



**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

May 23, 2022

Chris Elias, Executive Director
San Joaquin Area Flood Control Agency
22 East Weber Avenue, Suite 301
Stockton, CA 95202

Delivered via email: Chris.Elias@stocktonca.gov

**RE: Comments on Notice of Preparation of an Environmental Impact
Report for the Mossdale Tract Area Urban Flood Risk Reduction Project,
SCH# 2022040471**

Dear Chris Elias:

Thank you for the opportunity to review and comment on the Mossdale Tract Area Urban Flood Risk Reduction Project, Notice of Preparation (NOP) of an Environmental Impact Report (EIR). The Delta Stewardship Council (Council) understands that the objective of the Mossdale Tract Area Urban Flood Risk Reduction Project (project), as described in the NOP, is to provide increased public safety through levee rehabilitation and improvements while implementing a multi-benefit risk reduction project that improves ecological function and habitat in the flood system, and contributes societal benefits such as recreation when feasible.

The Council is an independent state agency established by the Sacramento-San Joaquin Delta Reform Act of 2009, codified in Division 35 of the California Water Code, sections 85000-85350 (Delta Reform Act). The Delta Reform Act charges the Council with furthering California's coequal goals of providing a more reliable water

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supply and protecting, restoring, and enhancing the Sacramento-San Joaquin River Delta (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. 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.)

Pursuant to the Delta Reform Act, the Council has adopted the Delta Plan, a comprehensive long-term management plan for the Delta and Suisun Marsh that furthers the coequal goals. The Delta Plan contains regulatory policies, which are set forth in California Code of Regulations, Title 23, sections 5001-5015. 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, 85225.30.) 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 implementation of the project. (Wat. Code, § 85225.)

COVERED ACTION DETERMINATION AND CERTIFICATION OF CONSISTENCY WITH THE DELTA PLAN

Based on the project location and scope, as provided in the NOP, the proposed project appears to meet the definition of a covered action. Water Code section 85057.5(a) states that a covered action is a plan, program, or project, as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:

- (1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.* The project is located within the legal Delta.
- (2) Will be carried out, approved, or funded by a State or a local public agency.* The project will be carried out by the San Joaquin Area Flood Control Agency (SJAFCA), a local public agency.
- (3) Is covered by one of the provisions of the Delta Plan.* Delta Plan regulatory policies that may apply to the project are discussed below.

And

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(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 Delta. The project would have a significant impact on the coequal goal of protecting, restoring, and enhancing the Delta ecosystem, and a significant impact on a government-sponsored flood control program to reduce risks to people, property, and State interests in the Delta.

The State or local agency approving, funding, or carrying out the project must determine if that project is a covered action and, if so, file a Certification of Consistency with the Council prior to initiating project implementation. (Wat. Code, § 85225; Cal. Code Regs., tit. 23, § 5001(j)(3).)

COMMENTS REGARDING DELTA PLAN POLICIES AND POTENTIAL CONSISTENCY CERTIFICATION

The following section describes the Delta Plan regulatory policies that may apply to the proposed project based on the available information in the NOP. This information is offered to assist SJAFCA to prepare environmental documents that could be used to support a future Certification of Consistency for the 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 must be addressed in a Certification of Consistency for a project that is a covered action. If a future Certification of Consistency is prepared for the project, it must include detailed findings that address each of the following requirements:

Mitigation Measures

Delta Plan Policy **G P1(b)(2)** (Cal. Code Regs., tit. 23, § 5002(b)(2)) requires that covered actions not exempt from the California Environmental Quality Act (CEQA) must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 26, 2018 (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 finds are equally or more effective. These mitigation measures are identified in Delta Plan Appendix O and are

available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>.

If the Mossdale Tract Area Urban Flood Risk Reduction Project EIR identifies potentially significant impacts that require mitigation, SJAFCA should review Appendix O and include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan or identify substitute mitigation measures that the agency finds are equally or more effective.

Best Available Science

Delta Plan Policy **G P1(b)(3)** (Cal. Code Regs., tit. 23, § 5002(b)(3)) 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 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 (f).) Best available science is also required to be consistent with the guidelines and criteria in Appendix 1A of the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>). In a future Certification of Consistency for the project, SJAFCA should identify how project design and operational decisions were informed by best available science.

Adaptive Management

Delta Plan Policy **G P1(b)(4)** (Cal. Code Regs., tit. 23, § 5002(b)(4)) 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 1 B of the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1b.pdf>), and b) documentation of adequate resources to implement the proposed adaptive management plan. A future Certification of Consistency for the project should include an adaptive management plan consistent with the framework established in Appendix 1B.

Ecosystem Restoration Policy 2: Restore Habitats at Appropriate Elevations

Delta Plan Policy **ER P2** (Cal. Code Regs., tit. 23, § 5006) requires habitat restoration to be carried out consistent with Appendix 3 (available within Appendix B:

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<https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf>). The elevation map included as Figure 4-6 (<https://deltacouncil.ca.gov/pdf/delta-plan/figure-4-6-habitat-types-based-on-elevation.pdf>) and Appendix 4 of the Delta Plan should be used as a guide for determining appropriate habitat restoration actions based on an area's elevation.

In the EIR, SJAFCA should identify the elevation of the project site in relation to current water levels and projected sea level rise based on best available science, and document how proposed habitat restoration actions are appropriate for these elevations.

Delta Plan Policy ER P4: Expand Floodplains and Riparian Habitats in Levee Projects

Delta Plan Policy **ER P4** (Cal. Code Regs., tit. 23, § 5008) requires levee projects to evaluate and, where feasible incorporate, alternatives to increase floodplains and riparian habitats. The EIR should document how SJAFCA evaluated the feasibility of incorporating floodplain and riparian habitats into the design and construction of the project.

Delta Plan Policy ER P5: 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 proposed setback levee at River Mile (RM) 52 has potential to create aquatic habitat that could increase predation for threatened or endangered fish species.

SJAFCA should acknowledge ER P5 in the Biological Resources section of the EIR. The EIR should describe how the Mossdale Tract Area Urban Flood Risk Reduction Project will address both nonnative wildlife species as well as terrestrial and aquatic weeds. The EIR should analyze how the project will avoid or mitigate for conditions that would lead to establishment of nonnative invasive species. In the event that mitigation is warranted, mitigation and minimization measures must include Delta Plan Mitigation Measure 4-1 (available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>) or substitute equally or more effective measures.

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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 or planned future uses when feasible, considering comments from local agencies and the Delta Protection Commission.

The proposed project includes a variety of sites identified for ecosystem restoration and a potential setback levee. SJAFCA should acknowledge DP P2 in the regulatory setting for the Land Use and Planning section of the EIR. The EIR should describe the project process to avoid or reduce conflicts with existing or planned future uses.

Risk Reduction Policy 1: Prioritization of State Investments in Delta Levees and Risk Reduction

Delta Plan Policy **RR P1** (Cal. Code Regs., tit. 23, § 5012) calls for the prioritization of State investments in Delta flood risk management, including levee operation, maintenance, and improvements. The project seeks to improve public safety to urban areas, providing 200-year level of flood protection through levee rehabilitation and improvements. The EIR should document how SJAFCA has incorporated the prioritization of the state investments in Delta levees and risk reduction.

Risk Reduction Policy 4: Floodplain Protection

Delta Plan Policy **RR P4** (Cal. Code Regs., tit. 23, § 5015) states that no encroachment shall be allowed or constructed in the floodplain in certain areas within the legal Delta, unless it can be demonstrated by appropriate analysis that the encroachment will not have a significant adverse impact on floodplain values and functions. One area specified in RR P4 is the Lower San Joaquin River Floodplain Bypass area, located on the Lower San Joaquin River upstream of

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Stockton immediately southwest of Paradise Cut on lands both upstream and downstream of the Interstate 5 crossing.¹

While the project as proposed would not construct encroachments in the Lower San Joaquin Bypass Area, SJAFCA should consider this policy if the preferred alternative approved by the agency includes project features in this area. SJAFCA should acknowledge RR P4 in the regulatory setting for the Hazards and/or the Hydrology section(s) of the EIR. The EIR should analyze the impact of the proposed project on floodplain values and functions, and a future Certification of Consistency should identify if the project is consistent with Policy RR P4.

CLOSING COMMENTS

As SJAFCA proceeds with design, development, and environmental impact analysis of the project, the Council invites SJAFCA to engage Council staff in early consultation (prior to submittal of a Certification of Consistency) to discuss project features and mitigation measures that would 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://coveredactions.deltacouncil.ca.gov>. Council staff are available to discuss issues outlined in this letter as SJAFCA proceeds with its project and approval processes. Please contact Erin Mullin at (916) 902-6482 or Erin.Mullin@deltacouncil.ca.gov with any questions.

Sincerely,



Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council

¹ This area is described in the Lower San Joaquin River Floodplain Bypass Proposal, submitted to the California Department of Water Resources by the partnership of the South Delta Water Agency, the River Islands Development Company, Reclamation District 2062, San Joaquin Resource Conservation District, American Rivers, the American Lands Conservancy, and the Natural Resources Defense Council, March 2011.

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