



Delta Stewardship Council

A CALIFORNIA STATE AGENCY

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Carl Wilcox, Policy Advisor to the Director
California Department of Fish and Wildlife
1416 Ninth Street
Sacramento, CA 95814

Delivered via email: Carl.Wilcox@wildlife.ca.gov

RE: Comments on the Franks Tract Futures 2020 Reimagined Public Draft

Dear Carl Wilcox:

Thank you for the opportunity to review and comment on the Franks Tract Futures 2020 Reimagined Public Draft. The Delta Stewardship Council (Council) recognizes the objective(s) of the Franks Tract Futures process to explore options for improving ecosystem, water quality, recreation, and community benefits at Franks Tract as described in the public draft. The Council also appreciates the presentations that the California Department of Fish and Wildlife (CDFW) and other project partners have offered at Council meetings, most recently in June 2020.

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 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 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. 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.)

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Consistency with the Delta Plan

The Council understands that at this stage, the Frank's Tract Futures process is exploring a range of options to benefit the ecosystem, water quality, recreation, and communities surrounding Frank's Tract. At this time, it is uncertain if the alternatives or recommendations resulting from this process will result in a project subject to the California Environmental Quality Act (CEQA) and Delta Reform Act. If the process leads to such a future project, that future project would be required to demonstrate consistency with the Delta Plan. This letter identifies Delta Plan considerations the planning team should consider during ongoing planning efforts for Frank's Tract leading to a future project.

Based on the location and scope of Frank's Tract Futures provided in the public draft, a future project would 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 (Water Code, §12220) or Suisun Marsh (Pub. Resources 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>. Franks Tract is located within the Delta.
2. Will be carried out, approved, or funded by the State or a local public agency. A future project would be carried out by CDFW, a state 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. A future project would have a significant impact on the achievement of both coequal goals.
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 would apply to a future project are discussed below.

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

Applicable Delta Plan Policies

The following section describes the Delta Plan regulatory policies that would apply to a future project based on the available information in the public draft. This information is offered to assist CDFW in subsequent planning phases for Frank's Tract Futures and to prepare environmental documents that could be used to support a Certification of Consistency for a future 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 by a project proponent of a project that is 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 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 environmental documents for a future project based on the Franks Tracts Futures process identify significant impacts that require mitigation, CDFW 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>).

Detailed modeling of potential design alternatives and impacts on natural and human resources underlie the resource management and policy approaches advocated by the Franks Tract Futures process. The process of preparing scenarios, modeling outputs, and reviewing metrics and outputs with agency scientists and managers as well as local stakeholders should provide a basis to describe how best available science informs project decisions. Additional scientific evaluations performed during the CEQA process should also be included in a certification of consistency for a future project.

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.

Investigations completed to date to support Franks Tract Futures already inform conceptual and numerical models describing how an ecosystem restoration project at this location would function to support multiple project objectives. Several key uncertainties have also been articulated, such as the potential for salmon to use the historic Old River migratory corridor, or the effect a future project may have on the growth of harmful algal blooms in Franks Tract. The adaptive management approach developed for a future project should focus on studying such uncertainties relative to project objectives to inform future adaptation actions. 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.

Ecosystem Restoration Policy 1: Delta Flow Objectives

Delta Plan Policy **ER P1** (Cal. Code Regs., tit. 23, § 5005) requires the State Water Resources Control Board's Bay Delta Water Quality Control Plan flow objectives shall be used to determine consistency with the Delta Plan. The public draft describes changes to Delta hydrology that would affect regional water quality. The planning and environmental documents for a future project should analyze and document how the Franks Tract Futures proposal would impact or alter Delta flows that are subject to meeting the Bay Delta Water Quality Control Plan flow objectives.

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 (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.

Frank's Tract features ground elevations that lie well below sea level, and the proposal would include dredging and filling of landmasses to support tidal restoration. In planning and environmental documents for a future project, CDFW should analyze the elevation of the project site in relation to current water levels and projected sea level rise based on best available science. CDFW should also document how proposed habitat restoration actions are appropriate at these elevations.

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 preferred design concept described in the public draft proposes to benefit desirable nonnative fish species, including Largemouth bass and Striped bass. Sportfish habitat has been maintained and potentially enhanced in the preferred design concept, as bass fishing is an important component of the Delta economy. CDFW should address this potential discrepancy with ER P5 in the planning and environmental documents for a future project.

CDFW should acknowledge Policy ER P5 in planning and environmental documents for a future project. The environmental document should analyze how a future project would consider and avoid or mitigate the potential for new introductions of, or improved habitat conditions for both nonnative wildlife species as well as terrestrial and aquatic weeds. Moreover, analysis should indicate how a future project would avoid or mitigate for conditions that would lead to establishment of nonnative invasive species including, but not limited to, analysis of changes in salinity and flow regime. The environmental document for a future project should include a detailed monitoring plan to track the response of nonnative species and evaluate how the project would affect habitat 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 a substitute mitigation measure that is equally or more effective.

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.

CDFW should acknowledge Policy DP P2 in planning and environmental documents for a future project and fully describe economic, recreation, and other social aspects of Franks Tract and the Delta. Land use conflicts may result from construction impacts, changes to navigation that would affect facilities supporting water-based recreation, and other impacts. The planning and environmental documents for a future project should describe the process used to avoid or reduce conflicts with existing or planned future land 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. Planning and environmental documents for a future project should describe how CDFW has incorporated the prioritization of state investments in Delta levees for any levee improvements proposed as part of the project.

Risk Reduction Policy 3: Protect Floodways

Delta Plan Policy **RR P3** (Cal. Code Regs., tit. 23, § 5014) prohibits the presence or construction of encroachments in floodways that are not designated floodways or regulated streams unless it can be demonstrated by appropriate analysis that the encroachment will not unduly impede the free flow of water in the floodway or jeopardize public safety. The Frank's Tract Futures proposal would include construction in streams to enhance remnant levees, and may also include dredging and alter bathymetry in areas that may serve as a floodway. The CDFW should acknowledge Policy RR P3 in planning and environmental documents for a future project. CDFW should also describe how a future project would not impede the free flow of water in the floodway or jeopardize public safety.

Closing Comments

As CDFW proceeds with planning, design, and environmental impact analysis of any future project resulting from the Franks Tract Futures 2020 Reimagined process, the Council invites CDFW 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 CDFW proceeds in the next stages of this process. Please contact Chris Kwan (chris.kwan@deltacouncil.ca.gov) with any questions.

Sincerely,



Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council