



Delta Stewardship Council

A CALIFORNIA STATE AGENCY

August 27, 2021

Katherine Holmes
Solano Resource Conservation District
1170 North Lincoln Street #110
Dixon, CA 95620

Via email: katherine.holmes@solanorcd.org

RE: Comments on Initial Study and Proposed Mitigated Negative Declaration for the Ulatis Creek Habitat Restoration Project, SCH# 2021070447

Dear Katherine Holmes:

Thank you for the opportunity to review and comment on the Solano Resource Conservation District (Solano RCD) Ulatis Creek Habitat Restoration Project (project). According to the Initial Study and Proposed Mitigated Negative Declaration (IS/MND), the project will restore 20 acres of riparian woodland to the north bank of Ulatis Creek.

The Delta Stewardship Council (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 supply and protecting, restoring and enhancing the Sacramento-San Joaquin River Delta (Delta) ecosystem. (Water 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

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California's coequal goals for the Delta through the adoption and implementation of the Delta Plan. (Wat. Code, § 85300.)

The Delta Plan is 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. A state or local agency that proposes to undertake a covered action (defined in Water Code section 85057.5(a) and discussed below) 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 described in the IS/MND, the Ulatis Creek Restoration Project may 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 legal Delta (Wat. Code, § 12220) or Suisun Marsh (Pub. Res. Code § 29101). The approximate boundaries of these areas are publicly available on the Open Data Portal at <https://data.ca.gov/dataset/legal-delta-boundary> and <https://data.ca.gov/dataset/suisun-marsh-boundary>. This project would occur in whole within the boundaries of the legal Delta.
2. Will be carried out, approved, or funded by the State or a local public agency. This project would be approved and carried out by Solano RCD, a local public agency.
3. Will have a significant 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. This project would have a significant impact on the achievement of the coequal goal to protect, restore, and enhance the Delta ecosystem because it proposes riparian woodland habitat restoration within the Cache

Slough Priority Habitat Restoration Area established in Delta Plan Policy ER P3 (Cal. Code Regs., tit. 23, § 5007).

4. Is covered by one or more of the regulatory policies contained in the Delta Plan (Cal. Code Regs., tit. 23, §§ 5003-5015). Delta Plan regulatory policies that may apply to the project are discussed below.

The State or local agency approving, funding, or carrying out a project must determine if the project is a covered action and, if so, submit a Certification of Consistency to the Council prior to 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 Delta Plan regulatory policies that may apply to the project based on the information available in the IS/MND. This information is offered to assist Solano RCD to prepare environmental documents that could be used to support a future Certification of Consistency for the project. This information may also assist Solano RCD to describe the relationship between the project and the Delta Plan in the Final IS/MND.

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 covered action. The following is a subset of policy requirements which a project shall fulfill to be considered as consistent with the Delta Plan:

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>.

The Draft IS/MND for the project identifies potentially significant impacts to biological resources, hydrology/water quality, and cultural resources. The Draft IS/MND proposes numerous avoidance and minimization measures to address these impacts. The proposed avoidance and mitigation measures adopted by Solano RCD in the Final IS/MND must be equally or more effective than applicable feasible Delta Plan mitigation measures. In a future Certification of Consistency for the project, Solano RCD should document how the adopted mitigation measures are equally or more effective than the applicable mitigation measures contained in Delta Plan Appendix O.

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>).

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.

Ecosystem Restoration Policy 2: Restore Habitats at Appropriate Elevations

Delta Plan Policy **ER P2** (Cal. Code Regs., tit. 23, § 5006) requires that habitat restoration be carried out consistent with Delta Plan Appendix 3 (available within Appendix B: <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. As shown in Delta Plan Appendix 4, Ulatis Creek crosses multiple elevation bands in the Delta, including the intertidal elevation band, the sea level rise accommodation band, and the transitional habitat band.

According to the IS/MND, the project would restore riparian habitat on dry land above the mean high water mark. In the Final IS/MND, Solano RCD should identify the elevation of the project site in relation to current water levels and projected sea level rise based on best available science. In a future Certification of Consistency, Solano RCD should identify the location of the portions of the project site within each of the elevation bands depicted in Delta Plan Appendix 4, and document how the proposed habitat restoration action is appropriate for the site elevation and consistent with Delta Plan Appendix 3, supported by the elevation information in the Final IS/MND and/or other sources.

Ecosystem Restoration Policy 3: Protect Opportunities to Restore Habitat

Delta Plan Policy **ER P3** (Cal. Code Regs., tit. 23, § 5007) states that, within the priority habitat restoration areas (PHRAs) depicted in Delta Plan Appendix 5 (available within Appendix B: <https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf>), significant adverse impacts to the opportunity to restore habitat at appropriate elevations as described in ER P2 (Cal. Code Regs., tit. 23, § 5006) must be avoided or mitigated. The project is proposed to be located within the Cache Slough PHRA identified in Delta Plan Appendix 5. In a future Certification of Consistency, Solano RCD should describe whether and how significant adverse impacts to the opportunity to restore habitat at appropriate elevations would be avoided or mitigated, supported by information in the Final IS/MND and/or other sources.

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 Draft IS/MND describes herbicide applications to control invasive weeds and plants during project implementation (Draft IS/MND p. 12-15). These applications would allow for native species to be established in the project area, however the Draft IS/MND does not

further describe the potential for the project to introduce or improve habitat for invasive nonnative species, or how the project would avoid or mitigate such introductions or improvements.

In the Final IS/MND, Solano RCD should analyze how the project will address both nonnative wildlife species and terrestrial and aquatic weeds. It should analyze how the project will avoid or mitigate for conditions that would lead to introduction of or improved habitat conditions for 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.

Delta Plan Mitigation Measure 4-1 requires that an invasive species management plan be developed and implemented for any project whose construction or operation could lead to introduction or facilitation of invasive species establishment. The plan shall ensure that invasive plant species and populations are kept below preconstruction abundance and distribution levels, be based on the best available science, and be developed in consultation with the California Department of Fish and Wildlife (CDFW) and local experts. The plan shall include the following:

- Nonnative species eradication methods (if eradication is feasible)
- Nonnative species management methods
- Early detection methods
- Notification requirements
- Best management practices for preconstruction, construction, and post construction periods
- Monitoring, remedial actions and reporting requirements
- Provisions for updating the target species list over the lifetime of the project as new invasive species become potential threats to the integrity of the local ecosystems

Solano RCD should add a mitigation measure to the Final IS/MND that requires preparation and implementation of a plan that includes the components described above. To demonstrate consistency with Delta Plan policies **G P1(b)(2)** and **ER P5** in a future Certification of Consistency, Solano RCD should describe how the project

design, operations, and maintenance elements 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.

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.

According to the IS/MND, the project is not expected to conflict with agricultural land uses because seasonal grazing will not be permanently displaced as a result of the project. In the Final IS/MND, Solano RCD should identify how the project siting would avoid or reduce other conflicts with existing land uses, or conflicts with the uses described or depicted in the Solano County general plan. In a future Certification of Consistency, Solano RCD should describe whether and how the project siting avoids or reduces conflicts with existing uses and those described or depicted in the Solano County General Plan, if feasible, supported by information in the Final IS/MND and/or other sources.

Closing Comments

The Council invites Solano RCD 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. As part of the Council, the Delta Science Program's Adaptive Management Liaisons are available to provide further consultation and guidance regarding appropriate application of best available science and adaptive management.

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 RCD proceeds in the next stages of its project and approval processes. Please contact Avery Livengood, Environmental Program Manager, at avery.livengood@deltacouncil.ca.gov with any questions.

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Ulatis Creek Habitat Restoration Project
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Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Henderson", with a long horizontal flourish extending to the right.

Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council