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## DELTA STEWARDSHIP COUNCIL

*A California State Agency*

August 29, 2017

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Yolo Habitat Conservancy  
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Woodland, CA 95697

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Via email: [info@yolohabitatconservancy.org](mailto:info@yolohabitatconservancy.org)

**RE: Public Draft Yolo Habitat Conservation Plan/Natural Community Conservation Plan and the Draft Environmental Impact Statement/Environmental Impact Report, SCH#2011102043**

Dear Ms. Marchand:

Thank you for the opportunity to review and comment on the Public Draft Yolo Habitat Conservation Plan/Natural Community Conservation Plan (Yolo HCP/NCCP) and the Draft Environmental Impact Statement/Environmental Impact Report (Draft EIS/EIR). The Delta Stewardship Council (Council) applauds the Conservancy's efforts to develop a comprehensive effort to address the conservation needs and the effects of future anticipated activities on 12 sensitive species within Yolo County. We appreciate the opportunity to have had a dialogue with the Conservancy on these efforts over the past several years and look forward to continuing to work with you as you finalize and implement the Yolo HCP/NCCP.

In our previous comment letter on the Second Administrative Draft Yolo HCP/NCCP (dated 06/19/15), we requested that you consider whether the Yolo HCP/NCCP is a "covered action" under the Delta Plan. We had also highlighted several Delta Plan regulatory policies that are commonly relevant to habitat restoration projects. We appreciate that you addressed our comments in the Draft Yolo HCP/NCCP and the Draft EIS/EIR. We anticipate that these documents can be the foundation upon which the Yolo Habitat Conservancy (Conservancy) prepares a Delta Plan consistency certification. Below we offer additional information on the Delta Plan Consistency Certification process that we hope will be useful.

The mission of the Council is to promote the coequal goals of water supply reliability and ecosystem restoration in a manner that protects and enhances the unique values of the Delta as an evolving place (Water Code section 85054). The Council has a legally enforceable management framework for the Delta and Suisun Marsh called the Delta Plan, which applies a

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*"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

common sense approach based on the best available science to achieve the coequal goals. The Council was granted specific regulatory and appellate authority under the Delta Reform Act over certain actions that take place in whole or in part in the Delta or Suisun Marsh. The Council exercises that authority through the development and implementation of the Delta Plan.

### **Comments on the Draft EIS/EIR**

As mentioned above, we appreciate that you addressed our June 2015 comments in the Draft EIS/EIR. Apart from the recommendation to include the Delta Reform Act as part of the “Regulatory Settings” section, mentioned below, based on our review we felt that the EIS/EIR was adequate. For example, in addition to the extensive biological goals, objectives and conservation measures that reflect the changes toward habitat improvement and restoration, the EIS/EIR appears to have done a detailed analysis on reasonable range of alternatives that are potentially feasible.

### **Comments on the Yolo HCP/NCCP**

The Council applauds the efforts of the Yolo Conservancy in the development of the Yolo HCP/NCCP and its objectives of promoting recovery of listed species and natural landscapes while improving certainty and efficiencies in environmental permitting. Because the HCP/NCCP will be used as a guide for covered activities, we encourage the Conservancy to include the Delta Reform Act under 1.4 of the “Regulatory Context” section. Covered activities under the HCP/NCCP, within the Legal Delta, should comply with the described federal and state laws and regulations.

### **Delta Plan Consistency Certification Information**

According to the Delta Reform Act, state or local agencies approving, funding or carrying out projects, plans, or programs, upon determining their project is a “covered action” subject to regulations of the Delta Plan, must certify consistency of the project with the Delta Plan policies (Water Code section 85225). Based on the project description, Council staff believes your project meets the definition of a covered action. Generally, the California Environmental Quality Act (CEQA) lead agency, which in this case would be the Conservancy, would complete the Certification of Consistency.

The Council anticipates that the level of detail included in a Certification of Consistency for a programmatic plan such as the Yolo HCP/NCCP would be appropriate to the level of detail within the plan itself. As currently undefined projects under the Yolo HCP/NCCP are further developed and implemented over the 50-year permit term, the Delta Plan recommends that project proponents should consider whether these projects are covered actions requiring a consistency certification. Council staff looks forward to working with, and providing early consultation to, project proponents as these projects are developed. Upon our review, future

project activities should consider the guidance provided above with regard to Consistency Determination.

Additionally, we recommend that the Conservancy include the Delta Reform Act's regulatory framework and reflect the Delta Plan Policies in the forthcoming final EIS/EIR as part of the "Regulatory Setting", of sections listed below. This will provide the basis to support a Certification of Consistency for prospective projects.

- 4.2.2 Biological Resources
- 5.2.2 Land Use
- 6.2.2 Agricultural Resources
- 8.2.2 Recreation and Open Space
- 9.2.2 Hydrology and Water Quality

As previously stated, the Council appreciates that the Draft Yolo HCP/NCCP and the Draft EIS/EIR appears to address each of the policies highlighted from the June 2015 comment letter. To better support your Certification of Consistency, we encourage the Conservancy to revisit the following Delta Plan policies before filing:

### **Mitigation Measures**

Delta Plan Policy **G P1** (23 Cal. Code Regs. section 5002) requires that actions not exempt from CEQA and subject to Delta Plan regulations must include applicable feasible mitigation measures consistent with those identified in the Delta Plan Program EIR or substitute mitigation measures that are equally or more effective. See Mitigation Measures 4-1 through 4-5 in the Delta Plan's Mitigation and Monitoring Report Program available at:

[http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a\\_attach%202.pdf](http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%202.pdf).

### **Best Available Science and Adaptive Management**

Delta Plan Policy **G P1** also 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 regulatory definition of "best available science" is provided in Appendix 1A of the Delta Plan

<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%201A.pdf>).

Delta Plan Policy **G P1** also 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 1B of the Delta Plan

<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%201B.pdf>) and B)

documentation of adequate resources to implement the proposed adaptive management plan. Since the HCP/NCCP will be primarily funded through development fees, then it is expected that funding of monitoring and adaptive management for habitat restoration and creation of projects will be assured.

We recommend that the Conservancy's template for restoration plans require that such projects have an adaptive management strategy consistent with the framework in Appendix 1B of the Delta Plan. This could help to streamline consultation and consistency determination for projects implemented under the HCP/NCCP.

The Delta Science Program's Adaptive Management Liaisons are available to provide further consultation and guidance to help the Conservancy with the appropriate application of best available science and adaptive management. Please contact Karen Kayfetz ([Karen.Kayfetz@deltacouncil.ca.gov](mailto:Karen.Kayfetz@deltacouncil.ca.gov)) of the Delta Science Program.

**Restore Habitat in a Manner Consistent with the Delta Plan** - Delta Plan Policy **ER P2** (23 Cal. Code Regs.5006) states that habitat restoration must be consistent with Appendix 3 (<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%203.pdf>) of the Delta Plan regulations and that restoration will occur at appropriate elevations. Appendix 3, which is an excerpt from the 2011 Draft Ecosystem Restoration Program (ERP) Conservation Strategy, provides a vision for a mosaic of different habitat types within the Delta including open water, subsided lands, floodplains, and upland areas. It also includes a vision for use of Delta agricultural lands to support special-status wildlife species, which particularly relevant to the HCP/NCCP because much of the conservation plan's strategy involves widespread use of wildlife-friendly farming through conservation easements.

**Protect Opportunities to Restore Habitat** - Delta Plan Policy **ER P3** (23 Cal. Code Regs.5007) requires that, within the priority habitat restoration areas (PHRAs) depicted in Appendix 5 of the Delta Plan (<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%205.pdf>), significant adverse impacts to the opportunity to restore habitat must be avoided or mitigated. Much of the overlap between the Legal Delta and the HCP/NCCP Plan Area includes the Yolo Bypass PHRA. Please analyze the extent to which any of the covered activities in the HCP/NCCP may have significant adverse impacts to the opportunity to restore habitat within the Yolo Bypass PHRA.

**Land Use Conflicts** - Delta Plan Policy **DP P1** (23 Cal. Code Regs.5010) calls for locating new residential, commercial, and industrial development within areas designated for development in the Delta Plan, based on city and county general plans approved before adoption of the Delta Plan on May 17, 2013. Development is also permitted outside areas designated for development if it is consistent with the land uses designated in county general plans approved before adoption of the Delta Plan.

Petrea Marchand, Executive Director  
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Delta Plan Policy **DP P2** (23 Cal. Code Regs.5011) states that plans for ecosystem restoration must be sited to avoid or reduce conflicts with existing uses when feasible, considering comments from local agencies and the Delta Protection Commission. For example, addressing the requirement to consider sites on existing public lands, when feasible and consistent with a projects purpose, before privately owned sites are purchased.

**Invasive Species** - Delta Plan Policy **ER P5** (23 Cal. Code Regs.5009) calls for avoiding introductions and habitat improvements for invasive nonnative species or mitigating these potential impacts in a manner that appropriately protects the ecosystem. Analysis on this matter should address both nonnative wildlife species as well as terrestrial and aquatic weeds.

To the maximum extent practicable, covered actions should avoid or mitigate for conditions that would lead establishment of nonnative invasive species. In the event that mitigation is warranted, mitigation and minimization measures should be consistent with the Delta Plan Mitigation Measures 4-1 available at [http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a\\_atta%202.pdf](http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_atta%202.pdf).

### **Closing Comments**

We appreciate your willingness to engage with us and look forward to continued coordination as you proceed with the consistency certification process, and as you finalize and implement the Yolo HCP/NCCP. I encourage you to contact Ron Melcer at [Ronald.Melcer@deltacouncil.ca.gov](mailto:Ronald.Melcer@deltacouncil.ca.gov) or Megan Brooks at [Megan.Brooks@deltacouncil.ca.gov](mailto:Megan.Brooks@deltacouncil.ca.gov) for any questions you may have regarding Delta Plan consistency.

Sincerely,



Cassandra Enos-Nobriga  
Deputy Executive Officer  
Delta Stewardship Council