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DELTA STEWARDSHIP COUNCIL

A California State Agency

July 26, 2019

Ms. Nedzlene Ferrario
Solano County Department of Resource Management
675 Texas Street, Suite 5500
Fairfield, CA 94533

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Sent via email: nnferrario@solanocounty.com

RE: Comments on Proposed General Plan Amendment for Cache Slough

Dear Ms. Ferrario:

Thank you for the opportunity to review and comment on Solano County's (County) proposed General Plan Amendment (also referred to in this letter as "project" or "GPA") for the Cache Slough area. The Delta Stewardship Council (Council) understands that the County is considering adopting new General Plan policies that provide a framework for ecosystem restoration while ensuring land use compatibility with adjacent agricultural operations and continued economic viability of agriculture in Cache Slough. We appreciate your staff meeting with Council staff on April 18, 2019, regarding the intent and purpose of the proposed amendments. Thank you for also providing advance notice of the May 16, 2019 and July 18, 2019 public hearings on this item before the Planning Commission.

The Council is an independent agency of the State of California (State) established by the Sacramento-San Joaquin Delta Reform Act of 2009 (SBX7 1; Delta Reform Act (Wat. Code, § 85000, *et seq.*)). The Delta Reform Act sets forth two coequal goals for the Delta: providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals must 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). The Council is charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan, regulatory portions of which became effective on September 1, 2013.

Project Scope and California Environmental Quality Act Process

The Cache Slough area is a valuable agricultural region located at elevations that are capable of supporting viable habitat restoration. The County has identified several potential issues

"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

associated with land conversions from agriculture to habitat restoration or floodway uses, such as protecting the economic viability of agriculture in Cache Slough, loss of Prime Farmland, land use compatibility between wildlife and adjacent agriculture, nuisances due to lack of land maintenance and management for restoration projects, water quality and supply for agricultural and domestic use, degraded public recreation access, and declining property tax revenues. The Council understands that in response to several restoration projects proposed by the State in the Cache Slough area, the intent of the proposed GPA policies is to protect the County's agricultural, economic, and recreation interests by setting certain conditions and standards for restoration projects.

The staff report for the July 18, 2019 Planning Commission meeting provides that the proposed GPA qualifies for a Class 8 Categorical Exemption pursuant to Section 15308 of the California Environmental Quality Act (CEQA)¹ Guidelines for actions by regulatory agencies "to assure the maintenance, restoration, enhancement or protection of the environment where the regulatory process involves procedures for protection of the environment." Notwithstanding the County's proposed use of the CEQA categorical exemption, there is a reasonable probability that the adoption of the proposed GPA would have a significant impact on the State's coequal goals for the Delta for purposes of the GPA's consistency with the Delta Plan. For this reason, as discussed below, the County should submit to the Council a certification of consistency with the Delta Plan for the proposed GPA. Demonstrating consistency of the proposed policies with the Delta Plan is an important step. Future "covered actions" (discussed in more detail below) implicating these policies will also need to demonstrate consistency with the Delta Plan while being consistent with the County's proposed policies, and will be subject to potential appeal before the Council.

Covered Action Determination and Certification of Consistency with the Delta Plan

Pursuant to the Delta Reform Act, the Council was granted 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." The Council exercises that authority through its regulatory policies (set forth in Title 23 of the California Code of Regulations, Sections 5001 through 5016) and recommendations incorporated into the Delta Plan. State and local agencies are required to demonstrate consistency with the Delta Plan when carrying out, approving, or funding a covered action. (Cal. Water Code section 85057.5 and 85225.)

Water Code section 85057.5, subdivision (a), defines a covered action as 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 Delta or Suisun Marsh;*
- (2) Will be carried out, approved, or funded by a State or a local public agency;*

¹ The County certified a Program Environmental Impact Report for the General Plan update on August 5, 2008 (SCH# 2007122069).

- (3) Is covered by one of the provisions of the Delta Plan; and*
- (4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and State interests in the Delta.*

For purposes of Water Code section 85057.5, subdivision (a)(4), “significant impact” means “a substantial positive or negative 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, that is directly or indirectly caused by a project on its own or when the project's incremental effect is considered together with the impacts of other closely related past, present, or reasonably foreseeable future projects.” (Cal. Code Regs., tit. 23, § 5001(dd).) Projects exempted from CEQA are not generally considered covered actions unless there are unusual circumstances indicating a reasonable probability that the project will have a significant impact as described in subdivision (a)(4), including “local government plan amendments for the purpose of achieving consistency with the Delta Protection Commission’s Land Use and Resource Management Plan.” (Cal. Code Regs., tit. 23, § 5001(dd)(4).)

The proposed GPA appears to meet the definition of a covered action set forth in Section 85057.5(a) because:

1. it would apply to the Cache Slough area, which is located within the Delta primary zone;
2. it would be adopted and implemented by Solano County;
3. the proposed GPA policies affect activities that would be covered by Delta Plan regulatory policies (described in more detail below); and
4. it may have a significant positive or negative impact on the coequal goal of protection, restoration, and enhancement of the Delta ecosystem; and on the achievement of the coequal goals in light of the Delta as an evolving place.

Although the County proposes a CEQA exemption for the project, there are unusual circumstances that indicate a reasonable probability that the proposed GPA will have a significant impact on the Reform Act’s coequal goal of protection, restoration, and enhancement of the Delta ecosystem. The proposed GPA has potential to inhibit the opportunity to restore habitat within the Cache Slough and Yolo Bypass Priority Habitat Restoration Areas (PHRAs) identified in the Delta Plan. In addition, the staff report for the July 18, 2019 Planning Commission hearing on the GPA particularly states that “consistency with the Land Use and Resource Management Plan by the Delta Protection Commission ... is required prior to the Board of Supervisors action.”

The staff report also states that “The project consists of adoption of a policy framework to address potential agricultural land conversions in Cache Slough. Cache Slough is predominantly agriculture, adjacent to the Sacramento River and its tributaries, and the Yolo Bypass floodway. The proposed policies protect the existing agricultural environment and the

supporting infrastructure in order to ensure continued economic viability of the region in order to avoid conflicts of Solano County's vision for agriculture. Individual environmental effects due to construction activities will be evaluated on a project level or case by case basis." As stated above, the coequal goals must "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." Based on the staff report, it appears that there is also a reasonable probability that the proposed GPA will have a significant impact on the achievement of the coequal goals in light of the Delta as an evolving place.

Consequently, because there is a reasonable probability that the proposed GPA may have a significant impact on the coequal goals, including implications on the Delta as an evolving place, it would meet the covered action criterion set forth in Section 85057(a)(4).

Comments Regarding Delta Plan Policies and Potential Consistency Certification

The following section describes regulatory Delta Plan policies that may apply to the proposed GPA based on materials reviewed at the May 16, 2019 Planning Commission hearing and the notice of public hearing and staff report provided in advance of the July 18, 2019 Planning Commission hearing. This information is offered to assist the County in preparing a record that can be used to support a future certification of consistency with the Delta Plan.

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

Delta Plan Policy **G P1** (23 Cal. Code Regs. section 5002) specifies what must be addressed in a certification of consistency by a project proponent for a covered action. Subsection 3 of **G P1** (23 CCR Regs. section 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. Best available science means the best scientific information and data for informing management and policy decisions. (Cal. Code Regs, tit. 23, § 5001, subd. (f).) Six criteria are used to define best available science: relevance, inclusiveness, objectivity, transparency and openness, timeliness, and peer review. This policy generally requires that the lead agency clearly document and communicate the process for analyzing alternatives, impacts, and mitigation measures for a proposed project in order to foster improved understanding and decision making.² For the GPA, the County should describe in the record how the decision to adopt and implement the proposed policies is supported by best available science.

Ecosystem Restoration Policy 3: Protect Opportunities to Restore Habitat

Delta Plan Policy **ER P3** (23 Cal. Code Regs. section 5007) states that within the PHRAs depicted in Appendix 5 of the Delta Plan, significant adverse impacts to the opportunity to restore habitat at appropriate elevations must be avoided or mitigated.³

² The complete regulatory definition of best available science is provided in Appendix 1A, available here: [https://govt.westlaw.com/calregs/Document/I5AA81DA007BC11E39CD1C32461CFE427?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I5AA81DA007BC11E39CD1C32461CFE427?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)).

³ Appendix 5 is available at the following web link: <https://govt.westlaw.com/calregs/Link/Document/Blob/If2c3ed400a3111e3a29dad00d20c13c4.png?targetType=admin->

The area in which the County proposes to apply the proposed GPA policies includes the Cache Slough PHRA and portions of the Yolo Bypass PHRA identified in Appendix 5. The proposed GPA includes policies that would, among other things, require that proposed ecosystem restoration projects do not diminish viability of agriculture in Cache Slough and the surrounding region (Policy RS.P-29.1), and requires that ecosystem restoration projects that do proceed provide multiple flood risk, agriculture, and recreational benefits (Policy RS.P-29.10, Policy RS.P-29.11). The proposed GPA also includes policies that would require ongoing monitoring of restoration projects by third-party entities (Policy RS.P-29.14), active control of nonnative species (Policy RS.P-29.15), and an active water quality monitoring program (Policy RS.P-29.19).

Implementing the proposed GPA would require the County to adopt an Overlay Zone for the Cache Slough Region that establishes detailed requirements for restoration activities (Implementation Program RS.I-15.1). Future proposed zoning regulations could require findings for, and impose conditions on, restoration projects that are not currently required for such projects, which would also be potentially inconsistent with ER P3. Adopting the proposed General Plan policies and implementing zoning regulations for ecosystem restoration projects could inhibit the feasibility of habitat restoration opportunities within the Yolo Bypass and Cache Slough PHRAs by imposing additional approvals and requirements on such projects that do not currently exist.

As noted in the May 16, 2019 staff report, several large-scale habitat restoration projects are currently planned in Solano County within the Yolo Bypass and Cache Slough PHRAs. These include projects at Prospect Island, Lookout Slough, and Little Egbert Tract. As noted in the staff report, these projects are proposed to be sited in the Cache Slough region to take advantage of land elevations appropriate for restoration.

Chapter 4 of the Delta Plan underscores the importance of completing such large-scale restoration projects at favorable locations to achieving an overall vision, pursuant to the Delta Reform Act, for a restored Delta ecosystem. The proposed GPA could inhibit the size, features, connectivity, and/or elevation of these and other similar projects. As a result, we encourage the County to provide substantial evidence in the record supporting a future certification of consistency demonstrating how the proposed GPA would not preclude implementation of tidal wetland restoration projects in the Cache Slough and Yolo Bypass PHRAs.

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

Delta Plan Policy **DP P2** (23 Cal. Code Regs. section 5011) reflects one of the Delta Plan's charges to protect the Delta as an evolving place by siting water management facilities,

ecosystem restoration projects, and flood management infrastructure to avoid or reduce conflicts with existing uses or those uses described or depicted in city and county general plans when feasible. The County should describe in the record how implementation of the proposed GPA would work to avoid or reduce such conflicts with existing or planned future land uses. This discussion should specifically address both existing and planned future agricultural and ecosystem restoration land uses, among others. The Council also encourages the County to work with Council staff in early consultation to consider how the proposed GPA can be used to set an appropriate context for how future ecosystem restoration covered actions proposed by other public agencies within the County's jurisdiction should avoid or reduce conflicts with existing or planned future land uses.

Closing Comments

It is the agency approving, funding, or carrying out the project that ultimately must determine if that project is a covered action and, if so, file a certification of consistency with the Delta Plan (Wat. Code, § 85225) prior to project implementation. As the County proceeds toward adoption and implementation of the GPA, the Council invites the County to continue to engage Council staff in early consultation (prior to submittal of a certification of consistency) to discuss proposed policies and future zoning regulations that would promote consistency with the Delta Plan. Our staff continue to review the proposed draft GPA policies and may offer potential revisions that would better align the proposed amendment with the Delta Plan during consultation meetings. As part of the Council, Delta Science Program staff are available to provide further consultation and guidance regarding appropriate application of best available science.

More information on covered actions, early consultation, and the certification process can be found on the Council website, <http://deltacouncil.ca.gov>. We are available to discuss issues outlined in this letter as you proceed in the next stages of your approval processes. Please contact me at Jeff.Henderson@deltacouncil.ca.gov or (916) 445-0258 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