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DELTA STEWARDSHIP COUNCIL

A California State Agency

December 20, 2019

Susan Strachan
Yolo County Department of Community Services
292 West Beamer Street
Woodland, CA 95695

Via email: cannabis@yolocounty.org

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RE: Comments on the Yolo County Cannabis Land Use Ordinance Draft Environmental Impact Report, SCH# 2018082955

Dear Ms. Strachan:

Thank you for the opportunity to review and comment on the Yolo County (County) Cannabis Land Use Ordinance (CLUO) Draft Environmental Impact Report (Draft EIR). The Delta Stewardship Council (Council) recognizes the goals of the County to regulate cannabis activities through land use, zoning, and development standards, and related General Plan amendments. According to the Draft EIR, the EIR is also intended to be used to streamline the environmental review for Cannabis Use Permits pursuant to new regulations.

The Council is an independent state agency established by the Sacramento-San Joaquin Delta Reform Act of 2009, codified in Division 35 of the California Water Code, sections 85000-85350 (Delta Reform Act). The Delta Reform Act charges the Council with furthering California's coequal goals of achieving a more reliable water supply and restoring the Sacramento-San Joaquin River Delta (Delta) ecosystem, to be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. (Wat. Code, §85054.)

Pursuant to the Delta Reform Act, the Council has adopted the Delta Plan, a comprehensive long-term management plan for the Delta and Suisun Marsh that furthers the coequal goals. The Delta Plan identifies 14 regulatory policies, which are set forth in California Code of Regulations, Title 23, sections 5001-5015. The Delta Reform Act grants the Council specific regulatory and appellate authority over certain actions that take place in whole or in part in the Delta and Suisun Marsh, referred to as "covered actions." (Wat. Code, §§ 85022(a) and 85057.5.) A state or local agency that proposes to undertake a covered action is required to prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and submit that certification to the Council prior to implementation of the project (Wat. Code, § 85225).

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

– CA Water Code §85054

Covered Action Determination and Certification of Consistency with the Delta Plan

Based on the project location and scope provided in the Draft EIR, the proposed CLUO does not appear to meet the definition of a covered action, as it is not covered by one or more of the Delta Plan regulatory policies. However, it does appear that future Cannabis Use Permit projects for which the County conducts additional California Environmental Quality Act (CEQA) analysis may meet the definition of a covered action¹. Water Code section 85057.5(a) provides a multi-part test for such projects to define covered actions:

1. Will occur in whole or in part within the boundaries of the Delta (Wat.Code, §12220) or Suisun Marsh (Pub. Resources Code, § 29101). The CLUO would apply to unincorporated land in Yolo County, which includes land within the Legal Delta. Based on Exhibit 2-2 in the Draft EIR, three “existing or eligible” operations in Yolo County are located west of Clarksburg. Future cannabis operations could be proposed within the portion of Yolo County that is located within the Delta.
2. Will be carried out, approved, or funded by the State or a local public agency. Following adoption of the CLUO, applicants would apply for Cannabis Use Permits pursuant to the new regulations from the County, a local public agency. The County would determine whether additional environmental review is required, and whether to approve or deny individual application(s).
3. Will have a significant impact on the achievement of one or both of the coequal goals or the implementation of a government-sponsored flood control program to reduce risks to people, property, and State interests in the Delta. If proposed within the Yolo Bypass, future Cannabis Use Permits could have a significant impact on the achievement of the coequal goal to protect, restore, and enhance the Delta ecosystem, depending on the specific characteristics of the proposed cannabis operation.
4. Is covered by one or more of the regulatory policies contained in the Delta Plan (Cal. Code Regs., tit. 23, §§ 5003-5015). Delta Plan regulatory policies that may apply to future cannabis operations in the Yolo County portion of the Delta are discussed below.

As the local agency that may approve a future Cannabis Use Permits, the County must determine if the approval is a covered action and, if so, file a Certification of Consistency with the Delta Plan (Cal. Code Regs., tit. 23, § 5001(j)(1)(E)(3)) prior to project implementation. The Draft EIR identifies the Delta Reform Act of 2009 in its Regulatory Setting (p. 3.4-33), but does not identify the Delta Plan. In the Final EIR, please add the Council’s Certification of Consistency process to the Regulatory Setting and note that the County may be required to

¹ The Draft EIR (p. ES-8) states that the County intends to use the Program EIR prepared for the CLUO to streamline the environmental review and consideration of future cannabis operation applications. The County may determine that the environmental impacts of an individual project are adequately addressed in the CLUO EIR and that no further environmental review is required, or it may determine that additional environmental review is required or could require focused environmental review. If additional environmental review is required for a proposed project located within the Delta, the Delta Reform Act requirements for covered actions described herein would apply.

submit a certification of consistency for future Cannabis Use Permits pursuant to Water Code section 85225.

Delta Plan Regulatory Policies

The following section describes the Delta Plan regulatory policies that may apply to future Cannabis Use Permits. This information is offered to assist the County in determining whether a future Cannabis Use Permit is a covered action, and if so, to assist the County in preparing environmental documents that could be used to support a certification of consistency. Because the County intends to use this EIR to streamline environmental analysis of future Cannabis Use Permits, our comments focus on both changes to this Final EIR as well as content of future environmental documents for Cannabis Use Permits.

Ecosystem Restoration Policy 3: Protect Opportunities to Restore Habitat

Delta Plan Policy **ER P3** (Cal. Code Regs., tit. 23, § 5007) states that within priority habitat restoration areas depicted in Appendix 5, significant adverse impacts to the opportunity to restore habitat at appropriate locations must be avoided or mitigated. Appendix 5 is available at <http://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf> (starting on page 72).

The Yolo Bypass Priority Habitat Restoration Area (PHRA) falls within the unincorporated area of Yolo County. Following adoption of the CLUO, cannabis operators could apply for Cannabis Use Permits within the Yolo Bypass. If the County receives future applications for Cannabis Use Permits on land within the Yolo Bypass PHRA, the approval of a Cannabis Use Permit may be subject to ER P3.

We encourage the County to conduct additional environmental review of such projects in order to determine whether there may be significant adverse impacts to the opportunity to restore habitat at appropriate elevations. Please acknowledge Delta Plan Policy ER P3 in the Biological Resources section of this Final EIR and any subsequent environmental documents prepared for future cannabis operation applications.

Delta as Place Policy 1: Locate New Urban Development Wisely

Delta Plan Policy **DP P1** (Cal. Code Regs., tit. 23, §5010) places certain limits on new urban development within the Delta. Policy DP P1 states that new residential, commercial, or industrial development must be limited to areas that city or county general plans as of the date of the Delta Plan's adoption (May 26, 2013) designate for residential, commercial, and industrial development in cities or their spheres of influence. This policy is intended to strengthen existing Delta communities while protecting farmland and open space, providing land for ecosystem restoration needs, and reducing flood risk.

The Draft EIR states that cannabis is defined by the state, and is proposed to be defined in the CLUO, as an agricultural land use. As such, the Draft EIR concludes that implementation of the CLUO would not result in conversion of farmland to non-agricultural uses (Impact AG-1). This suggests that most future cannabis operations that are consistent with the CLUO,

particularly cultivation, would be consistent with Delta Plan Policy DP P1. A certification of consistency filed for a covered action will need to document and disclose that a future project is consistent. Please acknowledge Delta Plan Policy DP P1 in the Land Use and Planning section of the Final EIR and any subsequent environmental documents prepared for Cannabis Use Permits.

Risk Reduction Policy 4: Floodplain Protection

Delta Plan Policy **RR P4** (Cal. Code Regs., tit. 23, § 5015) states that no encroachment shall be allowed or constructed in the floodplain of the Yolo Bypass within the Delta unless it can be demonstrated by appropriate analysis that the encroachment will not have a significant adverse impact on floodplain values and functions.

The Yolo Bypass falls within the unincorporated area of Yolo County. As such, subsequent to adoption of the CLUO, cannabis operators could apply for use permits within the Yolo Bypass. If the County receives future cannabis operation applications for land within the Yolo Bypass within the Delta, the project may be subject to RR P4.

We encourage the County to conduct additional environmental review of such projects in order to determine whether there may be significant adverse impacts on floodplain values and functions. Please acknowledge Delta Plan Policy RR P4 in the Hydrology and Water Quality section of this Final EIR and any subsequent environmental documents prepared for future cannabis operation applications.

General Policy 1: Mitigation Measures and Best Available Science

Delta Plan Policy **G P1, subsection (b)(2)**, (Cal. Code Regs., tit. 23, § 5002(b)(2)) requires that covered actions not exempt from the California Environmental Quality Act (CEQA) must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 26, 2018 (unless the measures 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 finds are equally or more effective. These mitigation measures are identified in Delta Plan Appendix O (<http://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>).

The Draft EIR identifies significant impacts for air quality, biological resources, greenhouse gas emissions, hydrology and water quality, noise, and aesthetic impacts from overconcentration of cannabis uses and proposes mitigation measures to address these impacts. Council staff recommends that the County review the Delta Plan MMRP and, when applicable and feasible, to ensure that proposed mitigation measures that may be applied to future Cannabis Use Permits are equally as effective, or more effective than, applicable Delta Plan mitigation measures.

Delta Plan Policy **G P1** (Cal. Code Regs., tit. 23, § 5002(b)(3)) requires that all covered actions must document use of best available science relevant to the purpose and nature of the project.

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The Delta Plan defines best available science as “the best scientific information and data for informing management and policy decisions” (Cal. Code Regs, tit. 23, § 5001(f).) Best available science is also required to be consistent with the guidelines and criteria in Appendix 1A of the Delta Plan (<http://www.deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>). This policy generally requires the lead agency to clearly document and communicate the process for analyzing project alternatives, impacts, and mitigation measures of proposed projects, in order to foster improved understanding and decision making.

Closing Comments

Subsequent to adoption of the proposed CLUO, we invite the County to engage Council staff to discuss individual Cannabis Use Permits that may meet the definition of a covered action. More information on covered actions, early consultation, and the certification process can be found on the Council website, <http://deltacouncil.ca.gov/covered-actions>.

We are available to discuss issues outlined in this letter. Please contact Avery Livengood at (916) 445-0782 (Avery.Livengood@deltacouncil.ca.gov) with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Henderson", with a long horizontal flourish extending to the right.

Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council