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DELTA STEWARDSHIP COUNCIL

A California State Agency

August 22, 2018

Chair
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Ms. Regina Espinoza, District Manager
Bethel Island Municipal Improvement District
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Michael Gatto
Maria Mehranian
Susan Tatayon
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**Re: COMMENTS ON DRAFT INITIAL STUDY/PROPOSED MITIGATED NEGATIVE
DECLARATION FOR THE NORTHWEST LEVEE IMPROVEMENTS AND STONE ROAD
SEEPAGE REDUCTION PROJECT (SCH# 2018072062)**

Dear Ms. Espinoza:

Thank you for the opportunity to review and comment on Bethel Island Municipal Improvement District's (District) Draft Initial Study/Proposed Mitigated Negative Declaration (IS/MND) for the proposed Northwest Levee Improvements and Stone Road Seepage Reduction Project ("project"). This letter builds upon comments the Council offered on this project in our letter to the District dated June 6, 2018, and the early consultation discussion on August 15, 2018.

The Draft MND describes the proposed Project facilities located in the western Sacramento River-San Joaquin River Delta in Contra Costa County. The proposed project includes the following improvements:

- Approximately 13,000 linear feet (LF) of levee improvements, where needed, to meet Bulletin 192-82 criteria, including raising and widening the levee crest, waterside slope armoring, landside slope flattening, and installation of an all-weather road on the levee crown between stations 0+00 and 130+00.
- Creation of approximately 4,500 LF of 10-foot-wide berm on the waterside slope, from station 40+00 to 75+00 and 104+00 to 114+00, which would be planted to provide about 1 acre of emergent aquatic vegetation (EAV) habitat.
- Creation of approximately 3,500 LF or 1.2 acres of freshwater marsh, riparian forest, and scrub shrub habitat on the landside of the levee between stations 40+00 and 75+00.

"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

- Some geotechnical remediation that could include one or a combination of measures such as installation of a clay cutoff wall at the landside levee toe, installation of a drainage blanket on the landside levee slope, or placement of sheet piles along the landside of the levee to address seepage in this reach of the levee system.
- Additional seepage remediation as needed along Site 2, between levee stations 340+00 and 450+00.

The Delta Stewardship Council (Council) is an independent State of California agency established by the Sacramento-San Joaquin Delta Reform Act of 2009 (SBX7 1; Delta Reform Act). 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.

As stated in the Delta Reform Act, the State has "'coequal goals' (which) means 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" (Water Code section 85054).

Through the Delta Reform Act, the Council was granted specific regulatory and appellate authority over certain activities that take place in whole or in part in the Delta and Suisun Marsh, which are referred to as "covered actions". The Council exercises that authority through development and implementation of the Delta Plan. State and local agencies are required to demonstrate consistency with 14 regulatory policies identified in the Delta Plan when carrying out, approving, or funding a covered action.

Covered Action Status

Council staff appreciated the opportunity to learn more about the proposed project and the District's overall goals and objectives for flood protection and habitat restoration at our initial early consultation meeting on August 15, 2018. The Council would like to ensure that this project should advance Delta Plan objectives to reduce risk and enhance the ecosystem, consistent with DWR's multi-benefit objectives funded by the PSP.

Based on the project location and scope, the proposed project could have significant impacts on the achievement of the coequal goals as well as the implementation of a government-sponsored flood control program to reduce risks to people, property, and state interests in the Delta (Water Code section 85057.5). For these reasons, the project meets the definition of a covered action. As we discussed, the District must determine if the project is a covered action, and if so, file a certification of consistency with the Delta Plan.

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Per your request at our August 15 meeting, we have outlined an example process that a project proponent should follow to submit a certification of consistency to the Council. That example is provided as Attachment 1 to this letter.

For the purposes of compliance with both the Delta Reform Act and California Environmental Quality Act (CEQA), we offer the following comments below for your consideration in preparing the Final IS/MND for this project.

Comments on the Draft IS/MND

The following comments address content in the Draft IS/MND relevant to the Delta Plan.

At the August 15th meeting, District staff indicated that SOW discussions with DWR were still ongoing, and the District would determine final extent of habitat restoration on water and land sides of the levee at a future date. The final MND should evaluate impacts of the actual project to be constructed, including these additional details.

Regulatory Requirements, Permits, and Approvals: Please add “Delta Stewardship Council Certification of Consistency with the Delta Plan” to the list of “Other Public Agency Approvals” in the Final IS/MND (see Draft IS/MND, page 2-16)

Sea-level Rise: In 2015 Governor Jerry Brown issued Executive Order B-30-15 (<https://www.gov.ca.gov/2015/04/29/news18938/>), which requires State agencies to consider the potential impacts of climate change in their planning and investment decisions. In 2018, the Ocean Protection Council (OPC) released updated guidance for sea-level rise planning (http://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20180314/Item3_Exhibit-A OPC SLR Guidance-rd3.pdf). This updated guidance includes scenarios which indicate that the current 300-year water surface elevation that the Project is designed to will soon be outdated. We encourage BIMID to consider these projections in the design and implementation of this and other future risk reduction and habitat enhancement projects.

Comments regarding Delta Plan Policies and Consistency Certification

The following section describes Delta Plan policies that may be applicable to the proposed project based on the available information. This information is offered to assist the District to better describe the relationship between the proposed project and the Delta Plan in the Final IS/MND as part of the record supporting the District’s certification of consistency.

The Delta Plan includes regulatory policies that apply to all covered actions. Below, we have highlighted key regulatory policies that may be specifically relevant to the proposed project. We encourage the District to review the following Delta Plan policies before submitting a certification of consistency.

Mitigation Measures

Delta Plan Policy **G P1** (23 CCR 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 Environmental Impact Report or substitute mitigation measures that are equally or more effective. See the Delta Plan's Mitigation and Monitoring Report Program (MMRP) available at:

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

The Draft IS/MND proposes mitigation measures related to air quality, biological resource, cultural resource, geology and soils, hazards and hazardous materials, hydrology and water quality, noise, and transportation/traffic impacts intended to reduce the subject impacts to a less-than-significant level. As discussed, please more clearly identify in the MND the extent to which habitat restoration is for mitigation of project impacts, or enhancement. Council staff recommends that the District determine if additional, applicable, and feasible mitigation measures addressing these impacts are identified in the Delta Plan MMRP that are not already proposed in the Draft IS/MND. If such mitigation measures are available, please incorporate those measures in the Final IS/MND.

Best Available Science and Adaptive Management

Delta Plan Policy **G P1** (23 CCR Section 5002) 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>.

Continued coordination between Council staff and the District is advised to ensure that best available science is consistently applied to the planning, construction, and operation of the proposed project.

Delta Plan Policy **G P1** (23 CCR Section 5002) 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.

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In the case of the Northwest Levee Improvements and Stone Road Seepage Reduction Project, Council staff recommends that the District monitor the success of proposed mitigation measures to inform potential additional actions. It may be helpful to begin identifying adaptive management pathways that ensure management practices can respond to changed conditions for the enhanced levee system and restored habitat areas when the need arises.

The Delta Science Program's Adaptive Management Liaisons are available to provide further consultation and guidance to help guide project proponents with the appropriate application of best available science and adaptive management. Please contact Eva Bush at (916) 322-9341 (eva.bush@deltacouncil.ca.gov) of the Delta Science Program for additional information.

Prioritization of State Investments in Delta Levees and Risk Reduction

Delta Plan Policy **RR P1** (23 CCR section 5012) requires that discretionary State investments in Delta flood risk management be prioritized according to the guidelines stated in the Delta Plan. Levee improvements to a standard above Hazard Mitigation Plan (HMP), such as Bulletin 192-82, may be funded as befits the benefits provided. We recognize that the District has outlined the benefits anticipated from completing the proposed project. It would be helpful to also include by reference the Project Funding Agreement and list the associated benefits in greater detail.

Closing Comments

We look forward to continued early consultation with the District prior to submittal of a consistency certification for this project. Council staff is available to further discuss our comments on the IS/MND or Delta Plan policies applicable to the project. Please contact Erin Mullin of my staff at (916) 445-5459 (erin.mullin@deltacouncil.ca.gov) with any question, comment, or concern.

Sincerely,



Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council

CC: Cindy Messer
Andrea Lobato
Mike Mirmazaheri

Attachments

Attachment 1

Example Early Consultation Process / Certification of Consistency Filing

1. Project proponent develops project that may be a covered action and determines that CEQA will be required.
2. Project proponent contacts Council staff and requests training/consultation on the covered actions process and Delta Plan policies.
 - a. Alternatively, Council staff may contact the project proponent if staff are aware of a proposed project.
3. Meet for early consultation. Project proponent receives feedback from Council staff about the applicability of Delta Plan policies to their proposed project, including whether or not the project requires an Adaptive Management Plan.
 - a. If an Adaptive Management Plan is required, the project proponent arranges a separate consultation meeting with the Delta Science Program Adaptive Management Liaison(s).
 - b. Project proponent may continue to meet with Council staff for additional early consultation meetings if desired.
4. Project proponent begins developing/compiling material to file a certification of consistency.
 - a. It is recommended that the project proponent meet with Council staff at this stage so that they may review and offer feedback as the draft certification is created.
5. While not required, it is advised that all project proponents provide a draft certification at least 30 days prior to the desired date for submitting their certification to the Council.
 - a. Project proponents must publicly post their draft certification 10 days prior to submitting to the Council.
6. Project proponent files a certification of consistency (typically around the time that the Notice of Determination has been filed) through the Council website (<http://deltacouncil.ca.gov/how-certify>).
 - a. Council staff encourage project proponents to notify staff the day that a certification of consistency is filed so that a notification can be sent to the listserv.
 - b. Once a certification of consistency has been filed, there is a 30-day public review period to submit appeals.
7. If no appeals are submitted during this review period, the covered actions process is concluded.
 - a. If an appeal(s) is submitted, the Council has 60 days to hear the appeal and an additional 60 days to make its decision.
 - i. If the Council determines that the project is *not* consistent with the Delta Plan, the project is not allowed to proceed until: it is revised to be consistent with the Delta Plan, a new certification of consistency is submitted to the Council, and no appeals are submitted for the new certification.

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For more information, please review these links:

- Certification: <http://deltacouncil.ca.gov/what-covered-action>
- Appeals: <http://deltacouncil.ca.gov/what-appeal>