

ACTION ITEM

Ecosystem Amendment: Final Program Environmental Impact Report Certification and Plan Amendment Adoption

Summary: Staff will present the California Environmental Quality Act (CEQA) Final Program Environmental Impact Report (PEIR) prepared for the amendment to Chapter 4 (Protect, Restore, and Enhance the Delta Ecosystem) of the Delta Plan (“Ecosystem Amendment” or “Project”). The PEIR is being provided to the Council for consideration and potential certification prior to consideration and potential approval of the Ecosystem Amendment and potential approval to initiate rulemaking. The presentation will include an overview of the proposed Ecosystem Amendment, a summary of the comments received during the public comment period on the Draft PEIR (September 27 to November 30, 2021), and an overview of how the comments were addressed in the Final PEIR. Together, the Draft PEIR, the Final PEIR containing responses to comments and text revisions, and all appendices, constitute the PEIR for purposes of certification. If the Council certifies the PEIR, the Council may adopt the Ecosystem Amendment and authorize staff to initiate rulemaking for new and revised Delta Plan policies and mitigation measures proposed in the Ecosystem Amendment and PEIR.

REQUESTED ACTION

Staff recommends that the Council conduct a public hearing and adopt the attached Resolution 2022-05 (Attachment 1 to this staff report). Council actions described in the Resolution include, but are not limited to, the following:

- (1) Certify the Delta Plan Ecosystem Amendment Final PEIR, adopt the Findings and Statement of Overriding Considerations, and adopt and incorporate into the Delta Plan the Ecosystem Amendment, consisting of revisions to Delta Plan Chapter 4 and including all of the new and revised mitigation measures identified in the Draft and Final PEIR;
- (2) Adopt the Mitigation Monitoring and Reporting Program as described in the Resolution;
- (3) Direct and authorize the Executive Officer, or her delegee, to initiate rulemaking for new and revised Delta Plan policies and mitigation measures;
- (4) Direct the Executive Officer or her delegee to make any non-substantive changes as necessary to finalize the documents; and
- (5) Direct and authorize the Executive Officer, or her delegee, to exercise their discretion to make changes required by the Office of Administrative Law

(OAL), in order to comply with requirements of the Administrative Procedures Act (APA), and inform the Council of any such changes.

BACKGROUND

The Sacramento-San Joaquin Delta Reform Act of 2009, California Water Code sections 85000-85350 (Delta Reform Act), charges the Council with furthering California's coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Sacramento-San Joaquin River Delta and Suisun Marsh (Delta) ecosystem, to be achieved in a manner that protects and enhances the unique characteristics of the Delta as an evolving place (Cal. Wat. Code § 85054). To that end, the Council adopted the Delta Plan in 2013 (Cal. Wat. Code § 85059.) The regulatory portions of the Delta Plan (Delta Plan policies) are set forth in Title 23 of the California Code of Regulations, sections 5001-5016.

In accordance with Water Code section 85320(e), Chapter 4 of the Delta Plan was originally developed with the expectation that the Bay Delta Conservation Plan (BDCP) would be incorporated into the Delta Plan if the BDCP met specific statutory requirements. However, in May 2015, State and federal agencies shifted from the BDCP to a portfolio of mitigation projects known as the EcoRestore initiative. Following this shift, the Council assessed the need to amend Chapter 4.

The Council began initial consideration of the need for the Ecosystem Amendment in 2015 and 2016. Throughout 2017 and 2018, Council staff conducted listening sessions with a range of stakeholders, local agencies, Delta residents, councilmembers in public meetings, and Delta Independent Science Board (Delta ISB) members in public meetings. Based on these listening sessions and staff research, staff developed the proposed Ecosystem Amendment to include a portfolio of actions that protect existing ecosystems, restore ecosystems, and enhance working or urban landscapes that provide habitat resources to species. These approaches can reestablish ecological processes in natural communities to make them more resilient to land conversion and climate change. The proposed Ecosystem Amendment leverages decades of research, lessons learned in recovery planning, and increased coordination among agencies and partners working toward a common vision for a restored Delta ecosystem.

Staff presented preliminary proposed revisions to Chapter 4 to the Council for feedback at the April 2019 and June 2019 Council meetings. Staff released a subsequent Preliminary Public Review Draft in November 2019 and solicited agency, public, and Delta Independent Science Board (Delta ISB) comments. These comments were incorporated into the May 2020 Draft of the Ecosystem Amendment. The Council took action and authorized the May 2020 Draft as the

proposed project for environmental review under CEQA at its May 1, 2020 meeting. The Council issued a Notice of Completion and Notice of Availability of a Draft PEIR and appendices on September 27, 2021, and on November 18, 2021, hosted a public workshop to solicit oral comments on the Draft PEIR before the public comment period closed on November 30, 2021. A Final PEIR was prepared to respond to comments on the Draft PEIR and describe text changes made in response to comments (see Attachment 1, Exhibit A of this staff report).

The proposed Ecosystem Amendment includes:

- New and revised Delta Plan policies, recommendations, and performance measures related to ecosystem protection, restoration, and enhancement in the Delta;
- An updated narrative;
- Three regulatory appendices;
- Four technical appendices; and
- An updated appendix containing new and revised ecosystem performance measures.

The Project also includes new and revised mitigation measures as described in the individual resource areas of the Draft PEIR and in Sections 2.1 and 2.2 of the Final PEIR.

The Ecosystem Amendment presents five core strategies to achieve the coequal goal of protecting, restoring, and enhancing the Delta ecosystem that form the basis for the policies, recommendations, and performance measures in the proposed Amendment.

These core strategies are listed below, along with key approaches that the Ecosystem Amendment proposes to achieve each strategy. Included for each core strategy and element is a notation describing whether there is a proposed change to the existing Delta Plan:

Core Strategy 1: Create more natural, functional flows (revised in part)

- by requiring covered actions to be consistent with the State Water Resources Control Board's Bay-Delta Water Quality Control Plan flow objectives (**no change**)
- by working with the State Water Resources Control Board to ensure best available science informs its regulatory decisions regarding stream flows and water quality (**revised**)

Core Strategy 2: Restore ecosystem function (revised)

- by requiring covered actions to consider and disclose how they would improve ecosystem function and provide social benefits **(new)**
- by requiring consideration of expanded floodplains and creation of riparian habitat in levee projects **(revised)**
- by recommending increased public funding and recommending “good neighbor” strategies to coordinate restoration with adjacent uses **(new)** and
- by recommending that Delta levees be exempt from the U.S. Army Corps of Engineers’ policy prohibiting vegetation on levees **(no change)**

Core Strategy 3: Protect land for restoration and safeguard against land loss (new and revised)

- by requiring habitats to be restored at appropriate elevations for current and future conditions and protecting land with the best habitat restoration opportunities from incompatible uses **(revised)**
- by recommending enhanced working landscapes, developing or updating management plans for public lands to halt or reverse land subsidence, and recommending funding to reverse land subsidence **(new)**

Core Strategy 4: Protect native species and reduce the impact of nonnative invasive species (new and revised)

- by requiring covered actions to avoid introducing or expanding habitat supporting nonnative invasive species **(no change)**
- by improving fish migration within the Delta and upper watersheds, funding projects that help juvenile salmon avoid predation and being trapped by water intakes in the South Delta **(new)**, recommending actions to control nonnative invasive species, including predatory fish, managing hatcheries to reduce genetic risk and improve the resilience of native species, and coordinating remote fish tracking programs **(revised)**

Core Strategy 5: Improve institutional coordination to support implementation of ecosystem protection, restoration, and enhancement (new)

- by recommending support for the implementation of ecosystem restoration programs/projects and by aligning state restoration plans and conservation strategies with the Delta Plan **(new)**

ENVIRONMENTAL REVIEW OF THE PROPOSED ECOSYSTEM AMENDMENT

The PEIR has been prepared in compliance with CEQA (Public Resources Code (Pub. Resources Code) section 21000, et seq.) and State CEQA Guidelines (California Code of Regulations, title 14, section 15000, et seq.). Consistent with CEQA Guidelines

section 15206, the proposed Ecosystem Amendment is considered a project of statewide and regional significance. CEQA requires the lead agency to evaluate and consider the potential significant adverse environmental consequences of a project before the agency adopts or implements the project. Council staff prepared a Draft PEIR, which includes a conservative analysis of potential environmental impacts that could occur from the construction, operation, and implementation of different types of projects and activities that the Ecosystem Amendment would promote in the Primary Planning Area (the Delta as defined in Water Code section 12220 and the Suisun Marsh as defined in Public Resources Code section 29101) and Extended Planning Area (the watersheds that contribute flows to the Delta and areas of California outside the Delta watershed with places of use receiving water from or conveyed through the Delta). As described further below, the Council has also prepared a Final PEIR responding to comments received on the Draft PEIR and text revisions to the Draft PEIR addressing the comments. Together, the Draft PEIR, the Final PEIR containing responses to comments and text revisions, and all appendices, constitute the PEIR for purposes of certification.

The PEIR has been prepared pursuant to, and consistent with, the requirements for a Program EIR provided in section 15168 of the State CEQA Guidelines. In developing the PEIR, the Council recognizes the importance of providing full disclosure to the public regarding the potentially significant environmental effects of the proposed Ecosystem Amendment. The PEIR is also intended to provide sufficient information to foster informed decision-making by the Council.

The potentially significant impacts of the proposed Ecosystem Amendment are analyzed at a programmatic level in the PEIR, consistent with the level of detail of the Delta Plan, because the multiple actions encouraged by the proposed Ecosystem Amendment could affect a large geographic area, would be proposed and implemented by entities other than the Council, and direct authorization for or construction of site-specific projects are not proposed by the Council. The Council itself does not implement or directly authorize the construction or operation of any physical activities; these future actions would be within the responsibility and jurisdiction of other public agencies. Rather, through the Delta Plan, the Council seeks to influence the actions, activities, and/or projects of other entities—the details of which are under the responsibility and jurisdiction of entities that will propose, authorize, and/or implement them in the future. The number and location of all potential projects that would be proposed, authorized, or implemented are not known at this time. The impacts of specific projects will be evaluated in future project-level CEQA documents by the lead agencies for those proposed projects.

PEIR Process and Approach

The Council issued a Notice of Preparation (NOP) on May 11, 2020, to seek input from agencies, organizations, and the public on the scope of the PEIR. In addition, a public scoping meeting was conducted on May 28, 2020. In May 2020, the Council also sent notices pursuant to Assembly Bill 52 (AB 52) to tribes that requested notification of all Council activities, were determined to reside within impacted counties, or have previously commented on the Delta Plan. Non-AB 52 notices were sent to an additional 175 tribal contacts in May 2020. The Council received 18 comments on the NOP from tribes, agencies, non-governmental organizations, private entities, and individuals that are addressed in the Draft PEIR. The PEIR assumes that the Delta Plan and the proposed Ecosystem Amendment are implemented and achieve their desired outcomes, regardless of whether they are expressed as policies, recommendations, or performance measures. The Draft PEIR identified potentially significant impacts in the resource areas of aesthetics; agriculture and forestry resources; air quality; biological resources (aquatic and terrestrial); cultural resources; geology, soils, and mineral resources; greenhouse gas emissions; hazards and hazardous materials; hydrology and water quality; land use and planning; noise; recreation; transportation; tribal cultural resources; utilities and public services; and wildfire. Many impacts in the Draft PEIR are identified as significant and unavoidable because: (1) the site-specific details of projects to be implemented by other entities are not known at this time, (2) the proposed mitigation measures may not reduce impacts to a less than significant level, and (3) implementation of mitigation measures would be within the responsibility of other agencies.

Revisions to some of the mitigation measures previously adopted and incorporated into the Delta Plan are proposed to reduce or avoid the significant impacts of the proposed Ecosystem Amendment. These revised mitigation measures reflect formatting and updated best management practices. As required by CEQA, a reasonable range of alternatives to the proposed project were evaluated in the PEIR.

The Draft PEIR was published on September 27, 2021, and a Notice of Completion and Notice of Availability was sent to the State Clearinghouse local, State, and federal agencies and to organizations, individuals, and AB 52 and interested tribes who wanted to review and comment on the adequacy of the analysis included in the Draft PEIR. The public comment period for the Draft PEIR began September 27, 2021, and ended November 30, 2021. During the 64-day public comment period, the Council held a public workshop to solicit oral comments on the Draft PEIR. These comments were considered during the preparation of the Final PEIR.

SUMMARY OF PUBLIC COMMENTS ON THE DRAFT PEIR

Written comments from the public and public agencies were accepted throughout the public comment period. At the end of the public comment period for the Draft PEIR, a total of 19 comment letters and e-mails were received. There were three commenters at the public workshop representing Central Delta Water Agency, Local Agencies of the North Delta, and one individual. Comment letters were received from state and local agencies (13 comment letters), tribes (one comment letter), non-profit and other organizations (three comment letters), and individuals (two comment letters).

Comments received addressed issues including the proposed language of the Ecosystem Amendment, the legal basis for the Amendment (e.g., compliance with the Delta Reform Act), and the proposed Core Strategies and objectives. Other comments addressed CEQA requirements and the analysis of the proposed Ecosystem Amendment in the Draft PEIR.

Several comments raised issues pertaining to or seeking clarification of the process of developing the Ecosystem Amendment. Commenters also raised topics that were not part of the proposed Project, such as thematic areas outside the scope of the Ecosystem Amendment (e.g., Delta Levees Investment Strategy). Comments also raised issues regarding how the Ecosystem Amendment would help further the coequal goals and an enhanced Delta ecosystem. Other commenters raised issues related to the development and content of the core strategies included in the Ecosystem Amendment. One commenter questioned the role of the Delta Stewardship Council and the objectives of the Ecosystem Amendment. Other comments recommended specific edits or general changes or considerations to the Core Strategies. For instance, one commenter suggested that Core Strategy 2 (Restore Ecosystem Function) would be better implemented by including the New ER Recommendation "B" (*Use Good Neighbor Checklist to Coordinate Restoration with Adjacent Uses*) as a required mitigation measure rather than a recommendation.

Several comments related to the approach to the environmental analysis under CEQA. For instance, some comments stated that the Draft PEIR was inadequate because it did not evaluate the impacts of a full range of projects that could be implemented in response to the proposed Ecosystem Amendment. Other comments questioned the PEIR's many significant and unavoidable impact conclusions. Other comments asserted that the mitigation measures included in the Draft PEIR were overreaching in their intent to minimize identified impacts.

Several comments addressed specific mitigation measures in various resource areas. For example, one comment letter expressed that the cultural resources

mitigation measures did not adequately address tribal consultation related to tribal cultural resources and provided specific recommendations for how to revise mitigation measures to better protect tribal cultural resources and tribal consultation. Revisions in response to those comments have been incorporated in the Final PEIR.

After review and evaluation of the comments received on the Draft PEIR, Council staff determined that some comments by different commenters were substantially similar in subject matter. In response to these frequently raised comments, “topical responses” have been prepared to avoid the repetition of responses and lengthy duplication of text. These topical responses are provided in Chapter 3, section 3.1, of the Final PEIR to address common themes and issues repeated in the comments. The topical responses address the following general topics:

1. Development and Purpose of the Proposed Ecosystem Amendment
 - Development of the Ecosystem Amendment
 - Project Objectives
 - Relationship to Delta Plan
2. Approach to the Environmental Analysis
 - Program vs. Project Level Environmental Review
 - Approach to Environmental Analysis
 - Determination of Impact Significance

In addition to these topical responses, Council staff and consultants prepared written responses to each comment that raises a significant environmental issue (provided in section 3.2 of the Final PEIR).

PROPOSED REVISIONS TO THE ECOSYSTEM AMENDMENT AND DRAFT PEIR

Revisions were made to the Draft PEIR and to the text of the Ecosystem Amendment in response to public comments and to provide further clarity or non-substantive modifications.

Proposed Revisions to the Ecosystem Amendment

Based on public comments received on the PEIR, and as an outcome of tribal consultation, staff is proposing edits to the proposed Ecosystem Amendment that provide further clarification or corrections. For example, as an outcome of tribal consultation, Council staff proposes to revise and incorporate language into the Ecosystem Amendment that encourages coordination with tribes early in the project planning phase, recognition of traditional knowledge, and compliance with all relevant statutes and specific provisions of the Public Resources Code.

In addition to revisions proposed in response to tribal input, numerous minor edits are proposed to provide greater clarity and to correct information (for instance, removing reference to “draft” results that are now considered final results).

The proposed full text of and all revisions to the Ecosystem Amendment are provided in Final PEIR Appendix A, Text of Proposed Delta Plan Ecosystem Amendment.

Revisions to Draft PEIR

Text revisions to the Draft PEIR were also made in the Final PEIR to address public comments and Council staff-initiated changes. No significant new information was added to the Draft PEIR as a result of the public comment process. The Final PEIR responds to comments, and clarifies, amplifies, and makes non-substantive modifications to the Draft PEIR. It does not identify any new significant effects on the environment or a substantial increase in the severity of an environmental impact requiring major revisions to the Draft PEIR.

The revisions include edits to clarify or correct information, ensure consistency, or add information amplifying the discussion, including additional scientific citations. For example, several new citations to scientific articles were added to section 5.5 (Biological Resources – Aquatic). Various revisions were also made to address public comments. In addition, as an outcome of tribal consultation and input, Council staff revised and incorporated language into the Draft PEIR and mitigation measures that encourages coordination with tribes early in the restoration project planning phase, recognition of traditional knowledge, and compliance with all relevant statutes and specific provisions of the Public Resources Code. These revisions to the Draft PEIR include additional language added to sections 5.7 (Cultural Resources) and 5.17 (Tribal Cultural Resources), and revisions to mitigation measures in these sections, as discussed below.

As a result of public comments on the Draft PEIR and tribal consultation held after the Draft PEIR was issued, several changes were made to the revised mitigation measures in various resource areas and two new measures were added to Revised Mitigation Measure 10-1 in section 5.7 (Cultural Resources) and section 5.17 (Tribal Cultural Resources). To obtain and incorporate early input into the design process of restoration projects from culturally affiliated tribes of the Delta, the following new measure was added to Revised Mitigation Measure 10-1 in Section 5.7 Cultural Resources and Section 5.17 Tribal Cultural Resources:

10-1(a) California Native American tribes with which the lead agency is required to consult with under AB52 that are on the contact list of traditionally or culturally affiliated tribes of the Delta maintained by the

California Native American Heritage Commission (pursuant to Public Res. Code § 21073), and have requested to be notified of all projects (pursuant to Public Res. Code 17 21080.3.1) shall be coordinated with early in the process during the design phase of ecosystem restoration projects. This coordination is intended to improve design, project resiliency, and respect, as well as enhance cultural values, and integrate traditional and local ecological knowledge.

In order to require cultural resources sensitivity training in coordination with California Native American tribes traditionally and culturally affiliated with the Delta the following new measure was added to Revised Mitigation Measure 10-1 in Section 5.7 Cultural Resources and Section 5.17 Tribal Cultural Resources:

10-1(b) Prior to project construction, a qualified archaeologist, defined as one meeting the U.S. Secretary of the Interior's Professional Qualifications Standards for Archeology and with expertise in California archaeology, in coordination with California Native American tribes traditionally and culturally affiliated with the Delta, shall develop a Cultural Resources/Tribal Cultural Resources Awareness and Sensitivity Training Program for all construction and field workers involved in project-related ground-disturbing activities. The program shall include a presentation that covers, at a minimum, the types of cultural resources and tribal cultural resources common to the area, regulatory protections for such resources, and the protocol for unanticipated discovery of archaeological resources and potential tribal cultural resources. An archaeologist and representative from a culturally affiliated California Native American Tribe shall provide an in-person or, if in-person is not feasible, video-conference-based training presenting the Cultural Resources/Tribal Cultural Resources Awareness and Sensitivity Training Program to all personnel working in areas of project ground-disturbing activities prior to working in these areas. Written materials associated with the Program shall be provided to project personnel, as appropriate.

In addition to these two new mitigation measures, further changes were made to revised mitigation measures as a result of comments received on the Draft PEIR in the following resource areas:

- Aesthetics: Revised Mitigation Measure 8-1(g):
- Biological Resources – Terrestrial: Revised Mitigation Measures 4-2(h) and 4-4(d)
- Cultural Resources: Revised Mitigation Measures 10-1(a) through (i)
- Tribal Cultural Resources: Revised Mitigation Measures 10-1(a) through (i)

- Recreation: Revised Mitigation Measures 18-1(a), 18-2 (c), and 18-2(d)

These edits included revisions to clarify baseline conditions for certain mitigation activities, updated protocols and available options to mitigate adverse impacts to habitat and special-status plant species, and updated language regarding impacts to recreational opportunities. For Cultural Resources, various existing mitigation measures were revised to better address the identification of submerged cultural resources, human remains, and tribal consultation and treatment of tribal cultural resources. Revised Mitigation Measure 10-1 in Cultural Resources was renumbered to account for the addition of the two new measures 10-1(a) and 10-1(b), discussed above.

Chapter 2 of the Final PEIR lists all revisions to the PEIR made since the publication of the Draft PEIR.

TRIBAL CONSULTATION

Two tribes requested consultation under AB 52, which recognizes the expertise of tribes regarding cultural resources and provides a method for public agencies to incorporate tribal knowledge into their CEQA environmental review and decision-making processes. Under AB 52, if a California tribe wishes to be notified of projects within its traditionally and culturally affiliated area, the tribe must submit a written response to the relevant lead agency (Pub. Resources Code, § 2 1080.3. 1 (b).) As a result, tribes that have requested notification of proposed projects were notified of the proposed Ecosystem Amendment.

Two tribes that are traditionally and culturally affiliated to the Delta, the Yocha Dehe Wintun Nation and Buena Vista Rancheria of Me-Wuk Indians, requested consultation under AB 52. Consultation by video conference was held with the Yocha Dehe Wintun Nation on November 29, 2021 and January 19, 2022, and with the Buena Vista Rancheria of Me-Wuk Indians on November 23, 2021 and December 15, 2021. Correspondence over email communication also occurred during and after this time period.

As a result of tribal consultation, changes were made to the Ecosystem Amendment, which include the acknowledgement that tribes should be consulted early on in the design process of restoration projects, and that the traditional knowledge they are able to provide is very valuable. The addition of PEIR Mitigation Measure 10-1 (a), as described in detail above, was also added as a result of tribal consultation.

FINAL PEIR

The Final PEIR consists of an introduction, text revisions to the Draft PEIR made in response to comments and Council staff review, a list of changes made since the Draft PEIR was issued, written responses to comments (including a list of commenters on the Draft PEIR), a list of additional references new to the preparation of the Final PEIR, and appendices. Appendix A of the Final PEIR contains the revised Ecosystem Amendment as well as all revisions made to the text of the Ecosystem Amendment since the May 2020 Draft. Revisions made after issuance of the Draft PEIR clarify, amplify, and make non-substantive modifications to the Proposed Project (Ecosystem Amendment) and the Draft PEIR and do not change the findings or conclusions of the Draft PEIR. The Final PEIR was released to the public and responses to comments received from public agencies were sent to each commenting public agency on June 13, 2022.

Requirements for PEIR Certification and Future Steps in Project Approval

Before the Council makes a decision with regard to the proposed Ecosystem Amendment, State CEQA Guidelines section 15090(a) requires that the Council first certify that the PEIR has been completed in compliance with CEQA, that the Council has reviewed and considered the information in the PEIR, and that the PEIR reflects the independent judgment and analysis of the Council.

A Mitigation Monitoring and Reporting Program (MMRP) is required by CEQA to ensure implementation of the mitigation measures. An MMRP identifies each mitigation measure that has been adopted, the party responsible for implementation, the monitoring schedule, and who will perform the monitoring functions. Given that the Council will not be proposing projects to implement the Delta Plan, the Council's monitoring role will be carried out through the covered action certification of consistency process and 23 CCR § 5002(b)(2). The MMRP is presented as Exhibit C to Resolution 2022-05, which is Attachment 1 to this staff report.

Pursuant to State CEQA Guidelines section 15091, a lead agency may only approve or carry out a project for which an EIR has been prepared that identifies one or more significant environmental effects if it makes one or more of the following findings (State CEQA Guidelines section 15091(a)):

- (1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects as identified in the final EIR.
- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes

have been adopted by such other agency or can and should be adopted by such other agency.

- (3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

Accordingly, if the Council approves the Ecosystem Amendment, it must adopt appropriate findings as set forth in State CEQA Guidelines section 15091. Because the Ecosystem Amendment would result in significant and unavoidable impacts, as part of the findings the Council must also adopt a Statement of Overriding Considerations (SOC) (State CEQA Guidelines section 15093), which explains why the benefits of the proposed project outweigh its unavoidable significant environmental effects.

The proposed CEQA findings and SOC for the Ecosystem Amendment are presented as Exhibit B to Resolution 2022-05, which is Attachment 1 to this staff report. Should the Council adopt the proposed Project, Council staff will file the required Notice of Determination with the State Clearinghouse.

Summary

Council staff finds that the PEIR meets the requirements of CEQA. Staff recommend that the Council, exercising its independent judgment, certify that the PEIR was prepared in compliance with CEQA and the State CEQA Guidelines, adopt the Findings and Statement of Overriding Considerations, adopt and incorporate into the Delta Plan the new and revised mitigation measures identified in the PEIR, and adopt the Ecosystem Amendment.

The proposed Ecosystem Amendment will require rulemaking under the APA (Gov. Code § 11340 et seq.) for amendments to Chapter 4 mitigation measures and the following regulatory policies:

- Amend Definitions (if needed) (Cal. Code Regs., tit. 23, § 5001)
- Amend G P1(b)(2): Mitigation Measures (Cal. Code Regs., tit. 23, § 5003)
- Amend ER P2: Restore Habitats at Appropriate Elevations (Cal. Code Regs., tit. 23, § 5006)
- Amend ER P3: Protect Opportunities to Restore Habitat (Cal. Code Regs., tit. 23, § 5007)
- Amend ER P4: Expand Floodplains and Riparian Habitat in Levee Projects (Cal. Code Regs., tit. 23, § 5008)

- Add ER PA: Disclose Contributions to Restoring Ecosystem Function and Providing Social Benefits (Cal. Code Regs., tit. 23, section to be determined).

REQUESTED ACTION

Today, staff is recommending that the Council receive public comments and then adopt the attached Resolution 2022-05 (Attachment 1). Council actions described in the Resolution include, but are not limited to, the following:

- (1) Certify the Delta Plan Ecosystem Amendment Final PEIR, adopt the Findings and Statement of Overriding Considerations, and adopt and incorporate into the Delta Plan the Ecosystem Amendment, consisting of revisions to Delta Plan Chapter 4 and including all of the new and revised mitigation measures identified in the Draft and Final PEIR;
- (2) Adopt the Mitigation Monitoring and Reporting Program as described in the Resolution;
- (3) Direct and authorize the Executive Officer, or her delegee, to initiate rulemaking for new and revised Delta Plan policies and mitigation measures;
- (4) Direct the Executive Officer or her delegee to make any non-substantive changes as necessary to finalize the documents; and
- (5) Direct and authorize the Executive Officer, or her delegee, to exercise their discretion to make changes required by the OAL, in order to comply with requirements of the APA, and inform the Council of any such changes.

Staff recommends that, after receiving the report on this matter, the Council conduct a public hearing, then after deliberation, adopt Resolution 2022-05 *"Certification of the Ecosystem Amendment Program Environmental Impact Report; Adoption of Findings and a Statement of Overriding Considerations, Mitigation Measures, and a Mitigation Monitoring and Reporting Program; and Adoption of the Ecosystem Amendment"* (Attachment 1).

NEXT STEPS

If the Council adopts Resolution 2022-05 and directs staff to initiate the rulemaking process for new and revised Delta Plan policies and mitigation measures resulting from the Ecosystem Amendment, staff will begin the process of developing the required rulemaking documents for public review. The rulemaking process provides an additional opportunity for the public to provide input regarding implementation of the Ecosystem Amendment policies. There will also be a public hearing concerning the proposed rulemaking and Council approval of the final regulations as part of the rulemaking process.

FISCAL INFORMATION

Not applicable.

LIST OF ATTACHMENTS

Attachment 1: Resolution #2022-05 Certification of the Ecosystem Amendment Program Environmental Impact Report; Adoption of Findings and a Statement of Overriding Considerations, Mitigation Measures, and a Mitigation Monitoring and Reporting Program; and Adoption of the Ecosystem Amendment

With attached exhibits:

Exhibit A - Final Ecosystem Amendment Program Environmental Impact Report (with appendices)

Appendix A: Text of Proposed Delta Plan Ecosystem Amendment

Appendix B: Attachments and Exhibits Submitted with Comment Letters

Exhibit B – Findings and a Statement of Overriding Considerations

Exhibit C – Mitigation Monitoring and Reporting Program

CONTACT

Jeff Henderson
Deputy Executive Officer, Planning and Performance Division
Phone: (916) 902-6490

Harriet Lai Ross
Assistant Planning Director
Phone: (916) 838-9731