



**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

March 18, 2026

Judah Grossman
Department of Water Resources
Division of Multibenefit Initiatives
P.O. Box 942836
Sacramento, CA 94236-0001

Delivered via email: tidesendmbp@water.ca.gov

RE: Comments on the Draft Supplemental Environmental Impact Report for the Tide's End Multibenefit Restoration Project, SCH# 2024070944

Dear Judah Grossman:

Thank you for the opportunity to review and comment on the Tide's End Multibenefit Restoration Project (Tide's End project) Draft Supplemental Environmental Impact Report (Draft SEIR).¹ The Delta Stewardship Council (Council) recognizes the objective of the Tide's End project to "restore and enhance tidal wetland and floodplain habitat, support multibenefit land uses (including managed

¹ According to the State Water Resources Control Board's program environmental impact report for the Statewide Order for Restoration Projects: "The State Water Resources Control Board ... developed an Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide (Order) to improve the efficiency of regulatory reviews for projects throughout the state that would restore aquatic or riparian resource functions and/or services. The Order establishes an authorization process for environmentally beneficial restoration project types and associated measures to protect species and the environment." The Tide's End project's Draft SEIR is prepared pursuant to that authorization process.

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wetlands and floodplain agriculture), and maintain or improve flood conveyance in the Yolo Bypass" (Draft SEIR, p. 1-1). The Tide's End project is identified as an early action project as part of a voluntary agreement to support the Healthy Rivers and Landscapes (HRL) Program, which Council staff understand can proceed independent of pending approval of the HRL Program by the State Water Resources Control Board as part of the ongoing update to the Sacramento-San Joaquin Bay Delta Water Quality Control Plan (Bay-Delta Plan).

The Council is an independent state agency established by the Sacramento-San Joaquin Delta Reform Act of 2009. (Wat. Code, § 85000 et seq.; Delta Reform Act) The Delta Reform Act charges the Council with furthering California's coequal goals of providing a more reliable water supply and protecting, restoring, and enhancing the Sacramento-San Joaquin River Delta and Suisun Marsh (Delta) ecosystem. (Wat. Code, § 85054.) The Delta Reform Act further states that the coequal goals are to 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. (Wat. Code, § 85054.) The Council is charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan. (Wat. Code, § 85300.)

The Delta Plan contains regulatory policies, which are set forth in California Code of Regulations, title 23, sections 5001 et seq. Through the Delta Reform Act, the Council was granted specific regulatory and appellate authority over certain actions of state or local public agencies that take place in whole or in part in the Delta. (Wat. Code, §§ 85210, 85225, 85225.10.) A state or local agency that proposes to undertake a covered action is required to prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and submit that certification to the Council prior to initiation of the implementation of the action. (Wat. Code, § 85225.)

COVERED ACTION DETERMINATION AND CERTIFICATION OF CONSISTENCY WITH THE DELTA PLAN

Based on the Tide's End project location and scope provided in the Draft SEIR, the Tide's End project appears to meet the definition of a covered action. Water Code section 85057.5, subdivision (a), states that a covered action is a plan, program, or project, as defined pursuant to the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.; CEQA) in Public Resources Code section 21065, that meets all of the following conditions:

- (1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh*
- (2) Will be carried out, approved, or funded by a state or a local public agency*
- (3) Is covered by one of the provisions of the Delta Plan*
- (4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta²*

As the agency approving, funding, or carrying out the Tide's End project, the Department of Water Resources (DWR) must determine if it is a covered action (Cal. Code Regs., tit. 23, § 5001, subd. (o)(3).) and, if so, file a certification of consistency with the Council prior to implementation. (Wat. Code, § 85225.)

Delta Plan Policies that May Apply to the Tide's End Project

The following section describes regulatory Delta Plan policies that may cover the Tide's End project based on materials provided in the Draft SEIR. (Wat. Code § 85057.5, subd. (a)(1).) This information could be used to support a future filing of a certification of consistency with the Council.

Ecosystem Restoration Policy 1: Delta Flow Objectives

Delta Plan Policy **ER P1** (Cal. Code Regs., tit. 23, § 5005.) requires the State Water Resources Control Board's Bay-Delta Plan flow objectives to be used to determine consistency with the Delta Plan. The location of the Tide's End project within the Yolo Bypass as well as the proposed changes in existing land use, roughness, and geometry of the site establish that the Tide's End project has the potential to affect flow in the Delta.

A future certification of consistency should include an analysis and document how the Tide's End project may impact or alter Delta flows that are subject to meeting the Bay-Delta Plan flow objectives in place at the time of the filing a certification of consistency. The Draft SEIR includes descriptions and analysis of water quality

² For purposes of Water Code section 85057.5, subdivision (a)(4), "significant impact" means "a substantial positive or negative impact on the achievement of one or both of the coequal goals or the implementation of a government-sponsored flood control program to reduce risks to people, property, and State interests in the Delta, that is directly or indirectly caused by a project on its own or when the project's incremental effect is considered together with the impacts of other closely related past, present, or reasonably foreseeable future projects." (Cal. Code Regs., tit. 23, § 5001, subd. (ss).)

objectives (e.g., Chapter 3, pps. 3.10-38 and 3.10-39). It is advisable to also address physical flow objectives either as part of these analyses in the Final SEIR, or elsewhere in the record supporting a future certification of consistency.

Ecosystem Restoration Policy A: Disclose Contributions to Restoring Ecosystem Function and Providing Social Benefits

Delta Plan Policy **ER PA** (Cal. Code Regs., tit. 23, § 5005.1.) applies to a covered action that includes the protection, enhancement, or restoration of the ecosystem and requires the submission of a completed Appendix 3A (Cal. Code Regs., tit. 23, app. 3A.) identifying contributions to restoring ecosystem function and social benefits associated with the covered action. The Draft SEIR describes several areas of potential contributions in these areas. In a future certification of consistency, DWR should review ER PA and Appendix 3A and include information supporting consistency with these regulatory requirements.

Ecosystem Restoration Policy 2: Restore Habitats at Appropriate Elevations

Delta Plan Policy **ER P2** (Cal. Code Regs., tit. 23, § 5006.) requires for projects that filed a Notice of Preparation (NOP) prior to April 1, 2025, habitat restoration be carried out consistent with Appendix 3 (Cal. Code Regs, tit. 23, app. 3).³ The elevation map in Appendix 4 (Cal. Code Regs, tit. 23, app. 4) also is included as Figure 4-6 in the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/figure-4-6-habitat-types-based-on-elevation.pdf>) and should be used as a guide for determining appropriate habitat restoration actions based on an area's elevation. If a proposed habitat restoration project is not consistent with Appendix 4, the certification of consistency is required to provide the rationale for the deviation based on best available science.

Based on the Tide's End project description and maps included in the Draft SEIR (Figure ES-3, Figure 2-3), much of the Tide's End project site appears to be located at intertidal elevation as defined under this policy. This aligns with the Tide's End project design and objectives. In a certification of consistency, DWR should describe how the Tide's End project elevation aligns with ER P2.

³ The NOP for the Tide's End project was released in July 2024, prior to the effective date for the most recent amendment to this policy, which was April 1, 2025. For this reason, the version of this policy that applies is the regulatory language that was in effect beginning September 1, 2013.

Ecosystem Restoration Policy 3: Protect Opportunities to Restore Habitat

Delta Plan Policy **ER P3** (Cal. Code Regs., tit. 23, § 5007.) requires for projects that filed a NOP prior to April 1, 2025, that, within the priority habitat restoration areas depicted in Appendix 5 (Cal. Code Regs, tit. 23, app. 5), significant adverse impacts to the opportunity to restore habitat at appropriate elevations as described in ER P2 (Cal. Code Regs., tit. 23, § 5006.) are required to be avoided or mitigated.⁴ Subsection (c) of this policy, as effective prior to April 1, 2025, requires in part that impacts identified in subsection (a) “be mitigated to a point where the impacts have no significant effect on the opportunity to restore habitat as described in section 5006.” The Tide’s End project is proposed to be located within the Yolo Bypass priority habitat restoration area.

In a future certification of consistency DWR should cite to the Draft SEIR (e.g., Chapter 2, Section 2.2) and describe how the Tide’s End project could improve the opportunity to restore native species at various elevations, including species that make use of tidal and floodplain habitat, and explicitly connect this to Yolo Bypass priority habitat restoration area.

Ecosystem Restoration Policy 5: Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species

Delta Plan Policy **ER P5** (Cal. Code Regs., tit. 23, § 5009.) requires that covered actions fully consider and avoid or mitigate the potential for new introductions of, or improved habitat conditions for, nonnative invasive species, striped bass, or bass in a way that appropriately protects the ecosystem.

The Delta has been significantly altered by invasive species. Golden mussel is of note because the NOP for the Tide’s End project was released in July 2024, before golden mussel was identified in the region (October 2024).

A future certification of consistency should describe efforts to fully consider, avoid, or mitigate the introduction of, or the improvement of habitat conditions for nonnative invasive species during and after construction, including, but not limited to, emerging species of concern, such as nutria and golden mussel. This could

⁴ The NOP for the Tide’s End project was released in July 2024, prior to the effective date for the most recent amendment to this policy, which was April 1, 2025. For this reason, the version of this policy that applies is the regulatory language that was in effect beginning September 1, 2013.

include development of a dedicated invasive species management plan and relevant linkages to an adaptive management plan.

In the event DWR determines mitigation is warranted, mitigation and minimization measures should include Mitigation Measure 4-1(e) (available in [Delta Plan Appendix O](#)) or equally or more effective measures.

Delta as Place Policy 2: Respect Local Land Use when Siting Water or Flood Facilities or Restoring Habitats

Delta Plan Policy **DP P2** (Cal. Code Regs., tit. 23, § 5011.) reflects one of the Delta Plan's charges to protect the Delta as an evolving place by siting water management facilities, ecosystem restoration, and flood management infrastructure to avoid or reduce conflicts with existing uses, or those uses described or depicted in city and county general plans for their jurisdictions or spheres of influence, when feasible, considering comments from local agencies and the Delta Protection Commission.

DP P2 also requires plans for ecosystem restoration to consider sites on existing public lands, when feasible and consistent with a project's purpose, before privately owned sites are purchased, and specifies that measures to mitigate conflicts with adjacent uses may include, but are not limited to, buffers to prevent adverse effects on adjacent farmland. Council staff note that the Tide's End project design features and mitigation measures include establishing buffers between restoration components and adjacent agricultural lands.

In a future certification of consistency DWR should describe the analysis included in the Draft SEIR of current and planned land uses, any potential conflicts, and how those would be avoided or reduced. In particular, it would be advisable to highlight how the Tide's End project reduces impacts to agricultural land uses and land enrolled in the Williamson Act (Gov. Code, § 51200 et seq.) (Chapter 3, Section 3.4).

The following policies also apply because the preceding policies cover the Tide's End project.

General Policy 1: Detailed Findings to Establish Consistency with the Delta Plan

Delta Plan Policy **G P1** (Cal. Code Regs., tit. 23, § 5002.) specifies what is required to be addressed in a certification of consistency. The following is a subset of policy requirements that a covered action is required to fulfill to be considered consistent with the Delta Plan.

Mitigation Measures

Delta Plan Policy **G P1(b)(2)** (Cal. Code Regs., tit. 23, § 5002, subd. (b)(2).) requires covered actions not exempt from CEQA to include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended June 23, 2022, unless the measures are within the exclusive jurisdiction of an agency other than the agency that files the certification of consistency, or substitute mitigation measures that the agency that files the certification of consistency finds are equally or more effective. These mitigation measures are identified in Delta Plan regulations as [Appendix O](#). DWR should review Appendix O and ensure that the mitigation measures included in the Draft SEIR (Chapter 3 and Appendix A) for the Tide's End project are equally or more effective than the Delta Plan mitigation measures.^{5,6}

Best Available Science

Delta Plan Policy **G P1(b)(3)** (Cal. Code Regs., tit. 23, § 5002, subd. (b)(3).) states that actions subject to Delta Plan regulations are required to document the use of best available science as relevant to the purpose and nature of the covered action. The Delta Plan defines best available science as "the best scientific information and data for informing management and policy decisions." (Cal. Code Regs, tit. 23, § 5001, subd. (g).) Best available science is also required to be consistent with the guidelines and criteria in Delta Plan [Appendix 1A](#). (Cal. Code Regs, tit. 23, div., 6 ch. 2, app. 1A.)

In a future certification of consistency, DWR should identify how the Tide's End project addresses each Appendix 1A criterion.

Adaptive Management

Delta Plan Policy **G P1(b)(4)** (Cal. Code Regs., tit. 23, § 5002, sub. (b)(4).) requires that ecosystem restoration and water management covered actions include adequate provisions to ensure the continued implementation of adaptive management, appropriate to the scope of the project. This requirement is satisfied through both a) the development of an adaptive management plan that is consistent with the framework described in Appendix 1B (Cal. Code Regs, tit. 23, app. 1B) and also found in the Delta Plan

⁵ Appendix A of the Draft SEIR includes General Protection Measures and Species Protection Measures from the program environmental impact report for the Statewide Order for Restoration Projects that DWR determined are applicable to the Tide's End project.

⁶ Please note specific mitigation requirements related to nonnative invasive species described under Ecosystem Restoration Policy 5 (ER P5) above.

March 18, 2026

(<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1b.pdf>), and b) documentation of adequate resources to implement the proposed adaptive management plan.

In the Council's August 2024 comment letter on the NOP for the Tide's End project, Council staff noted that the ecosystem restoration components of the Tide's End project would require the preparation of an adaptive management plan. The Department of Fish and Wildlife also included comments on the NOP that reference the importance of adaptive management. The Draft SEIR does not include an adaptive management plan. In a future certification of consistency, DWR should include an adaptive management plan and describe how this would be implemented.

CLOSING COMMENTS

The Council invites DWR to engage Council staff in early consultation prior to the submittal of a certification of consistency to promote consistency with the Delta Plan. More information on covered actions, early consultation, and the certification process can be found on the Council website <https://deltacouncil.ca.gov/covered-actions/>.

Council staff are available to discuss issues outlined in this letter as DWR proceeds with the next stages of the Tide's End project. Please contact Daniel Constable at daniel.constable@deltacouncil.ca.gov with any questions.

Sincerely,



Jeff Henderson
Deputy Executive Officer