certifying agencies determine if covered action is *consistent with* the 14 regulatory policies



What is a Covered Action?

– Five Requirements

1. Plan, program, or project as defined in Public Resources Code § 21065
2. Taking place, in whole or in part, within the Delta or Suisun Marsh
3. Carried out, approved, or funded by a state or local public agency
4. Will have a significant impact on achieving one or both coequal goals or implementing government-sponsored flood programs to reduce risks to people, property, and state interests in the Delta
5. Covered by one or more Delta Plan regulatory policies

Delta Plan Policies
WR P1 - Reduce Reliance
WR P2 - Transparency in Water Contracting
ER P1 - Delta Flow Objectives
ER PA – Disclose Contributions to Restoring Ecosystem Function and Providing Social Benefits
ER P2 - Restore Habitats at Appropriate Elevations
ER P3 – Protect Opportunities to Restore Habitat
ER P4 – Expand Floodplains and Riparian Habitat in Levee Projects
ER P5 - Avoid Invasive Nonnative Species
DP P1 – Locate New Urban Development Wisely
DP P2 - Respect Local Land Use
RR P1 - Prioritization of Levee Investments
RR P2 – Require Flood Protection in Residential and Rural Areas
RR P3 – Protect Floodplain
RR P4 – Floodplain Protection
G P1(b)(1) – Coequal Goals
G P(1)(b)(2) – Mitigation Measures
G P(1)(b)(3) – Best Available Science
G P1(b)(4) – Adaptive Management

What is a Certification of Consistency?

- Agency submits written certification of consistency describing how covered action is consistent with regulatory policies
- Most submitted by:
 - Department of Water Resources
 - Reclamation districts
 - Flood control agencies
 - Counties and cities
- Most submitted for:
 - Ecosystem restoration projects
 - Levee projects

Delta Plan Consistency
Detailed Findings

ZACHARIAS RANCH MITIGATION BANK

Sacramento County, California

USACE PERMIT/TRACKING NO.: SPK-2020-00886

AUGUST 2024

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What is an Appeal? Who can File an Appeal?

- Certification of consistency posted on the Council's website
 - Clearinghouse for information
- Any person may appeal within 30 days
- If no person appeals, covered action may proceed
- Appeal requirements in California Code of Regulations (23 CCR §§ 5020, et seq.)

The screenshot shows the Delta Stewardship Council website. The header includes the CA.gov logo, social media links, and navigation links like 'Contact Us' and 'Settings'. The main content area is titled 'Delta Stewardship Council' and 'A CALIFORNIA STATE AGENCY'. It features a 'COVERED ACTIONS OVERVIEW' section with a 'REGISTER' button and a 'LOG IN' button. The 'CERTIFICATION STATUS' section shows a 'Public Review of Certification' button. The 'COVERED ACTION CERTIFICATION' section displays the title 'Cache Slough Mitigation Bank (C20255)' and a 'DOWNLOAD CERTIFICATION' button. Below this, there is a table of documents under the 'All Documents' section.

Document Title	Category/Policy	Process Step	Type	Upload Date
appk_wildlife hazards analysis_20241115.pdf	Delta as a Place - DP P2	Certification Submission	Party Submittal	06/20/2025
email authorization from county_dsc.pdf		Certification Submission	Party Submittal	06/20/2025

What Happens After an Appeal is Filed?

Filing an appeal begins Council's appeals process:

- Ex Parte communication prohibition
- Notice of Appeal (within 5 days of appeal)
- Full and complete record (within 5 days of notice)
- Notice of Hearing and Briefing Schedule
- Written briefs from appellant(s), certifying agency, Delta Protection Commission

What is the Delta Protection Commission's Role?

- Commission has advisory role in appeal process
- Council's procedures allow Commission to submit written brief and to address the Council regarding issues raised by an appellant in an appeal (23 CCR § 5028(a)(1).)
- Council considers Commission's comments and presentation as those of an expert agency regarding the unique cultural, recreational, and agricultural values of the Delta



What Happens at a Hearing?

- Council holds a public hearing within 60 days of appeal
- Certifying agency, appellant(s), and the Delta Protection Commission appear before the Council to present their case and/or address issues raised in the appeal(s)
- The public can provide comments pursuant to the Bagley-Keene Open Meeting Act



What does the Council Consider?

- Council **does not** independently review covered action to determine if consistent with Delta Plan
- Council has *appellate authority and oversight* over covered actions; it **does not** *approve or condition* covered actions
- Council **does** determine if evidence supports the agency's certification that covered action is consistent with Delta Plan regulations
- Appellant's burden to demonstrate lack of evidence

What is a Council Decision?

- Council issues decision with specific findings within 60 days of hearing
- Majority vote of the voting membership of the Council required to approve decision

Resolution 2025-01	
DECISION NO. D20242	
STATE OF CALIFORNIA	
DELTA STEWARDSHIP COUNCIL	
<p>San Francisco Baykeeper, Winnemem Wintu, Shingle Springs Band of Miwok Indians, Cal. Indian Environmental Alliance, Friends of the River, Center for Biological Diversity, Save California Salmon, California Sportfishing Protection Alliance, Golden State Salmon Association, and Restore the Delta</p> <hr/> <p>South Delta Water Agency</p> <hr/> <p>County of Sacramento, Sacramento County Water Agency, Sacramento Area Sewer District, and City of Stockton</p> <hr/> <p>County of San Joaquin, Central Delta Water Agency, and Local Agencies of the North Delta</p> <p>Appellants,</p> <p>v.</p> <p>California Department of Water Resources,</p> <p>Respondent,</p>	<p>(Appeal Nos. C20242-A1, C20242-A2, C20242-A3, C20242-A4)</p> <p>In the Matter of the Department of Water Resources' Certification of Consistency for 2024-2026 Proposed Geotechnical Activities</p> <p>DECISION No. D20242</p> <p>BEFORE: Julie Lee, Chair; Gayle Miller, Vice-Chair; Diane Burgis; Frank C. Damrell, Jr.; Ben Hueso; Maria Mehranian; Daniel Zingale.</p>

What are the Outcomes of the Council's Decision?

- *Dismiss* appeals that do not identify an appealable issue, do not provide required information, or are outside Council's jurisdiction; or
- *Deny* appeals if evidence in the record supports the certification; or
- *Remand* the matter to the agency for reconsideration because certification not supported by substantial evidence in the record

What Happens After the Council's Decision?

- If Council dismisses and/or denies all appeals, covered action may proceed
- If Council remands, covered action cannot proceed until Council's findings addressed in revised certification
- Appeals of revised certification limited to issues remanded by the Council and/or changes to covered action

By the Numbers ...

Since 2013

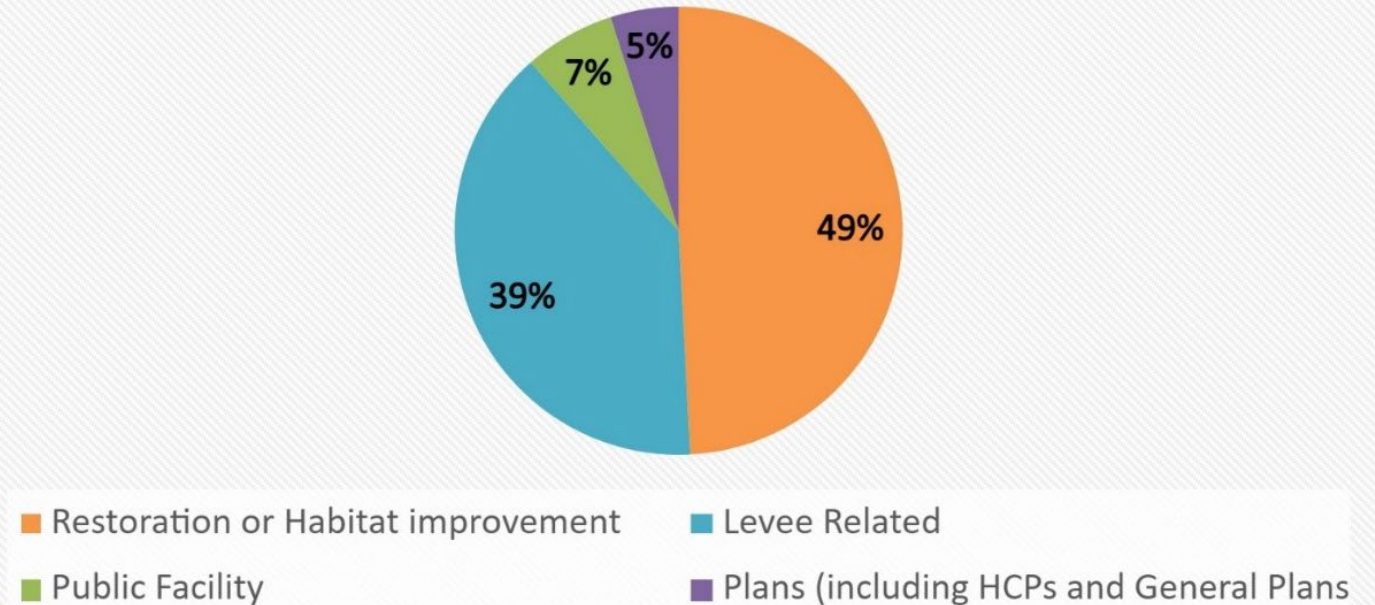
58 Certifications of consistency

6 Certifications appealed

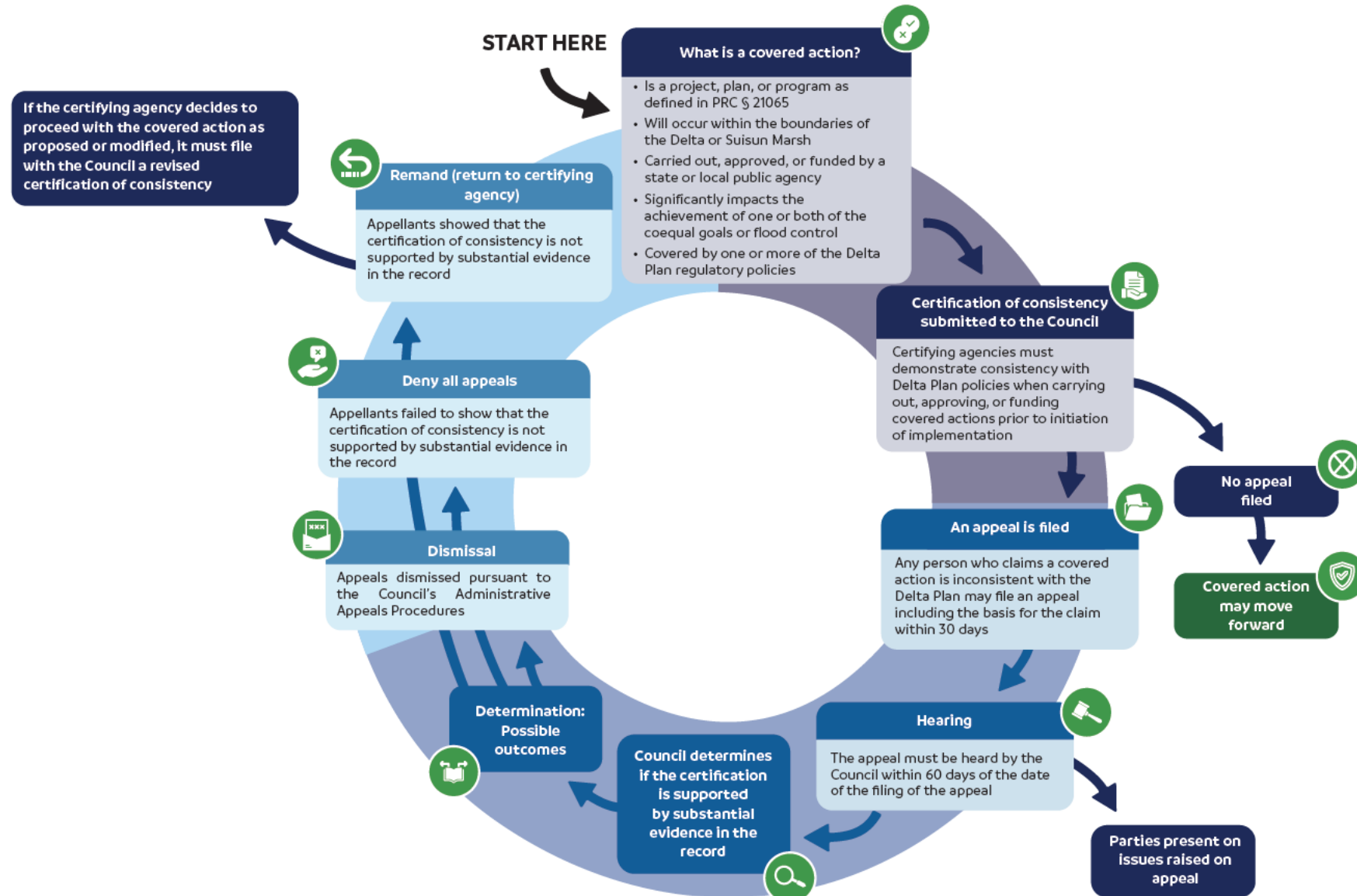
21 Appeals filed

1 Certification remanded

Certifications of Consistency by Project Type



Certification & Appeal Process



Thank you

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