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Mathew Walsh, Principal Planner  
Solano County Planning Services Division  
Resource Management Department  
675 Texas Street, Suite 5500  
Fairfield, CA 94533

715 P Street, 15-300  
Sacramento, CA 95814

916.445.5511  
DELTACOUNCIL.CA.GOV

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Delivered via email: [mwalsh@solanocounty.com](mailto:mwalsh@solanocounty.com)

**RE: Comments on Notice of Intent to Adopt an Initial Study/Mitigated Negative Declaration for the Cache Slough Mitigation Bank Project, SCH#2025-010929**

Dear Mathew Walsh:

Thank you for the opportunity to review and comment on the Cache Slough Mitigation Bank Project (mitigation bank project) Notice of Intent (NOI) for an Initial Study/Mitigated Negative Declaration (IS/MND). The Delta Stewardship Council (Council) recognizes the objective of the mitigation bank project to restore over 300 acres of freshwater tidal wetland and floodplain riparian habitats to serve a variety of mitigation needed for state, federal, and local permits.

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 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 location and scope, as provided in the Draft IS/MND, the mitigation bank 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 mitigation bank project would occur in the southern part of the Yolo Bypass within the Legal Delta.
- (2) Will be carried out, approved, or funded by a state or a local public agency.* This mitigation bank project will be approved by Solano County, a local public agency.
- (3) Is covered by one of the provisions of the Delta Plan.* 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 mitigation bank project would have a significant impact on the achievement of the coequal goal to protect, restore, and enhance the Delta Ecosystem.

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, subd. (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 mitigation bank project based on the available information in the Draft IS/MND. This information is offered to assist Solano County in preparing 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 certifying agency for 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, subd. (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 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 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 Draft IS/MND identifies potentially significant impacts that can be mitigated to a less-than-significant level with the implementation of specified mitigation measures for Biological Resources, Cultural Resources, Tribal Cultural Resources, Noise, Hazards and Hazardous Materials, and Wildfires.

Before submitting a Certification of Consistency to the Council, Solano County should review Appendix O and ensure that the Mitigation Measures for the mitigation bank project 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, 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 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, subd. (f).) Best available science is also required to be consistent with the guidelines and criteria in Appendix 1A (Cal. Code Regs, tit. 23, div., 6 Ch. 2, app. 1A) and also in the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>).

In a future Certification of Consistency, Solano County should directly identify how the mitigation bank project addresses each Best Available Science criterion outlined in Appendix 1A.

### *Adaptive Management*

Delta Plan Policy **G P1(b)(4)** (Cal. Code Regs., tit. 23, § 5002, subd. (b)(4).) requires that ecosystem restoration and water management covered actions include adequate provisions for the 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 (Cal. Code Regs, tit. 23, app. 1B) and also in 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.

The ecosystem restoration components of the mitigation bank project would require the preparation of an adaptive management plan. Please visit the [Interagency Adaptive Management Coordination webpage](#) for resources to help create a more effective adaptive management plan, including a checklist

of what to include, examples from other plans, monitoring resources, and more.

*Delta Plan Policy ER P2: 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 is also 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.

As part of a future Certification of Consistency for the mitigation bank project, Solano County should consider addressing any deviations from this policy and document how the proposed habitat restoration action is appropriate for these elevations based on best available science.

*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 invasive nonnative species in a way that appropriately protects the ecosystem.

Solano County should acknowledge Policy ER P5 in the Biological Resources section of the Final IS/MND. The Final IS/MND should analyze how the mitigation bank project will address both nonnative wildlife species as well as terrestrial and aquatic weeds. In addition to the invasive species already identified in the Draft IS/MND, Solano County should also consider how nutria and the golden mussel could affect the mitigation bank project. The Final IS/MND should analyze how the mitigation bank project will avoid or mitigate for conditions that would lead to the establishment of nonnative invasive species. If that mitigation is warranted, mitigation and minimization measures are required to 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.

*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 land uses when feasible, considering comments from local agencies and the Delta Protection Commission.

Solano County should acknowledge DP P2 in the environmental setting for the Land Use and Planning section of the Final IS/MND (p. 3-101 of the Draft IS/MND). The Final IS/MND should describe the process proposed to avoid or reduce conflicts with existing or planned future land uses.

**CLOSING COMMENTS**

The Council invites Solano County to engage Council staff in early consultation prior to the submittal of a Certification of Consistency to discuss the mitigation bank 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 Solano County proceeds in the next stages of its mitigation bank project and approval processes. Please contact Eva Bush at [eva.bush@deltacouncil.ca.gov](mailto:eva.bush@deltacouncil.ca.gov) with any questions.

Sincerely,



Jeff Henderson  
Deputy Executive Officer