

DELTA STEWARDSHIP COUNCIL

RESOLUTION 2022-03

DELTA STEWARDSHIP COUNCIL FINDINGS ON APPEAL OF THE REVISED  
CERTIFICATION OF CONSISTENCY C202110 FOR THE LOOKOUT SLOUGH TIDAL  
HABITAT RESTORATION AND FLOOD IMPROVEMENT PROJECT

WHEREAS, the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act), Water Code section 85000 *et seq.*, directs that the Delta Plan must further the “coequal goals” (Water Code § 85300) of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem 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 (Water Code § 85054); and

WHEREAS, the Delta Reform Act established a certification process for demonstrating consistency with the Delta Plan and requires any State or local agency proposing to undertake a qualifying action (covered action) to submit to the Delta Stewardship Council (Council) a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan (Wat. Code, § 85225); and

WHEREAS, the Delta Reform Act further specifies that, no later than 30 days after the submission of the certification of consistency, any person who claims that a proposed covered action is inconsistent with the Delta Plan and, as a result of that inconsistency, the action will have a significant adverse impact on the achievement of one or both of the coequal goals or implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta, may file an appeal with regard to a certification of consistency submitted to the Council (Wat. Code, §§ 85225.10 and 85225.15); and

WHEREAS, the Delta Reform Act requires the Council to hear appeals within 60 days of the date of the filing of the appeal, unless the Council, or by delegation the executive officer, determines that the issue raised on appeal is not within the Council’s jurisdiction or does not raise an appealable issue (Wat. Code § 85225.20); and

WHEREAS, the Council is required to make specific written findings either denying the appeal or remanding the matter to the state or local public agency for reconsideration of the covered action based on the finding that the certification of

consistency is not supported by substantial evidence in the record before the state or local public agency that filed the certification within 60 days of hearing the appeal (Wat. Code §§ 85225.20 and 85225.25); and

WHEREAS, upon remand, the state or local agency may determine whether to proceed with the covered action, and if it decides to proceed with the action or with the action as modified to respond to the findings of the Council, the agency must file a revised certification of consistency that addresses each of the findings made by the Council and file that revised certification with the council prior to proceeding with the action; and

WHEREAS, the California Department of Water Resources (Department) submitted to the Council Certification of Consistency C20215 for the Lookout Slough Tidal Habitat Restoration and Flood Improvement Project (Lookout Slough Project) on February 2, 2021; and

WHEREAS, Certification of Consistency C20215 was appealed by Liberty Island Access (LIA; Appeal C20215-A1), Solano County Water Agency (SCWA; Appeal C20215-A2), Reclamation Districts 2060 and 2068 (the Districts; Appeal C20215-A3); and Central Delta Water Agency (CDWA; Appeal C20215-A4); and

WHEREAS, after hearing the appeals, the Council remanded to the Department for reconsideration, in part, specific appeal issues raised by LIA in Appeal A20215-1 related to Delta Plan policies G P1(b)(3) and DP P2; and dismissed or denied all other appeal issues raised in Appeals C20215-A1, A20215-A2, A20215-A3, and A20215-A4, as specified in the Council's July 16, 2021 *Determination Regarding Appeals of the Certification of Consistency by the California Department of Water Resources for the Lookout Slough Tidal Habitat Restoration and Flood Improvement Project* (July 16 Determination); and

WHEREAS, the California Department of Water Resources submitted to the Council Revised Certification of Consistency C202110 (Revised Certification C202110) for the Lookout Slough Project on December 30, 2021, and the Council received timely appeals of Revised Certification C202110 from SCWA (Appeal A202110-1) and LIA (Appeal A202110-2); and

WHEREAS, on March 24, 2022, the Council held a duly noticed public hearing on the appeals of Revised Certification C202110, and received oral and written comments related to the appeals from SCWA, LIA, the Department, and all other interested persons; and

WHEREAS, following the conclusion of the March 24, 2022 public hearing, the Council dismissed all appeal issues raised by SCWA in Appeal A202110-1 and issues related to Delta Plan policy G P1(b)(2) raised by LIA in Appeal A202110-2, as set forth in the Council's March 24, 2022 *Dismissal of Issues on Appeal of the Revised Certification of Consistency by the California Department of Water Resources for the Lookout Slough Tidal Habitat Restoration and Flood Improvement Project (Certification Number C202110)* (March 24 Dismissal); and

WHEREAS, following the conclusion of the March 24, 2022 public hearing, the Council directed staff to prepare draft findings regarding non-dismissed issues on appeal of Revised Certification C202110 for the Council's consideration at the April 28, 2022 meeting and to issue such notices and take such steps as are necessary in carrying out the intent of the Council's directive; and

WHEREAS, on April 14, 2022, Council staff prepared and released for comment draft findings in a *Draft Determination Regarding Appeals of the Revised Certification of Consistency by the California Department of Water Resources for the Lookout Slough Tidal Habitat Restoration and Flood Improvement Project* (draft staff findings) requesting comments by 5:00 p.m. on April 19, 2022; and

WHEREAS, comments on the draft staff findings received by April 19, 2022, were considered in the staff preparation of the *Proposed Determination Regarding Appeals of the Revised Certification of Consistency by the California Department of Water Resources for the Lookout Slough Tidal Habitat Restoration and Flood Improvement Project* (Proposed Determination), which was released on April 25, 2022, and which was presented to the Council as Attachment 3 to the staff report in this matter at the Council's April 28, 2022 public meeting; and

WHEREAS, at its duly noticed public meeting on April 28, 2022, the Council received and considered oral and written comments from Appellants, the Department, and all other interested persons regarding Revised Certification C202110 and the Proposed Determination; and

WHEREAS, after receiving comments on Revised Certification C202110 and the Proposed Determination, the Council considered the Proposed Determination, and the detailed written findings contained therein, on appeal issues that were not dismissed in the March 24 Dismissal; and

WHEREAS, the Proposed Determination includes a section containing issues that were dismissed by the Council following the hearing on appeals on March 24, 2022, as set forth in the March 24 Dismissal, and the dismissal of these issues has been adopted by the Council, and they are included in the Proposed Determination for

ease of reference and are not subject to renewed deliberation (see Section H of the Proposed Determination); and

WHEREAS, the Council's findings on the appeals of Revised Certification C202110 for the Lookout Slough Project do not constitute a project for purposes of the California Environmental Quality Act because the Council's action is not a discretionary project proposed to be carried out or approved by a public agency (Pub. Res. Code § 21080, subdiv. (a)).

NOW, THEREFORE, BE IT RESOLVED BY THE DELTA STEWARDSHIP COUNCIL THAT:

1. The Council hereby finds the foregoing recitals to be true and correct and incorporates them herein.
2. The hereby adopts the *Proposed Determination Regarding Appeals of the Revised Certification of Consistency Number C202110 of the California Department of Water Resources for the Lookout Slough Tidal Habitat Restoration and Flood Improvement Project* and the specific written findings set forth therein, which is hereby incorporated into and made part of this Resolution as Attachment A, and:
  - a. denies the appeals, in part, on the issues recommended for denial as set forth in the Proposed Determination; and
  - b. dismisses the appeals on the issues recommended for dismissal as set forth in the Proposed Determination.
3. The Council hereby directs and authorizes the Executive Officer, or her delegatee, to take such steps and make such non-substantive changes to the Proposed Determination as are necessary to finalize and make the Final Determination publicly available.

#### CERTIFICATION

On a motion by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and a vote of the Council, the foregoing resolution was passed and adopted by the Delta Stewardship Council by the following vote at a regular meeting of the Delta Stewardship Council on April 28, 2022.

Vice-Chair Madueño \_\_\_\_\_

Councilmember Damrell \_\_\_\_\_

Councilmember Lee \_\_\_\_\_

Councilmember Mehranian \_\_\_\_\_

Councilmember Nottoli \_\_\_\_\_

Councilmember Smith \_\_\_\_\_

Councilmember Zingale \_\_\_\_\_

Dated: April 28, 2022

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Rebecca Barger

Clerk of the Board of the Delta Stewardship Council