



DELTA STEWARDSHIP COUNCIL

A California State Agency

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December 17, 2013

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Via Email: DERA@saccounty.net

RE: South Sacramento Habitat Conservation Plan NOP, SCH# 2008062030

Dear Ms. Hack:

This letter responds to your Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR) for the South Sacramento Habitat Conservation Plan (SSHCP) and its request for comments on the scope and content of the environmental information that is relevant to our agency's responsibility in connection with the proposed project.

State law specifically directs the DSC to provide "advice to local and regional planning agencies regarding the consistency of local and regional planning documents with the Delta Plan" (Water Code sec 85212). The Delta Stewardship Council adopted the Delta Plan on May 16, 2013, and the Plan's regulatory policies became effective on September 1, 2013. The Delta Plan, including its policies and recommendations, should be acknowledged in the EIR's description of the project's environmental setting.

The NOP's project summary states that the South Sacramento Habitat Conservation Plan "identifies urban development and public infrastructure projects within an Urban Development Area (UDA) and defines mitigation and avoidance measures for covered species and habitat that will be affected by the covered activities identified in the SSHCP." The NOP indicates that the covered activities may include the construction, installation, or extension of:

- Private development projects.
- Surface and groundwater delivery facilities.
- Water treatment facilities.
- Sewer and recycled water treatment and conveyance facilities.
- Solid waste sanitation facilities.
- Public facilities (police station, hospitals, schools, community centers, and administration centers).
- Indoor and outdoor recreation facilities.
- Energy utility facilities.
- Aggregate mining activities.
- Habitat management activities.

"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

We recommend the following matters be discussed or included in the EIR:

- **Inconsistencies with the Delta Plan.** The EIR should discuss any inconsistencies between the project and the Delta Plan, as required by 15125(d) of the CEQA Guidelines. Note, too, that the CEQA Guidelines' Appendix G states that a project that is inconsistent with any applicable land use plan, policy, or regulation may result in a finding of significant impact on biological resources.
- **Agricultural Resources:** The EIR should include an analysis of the potential loss of agricultural land in the Delta caused by urban development covered by the SSHCP. Delta Plan Policy **DP P1** (23 CCR 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. Please quantify the areal extent of the proposed UDA within the Delta, and discuss any potential impacts to agricultural resources.
- **Biological Resources:** The NOP states that the EIR will identify any potential impacts of the SSHCP on biological resources. Delta Plan Policy **ER P2** (23 CCR Section 5006) states that habitat restoration must be carried out consistent with Appendix 3 of the Delta Plan regulations, which is an excerpt from the California Department of Fish and Wildlife's Draft Ecosystem Restoration Program *Conservation Strategy*, which calls for restoring habitats at appropriate elevations. Further guidance is provided by Delta Plan Recommendation **ER R2**, which states, for the Cosumnes-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."

The Delta Plan establishes six habitat restoration areas in the Delta, one of which, the Cosumnes-Mokelumne Confluence, is located within the SSHCP Plan Area. Delta Plan Policy **ER P3** (23 CCR Section 5007) calls for protecting opportunities to restore habitat in these areas. More specifically, the policy states that "significant adverse impacts to the opportunity to restore as described in section 5006 must be avoided or mitigated." Potential mitigation measures could include elevating facilities so that water can flow underneath to allow for future restoration of habitats dependent 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. The mitigation shall be determined, in consultation with the California Department of Fish and Wildlife, considering the size of the project area and the type and value of habitat that could be restored in that area.

We recommend that the EIR analysis include the impact of any urbanization or the placement of permanent agricultural easements on the opportunity to restore these types of habitat within the Delta Plan's Cosumnes-Mokelumne Confluence area.¹ The EIR should assess impacts to the opportunity to restore these areas for the habitat uses encouraged by the Delta Plan or the conservation measures recommended in the draft Bay Delta Conservation Plan.

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

Delta Plan Policy **ER P5** (23 CCR Section 5009), calls for avoiding introductions of and habitat Improvements for invasive nonnative species. It states, "The potential for new introductions of or improved habitat conditions for nonnative invasive species, striped bass, or bass must be fully considered and avoided or mitigated in a way that appropriately protects the ecosystem." The EIR should analyze the project's potential to introduce or improve habitat for nonnative invasive species.

- **Hydrology:** The NOP states that the EIR will analyze hydrology, which we presume includes flooding. The Delta Plan contains three policies that are most relevant to the County's consideration of this issue: Policy **RR P2** (23 CCR section 5013) requires flood protection for residential development in rural areas, Policy **RR P3** (23 CCR section 5014) restricts encroachment in floodways, and Policy **RR P4** (23 CCR Section 5015) restricts encroachments in floodplains, including the Cosumnes-Mokelumne Confluence.² 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 the floodplain values and functions."

In addition, the Delta Plan contains a recommendation (**RR R6**) encouraging the Central Valley Flood Protection Board to evaluate designating additional floodways. Flood risk reduction should be included as a factor when evaluating various conservation and development scenarios. We recommend that the EIR include analysis of potential conflicts between proposed activities in the SSHCP and the implementation of the project.

Other matters for your consideration

The Delta Reform Act specifically established a certification process for compliance with the Delta Plan's regulatory policies (See attachment on Covered Actions for details). According to the Delta Reform Act, it is the state or local agency approving, funding, or carrying out the project that must certify consistency with the Delta Plan. This certification is subject to appeal to the DSC. Should you determine the South Sacramento Habitat Conservation Plan is a covered action, a way to streamline the process and make full use of the EIS/EIR is to include the information and analysis needed to support the certification of Delta Plan consistency within the EIS/EIR, potentially including a draft certification as an appendix to the EIS/EIR.

Please also note that the final EIR for the Delta Plan includes a Mitigation Monitoring and Reporting Plan that describes the mitigation required for covered actions. If you should determine the South Sacramento Habitat Conservation Plan is a covered action, it would be affected by the Delta Plan's Policy **G P1** (23 CCR Section 5002(b)(2)), which states, "Covered actions not exempt from CEQA must include applicable feasible mitigation measures identified in the Delta Plan's Program EIR or substitute mitigation measures that the proposing agency finds are equally or more effective."

I encourage you to contact Jessica Davenport at jdavenport@deltacouncil.ca.gov or (916) 445-2168 with your questions, comments, or concerns. We would like to work with you to ensure the consistency of the South Sacramento Habitat Conservation Plan with the Delta Plan while also avoiding, minimizing or mitigating potential environmental impacts and we look forward to continued coordination between our agencies to further our related efforts. We are available to continue discussions about how to ensure that your project is consistent with the Delta Plan.

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."

Catherine Hack
Environmental Coordinator
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Sincerely,



Cindy Messer
Deputy Executive Officer

cc: Erik Vink, Delta Protection Commission
Carl Wilcox, Department of Fish and Wildlife
Scott Cantrell, Department of Fish and Wildlife
Dave Zezulak, Department of Fish and Wildlife
Len Marino, Central Valley Flood Protection Board
Kacey Lizon, Sacramento Area Council of Governments