



715 P Street, 15-300
Sacramento, CA 95814

916.445.5511
DELTACOUNCIL.CA.GOV

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July 17, 2024

Emily Pappalardo, PE
Brannan-Andrus Levee Maintenance District
P.O. Box 929
Walnut Grove, CA 95690

Delivered via email: epappalardo@dcceng.net

RE: Comments on Notice of Preparation of an Initial Study/Mitigated Negative Declaration for the Georgiana Slough Erosion Control and Habitat Enhancement Project, SCH# 2024-061227

Dear Emily Pappalardo:

Thank you for the opportunity to review and comment on the Georgiana Slough Erosion Control and Habitat Enhancement Project (project) Notice of Intent (NOI) for an Initial Study/Mitigated Negative Declaration (IS/MND). The Delta Stewardship Council (Council) recognizes the objective of the project to resolve erosion and undercutting issues along the right bank levee of Georgiana Slough on lower Andrus Island and to add a habitat bench with native vegetation.

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 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, a comprehensive long-term management plan for the Delta and Suisun Marsh. (Wat. Code, § 85300.) The Delta Plan contains regulatory policies, which are set forth in California Code of Regulations, title 23, section 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 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 NOI, the proposed 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 (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. This project would occur along Georgiana Slough, located in the legal Delta.

(2) Will be carried out, approved, or funded by a state or a local public agency. This project would be carried out by the Brannan-Andrus Levee Maintenance District (BALMD), a local public agency.

(3) Is covered by one of the provisions of the Delta Plan. This project's potentially applicable Delta Plan regulatory policies are described below.

(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. This project would have a significant impact on the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.

The state or local agency approving, funding, or carrying out a covered action is required to file a Certification of Consistency with the Council prior to project implementation. (Wat. Code, § 85225; Cal. Code Regs., tit. 23, § 5001(k)(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 Draft IS/MND. This information is offered to assist BALMD to prepare a future Certification of Consistency.

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 by a project proponent of a project that is a covered action. The following is a subset of policy requirements that a project 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(b)(2).) requires covered actions not exempt from the CEQA to 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 a state or local agency other than the state or local agency that files the Certification of Consistency, or substitute mitigation measures that

the state or local agency finds are equally or more effective. These mitigation measures are identified in Appendix O of the Delta Plan and are available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>.

The project's IS/MND identifies potentially significant impacts that can be mitigated to less-than-significant impacts with the implementation of specified mitigation measures. Before submitting a Certification of Consistency to the Council, BALMD should review Appendix O and ensure that proposed project Avoidance and Mitigation Measures (AMMs) are equally or more effective than the Delta Plan mitigation measures.

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 are required to document the 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 (Cal. Code Regs, tit. 23, app. 1A.), which also is in the Delta Plan.

(<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>)

Ecosystem Restoration Policy 2: Restore Habitats at Appropriate Elevations

Delta Plan Policy **ER P2** (Cal. Code Regs., tit. 23, § 5006.) requires habitat restoration be carried out consistent with Appendix 3. (Cal. Code Regs, tit. 23, app. 3.) The elevation map (Cal. Code Regs, tit. 23, app. 4.), which 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>) should be used as a guide for determining appropriate habitat restoration actions based on an area's elevation.

The IS/MND analyzed elevation to allow for the needed inundation to develop aquatic and semi-aquatic habitats on the habitat bench on the water side slop of the levee. The Department of Fish and Wildlife was consulted to develop the list of species used to vegetate the habitat bench. Both items should be incorporated in a future Certification of Consistency for the proposed 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 in a way that appropriately protects the ecosystem.

The IS/MND includes AMM 3 to minimize construction impacts to water quality, aquatic habitat, and listed species. Section 2-6 of the IS/MND addresses post-construction and planting monitoring and adaptive management. The Final IS/MND should include an additional AMM specifically addressing avoidance and management of invasive, nonnative species for both construction and operations. Project mitigation and minimization measures are required to include the Delta Plan's 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.

CLOSING COMMENTS

The Council invites BALMD to engage Council staff in early consultation prior to the 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 BALMD proceeds in the next stages of its project and approval processes. Please contact Eva Bush at eva.bush@deltacouncil.ca.gov with any questions.

Sincerely,



Jeff Henderson
Deputy Executive Officer