



**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

May 5, 2022

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RE: Comments on Stone Lakes National Wildlife Refuge Restoration Project Initial Study/Mitigated Negative Declaration

Dear Joelle Inman:

The Delta Stewardship Council (Council) appreciates the opportunity to comment on the Initial Study/Mitigated Negative Declaration (IS/MND) for the Stone Lakes National Wildlife Refuge Restoration Project (project), according to which the project would restore and enhance freshwater emergent seasonal wetlands and valley riparian communities to benefit wildlife and biodiversity. Sacramento County (County) is the lead agency for the project, which has been developed in collaboration with the U.S. Fish and Wildlife Service (USFWS).

The Council is an independent California 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 providing a more reliable water supply and protecting, restoring, and enhancing the Sacramento-San Joaquin River Delta (Delta) ecosystem. (Water Code, § 85054.) The Delta Reform Act further states that the coequal goals are 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. The

Council is charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan. (Wat. Code, § 85300.)

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 contains regulatory policies, which are set forth in California Code of Regulations, Title 23, sections 5001-5015. A State or local agency that proposes to undertake a covered action, as defined by the Delta Reform Act, 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.)

Covered Action Determination and Certification of Consistency with the Delta Plan

Based on the project location and scope described in the Draft SEIR, the proposed project appears to meet the definition of a covered action. Water Code section 85057.5(a) states that a covered action is a plan, program, or project, as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:

1. Will occur in whole or in part within the boundaries of the legal Delta (Water Code, §12220) or Suisun Marsh (Pub. Resources Code, § 29101). The approximate boundaries of these areas are publicly available on the Open Data Portal at <https://data.ca.gov/dataset/legal-delta-boundary> and <https://data.ca.gov/dataset/suisun-marsh-boundary>. *The project is located within the Delta.*
2. Will be carried out, approved, or funded by the State or a local public agency. *The project will be approved by Sacramento County, a local public agency.*
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. *The project will have a significant impact on the coequal goal of protecting, restoring, and enhancing the Delta ecosystem.*
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 the proposed project are discussed below.*

The State or local agency approving, funding, or carrying out the project must determine if the project is a covered action and, if so, file a Certification of Consistency with the Council prior to project implementation. (Wat. Code, § 85225; Cal. Code Regs., tit. 23, § 5001(j)(3).)

Comments Regarding Delta Plan Policies and Potential Consistency

Certification

The following section describes the Delta Plan regulatory policies that may apply to the proposed project based on the available information in the Draft IS/MND. Many of these policies are identified throughout the Draft IS/MND. This information is offered to assist Sacramento County to prepare a future Certification of Consistency for the project.

General Policy 1: Detailed Findings to Establish Consistency with the Delta Plan

Delta Plan Policy **G P1** (Cal. Code Regs., tit. 23, § 5002) specifies what must be addressed in a Certification of Consistency by a project proponent of a project that is a covered action. The following is a subset of GP 1 requirements that a project must fulfill to be considered consistent with the Delta Plan:

Mitigation Measures

Delta Plan Policy **G P1(b)(2)** (Cal. Code Regs., tit. 23, § 5002(b)(2)) requires 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 and are available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>.

The Draft IS/MND proposes mitigation measures in the resource areas of air quality, biological resources and cultural resources. As such, Sacramento County should review Delta Plan Appendix O and include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan or identify substitute mitigation measures that the agency finds are equally or more effective.

Best Available Science

Delta Plan Policy **G P1(b)(3)** (Cal. Code Regs., tit. 23, § 5002(b)(3)) states that actions subject to Delta Plan regulations must document use of best available science as relevant to the purpose and nature of the project. 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 (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>).

Adaptive Management

Delta Plan Policy **G P1(b)(4)** (Cal. Code Regs., tit. 23, § 5002(b)(4)) requires that ecosystem restoration and water management covered actions include adequate provisions for continued implementation of adaptive management, appropriate to the scope of the action. This requirement is satisfied through a) the development of an adaptive management plan that is consistent with the framework described in Appendix 1 B of the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1b.pdf>), and b) documentation of adequate resources to implement the proposed adaptive management plan.

Ecosystem Restoration Policy 2: Restore Habitats at Appropriate Elevations

Delta Plan Policy **ER P2** (Cal. Code Regs., tit. 23, § 5006) requires habitat restoration be carried out consistent with Appendix 3 (available within Appendix B: <https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf>). The elevation map included as Figure 4-6 (<https://deltacouncil.ca.gov/pdf/delta-plan/figure-4-6-habitat-types-based-on-elevation.pdf>) and Appendix 4 of the Delta Plan should be used as a guide for determining appropriate habitat restoration actions based on an area's elevation. The final IS/MND should identify if the project's restored habitat areas are consistent with Appendix 3, Figure 4-6, and Appendix 4 of the Delta Plan, with consideration for both current water levels and projected sea level rise (based on best available science).

Ecosystem Restoration Policy 3: Protect Opportunities to Restore Habitat

Delta Plan Policy **ER P3** (Cal. Code Regs., tit. 23, § 5007) states that, within the priority habitat restoration areas (PHRAs) depicted in Appendix 5 (available within Appendix B: <https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf>), significant adverse impacts to the opportunity to restore habitat at appropriate elevations as described in ER P2 (Cal. Code Regs., tit. 23, § 5006) must be avoided or mitigated. The project is located within the Cosumnes-Mokelumne River Confluence PHRA. The County should acknowledge Policy ER P3 in the Biological Resources section of the final IS/MND and discuss habitat restoration components of the project provided in the Draft SEIR to support a future Certification of Consistency.

Ecosystem Restoration Policy 5: Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species

Delta Plan Policy **ER P5** (Cal. Code Regs., tit. 23, § 5009) requires that covered actions fully consider and avoid or mitigate the potential for new introductions of, or improved habitat conditions for nonnative invasive species, striped bass, or bass in a way that appropriately protects the ecosystem. In the event that mitigation is warranted, mitigation and minimization measures must include Delta Plan Mitigation Measure 4-1 (available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>) or substitute equally or more effective measures. The County should document in a future Certification of Consistency for the project how the project fully considered and avoided or mitigated potential introductions of or improved habitat for invasive non-native species.

Delta as Place Policy 2: Respect Local Land Use when Siting Water or Flood Facilities or Restoring Habitats

Delta Plan Policy **DP P2** (Cal. Code Regs., tit. 23, § 5011) reflects one of the Delta Plan's charges to protect the Delta as an evolving place by siting water management facilities, ecosystem restoration, and flood management infrastructure to avoid or reduce conflicts with existing or planned future uses when feasible, considering comments from local agencies and the Delta Protection Commission. If applicable, and when feasible, the County should document in a future Certification of Consistency for the project whether the project conflicts with existing or planned future uses as described in DP P2 and how the project was sited to avoid or reduce such conflicts.

Closing Comments

Thank you for engaging the Council in early consultation on this project and for the opportunity to provide comments on the Draft IS/MND. Should you have any questions, please contact Eva Bush at (916) 284-1619 or eva.bush@deltacouncil.ca.gov

Sincerely,



Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council