



980 NINTH STREET, SUITE 1500
SACRAMENTO, CALIFORNIA 95814
HTTP://DELTACOUNCIL.CA.GOV
(916) 445-5511

DELTA STEWARDSHIP COUNCIL

A California State Agency

September 5, 2017

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Todd Smith, Acting Environmental Coordinator
County of Sacramento
Office of Planning and Environmental Review
827 7th Street, Room 225
Sacramento, CA 95814

Members
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Executive Officer
Jessica R. Pearson

Via email: smithtodd@saccounty.net

RE: Draft Environmental Impact Statement/Environmental Impact Report for the South Sacramento Habitat Conservation Plan, SCH#2008062030

Dear Mr. Smith:

Thank you for the opportunity to review and comment on the Draft Environmental Impact Statement/Environmental Impact Report (Draft EIS/EIR) for the South Sacramento Habitat Conservation Plan (SSHCP). The Delta Stewardship Council (Council) applauds Sacramento County's (County) efforts to improve certainty and efficiencies in environmental permitting and protection of open space, habitat, and agriculture. We support the intent to develop a comprehensive plan to ensure the long-term viability of 28 plant and wildlife species.

The Council appreciates and recognizes many of the additions made in response to our previous comment letter, dated December 2013. Below we offer additional information on the Delta Plan Consistency Certification process that we hope will be useful. We also highlighted several Delta Plan regulatory policies that are commonly relevant to habitat restoration projects and provided a few recommendations. We anticipate that this work can be a foundation upon which the County prepares a Delta Plan consistency certification. As the SSHCP is implemented over the 50-year permit term, the Council recommends that any covered activities located within the Legal Delta or the Preserve Planning Unit (PPU 6) are consistent with the Delta Plan. These activities should consider the guidance provided below with regard to Consistency Determination.

"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

Comments on the Draft EIS/EIR

The Draft EIS/EIR identifies that SSHCP overlaps with roughly 40,980 acres of the Legal Delta. Although the majority of covered activities will be implemented within the Urban Development Area (UDA), the Draft EIS/EIR also defines two categories of covered activities (Rural Transportation projects and Recycled Water projects) that will be constructed outside the UDA, as well as covered activities related to the management and improvement of species habitats within the proposed Preserve Systems.

We appreciate that the Draft EIS/EIR (Appendix D) defines mitigation and avoidance measures for covered species and habitat that will be affected by the covered activities identified in the SSHCP. Table 8-8 displays the direct impacts of covered activities for each natural land cover type outside the UDA, totaling 1,438 acres. Section 7.2.3.2 states that outside the UDA, associated infrastructure and transportation improvement projects would directly impact the natural land cover in parts of the Lower Cosumnes River.

The Delta Plan established six habitat restoration areas in the Delta, of which the Cosumnes-Mokelumne Confluence, is located within the SSHCP Plan Area. Delta Plan Policy ER P3 calls for protecting opportunities to restore habitat in these areas. We recommend that the Final EIR analysis include the impact of any urbanization or permanent agricultural easements on the opportunity to restore priority habitat areas within the Delta Plan's Cosumnes-Mokelumne Confluence area. Potential mitigation measures could include elevating facilities so that water can flow underneath to allow for future restoration of habitats depended on tides or periodic flooding, or locating facilities at the edge of the restoration area, rather than in the middle, to improve opportunities for restoring habitat connectivity. For more information, please refer below to the section "Restore Habitat in a Manner Consistent with the Delta Plan."

We appreciate that the Draft EIS/EIR quantifies the areal extent of the proposed UDAs and discusses any potential impacts to agricultural resources. We recognize that under the Proposed Actions/Proposed Project Alternative that 1,900 acres of urban development would not be "displaced" outside the UDA. However, as discussed in section 4.2.3.1, "both inside and outside of the UDA, other preserves are needed to complete the Preserve System and would be acquired by preserving under-developed or agricultural lands." Additionally, Elk Grove's Sphere of Influence, as part of the UDA, slightly overlaps with the Legal Delta. Please review the Delta Plan land use policies discussed in more detail below in the section "Land Use Conflicts".

Under 7.2.3.2 of the Draft EIS/EIR, "Outside the UDA, associated infrastructure and transportation improvement projects would directly impact 1,438 acres of natural land cover types, primarily parts of Lower Cosumnes River." The Delta Plan contains three policies that relate to flood protection, encroachment in floodways, and encroachment on floodplains, which should be considered in this analysis. Please refer below to the section "Hydrology" for more detail on these policies.

In addition, while we appreciate that the Delta Reform Act's regulatory framework is added under the *Affected Environmental/Environmental Setting 4.1.1.2 State Regulations and Policies*, we recommend that you include the Delta Plan Policies that reflect the sections below in the forthcoming final EIS/EIR as part of the "Affected Environmental/Environmental Setting" sections for:

- Chapter 6 – Agriculture
- Chapter 7 – Hydrology
- Chapter 8 – Natural Land Cover Habitats, and Associated Plant and Animal Communities
- Chapter 9 – Special Status Species Including HCP Covered Species
- Chapter 10 – Aquatic Resources

Delta Plan Covered Actions and Consistency Certification

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 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.

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 plan description, Council staff believes your plan meets the definition of a covered action. Generally, the California Environmental Quality Act (CEQA) lead agency, which in this case would be Sacramento County, would complete the Certification of Consistency.

Again as projects under the SSHCP are further developed and implemented over the 50-year permit term, future project activities should consider the guidance provided in this document with regard to Consistency Determination. Council staff looks forward to working with, and providing early consultation to, project proponents as these projects are developed. As previously stated, the Council appreciates that the Draft EIS/EIR appears to address many of the policies highlighted from the December 2013 comment letter. To better support your Certification of Consistency, we encourage you to review our recommendations and revisit the following Delta Plan policies before filing:

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Mitigations 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. Mitigation Measures in the Delta Plan's Mitigation and Monitoring Report Program is available at: (http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%2002.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 SSHCP 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 County'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 SSHCP.

The Delta Science Program's Adaptive Management Liaisons are available to provide further consultation and guidance to help the County with the appropriate application of best available science and adaptive management. Please contact Darcy Austin (Darcy.Austin@deltacouncil.ca.gov) of the Delta Science Program.

Land Use Conflicts: Policies related to locating new urban development wisely, and respecting local land use when siting water or flood facilities or restoring habitats. Delta Plan Policy **DP P1** (23 Cal. Code Regs. section 5010) states that new residential, commercial, or industrial development is permitted outside the urban boundaries only if it is consistent with the land use designated in the relevant county general plan. It is intended to strengthen existing Delta communities while protecting farmland and open space, providing land for ecosystem restoration needs, and reducing flood risk. Delta Plan Policy **DP P2** (23 Cal Code Regs.

section 5011) states that plans for ecosystem restoration must be sited to avoid or reduce conflicts with existing uses when feasible.

Restore Habitat in a Manner Consistent with the Delta Plan: As mentioned above, we recommend that the Final EIR analysis include the impact to these types of habitat within the Delta Plan's Consumnes-Mokelumne Confluence area¹. Delta Plan Policy **ER P2** (23 Cal. Code Regs. section 5006) states that habitat restoration must be consistent with Appendix 3 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 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.
(<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%203.pdf>)

Further guidance is provided by Delta Plan Recommendation **ER R2**, which states, for the Consumnes-Mokelumne Confluence, "Allow these unregulated and minimally regulated rivers to flood over their banks during winter and spring frequently and regularly to create seasonal floodplains and riparian habitats that grade into tidal marsh and shallow subtidal habitats."

Delta Plan Policy **ER P3** (23 Cal. Code Regs. section 5007) requires that, within the priority habitat restoration areas (PHRAs) depicted in Appendix 5 of the Delta Plan, significant adverse impacts to the opportunity to restore habitat must be avoided or mitigated. Much of the overlap between the Legal Delta and the SSHCP Plan Area includes the Consumnes-Mokelumne Confluence PHRA. (<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%205.pdf>)

Hydrology: As described above, please consider Delta Plan Policy **RR P2** (23 Cal. Code Regs. section 5013) which requires flood protection for residential development in rural areas, Policy **RR P3** (23 Cal. Code Regs. section 5014) restricts encroachment in floodways, and Policy **RR P4** (23 Cal. Code Regs. section 5015) restricts encroachments in floodplains, including the Cosumnes-Mokelumne Confluence². Policy **RR P4** states that "no encroachment shall be allowed or constructed unless it can be demonstrated by appropriate analysis that the encroachment will not have a significant impact on floodplain values and functions."

Invasive Species: Delta Plan Policy **ER P5** (23 Cal. Code Regs. section 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, design of habitat restoration and creation actions should avoid or minimize effects that would lead to the establishment of nonnative invasive species

¹ The boundaries of the priority habitat restoration areas are depicted in Appendix 5 of the Delta Plan regulations.

² RR P4 refers to the "Cosumnes River-Mokelumne River Confluence, as defined by the North Delta Flood Control and Ecosystem Restoration Project (McCormack-Williamson), or as modified in the future by the Department of Water Resources or U.S. Army Corps of Engineers."

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populations on site before relying upon mitigation measures. In the event that mitigation is warranted, those mitigation and minimization measure should be equally or more effective with the Delta Plan Mitigation Measures 4-1.

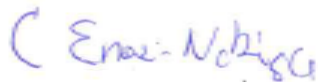
http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%202.pdf.

Finally, the level of detail included in the SSHCP certification filing should be consistent with the programmatic nature of the document. As specific projects or proposed activities which fall within whole or part of the Legal Delta are scoped and implemented, they would also seek consistency following the Council's guidelines. A way to better support the process is to include the information needed to support the certification of Delta Plan consistency within the EIS/EIR, as noted above, potentially including a draft certification as an appendix to the Final EIS/EIR.

Closing Comments

The Council is supportive of the SSHCP and its efforts to promote recovery of listed species and natural landscapes. We would like to work with you to ensure the consistency of the SSHCP with the Delta Plan and we look forward to continued coordination to further our related efforts. We are available to continue discussions about how to ensure that your Plan is consistent with the Delta Plan as you proceed in the next stages of your Plan approval process. I encourage you to contact my staff Ron Melcer (Ronald.Melcer@deltacouncil.ca.gov) or Megan Brooks (Megan.Brooks@deltacouncil.ca.gov) with your questions, comments, or concerns.

Sincerely,



Cassandra Enos-Nobriga
Deputy Executive Officer
Delta Stewardship Council