



Delta Stewardship Council

A CALIFORNIA STATE AGENCY

September 30, 2020

Victoria Lombardo, Senior Planner
City of Tracy, Development Services
333 Civic Center Plaza
Tracy, CA 95376

Sent via email: Victoria.Lombardo@cityoftracy.org

RE: Comments on Notice of Preparation of an Environmental Impact Report for the Tracy Alliance Project, SCH# 2020080524

Dear Victoria Lombardo:

Thank you for the opportunity to review and comment on the Tracy Alliance Project (proposed project) Notice of Preparation (NOP) of an Environmental Impact Report (EIR). The Delta Stewardship Council (Council) recognizes the objective of the Tracy Alliance Group, Suvik Farms, LLC., and Zuriakat to develop up to 3,352,320 square feet of warehouse space on approximately 191 acres of agricultural land within the City of Tracy's Sphere of Influence. According to the NOP, the proposed project would involve the demolition of existing residential and agricultural structures, removal of crops, construction of a 13-acre stormwater basin, and installation of more than 1,500 parking spaces. Approximately 13 acres would be reserved to accommodate a planned freeway interchange.

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.

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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.)

Our comments on the proposed project focus on the potential status of the project as a covered action, potential growth inducing impacts of the project in the Delta, and potential environmental justice impacts of the project.

Covered Action Determination and Certification of Consistency with the Delta Plan

Based on the project location and scope, as provided in the NOP, the proposed 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 (Water Code, §12220) or Suisun Marsh (Pub. Resources Code, § 29101). *The proposed project site is located in unincorporated San Joaquin County, within the City of Tracy's Sphere of Influence (SOI). The site is located wholly within the secondary zone of the legal Delta.*
2. Will be carried out, approved, or funded by the State or a local public agency. *The proposed project would require various approvals by the City of Tracy, a local public agency. These approvals include annexation of the project site into the city, pre-zoning, an amendment to the Northeast Industrial Specific Plan, and a Tentative Parcel Map or Lot Line Adjustment to create final development lots. Annexation of the proposed project site into the city also requires approval of the San Joaquin County Local Agency Formation Commission (LAFCO).*
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. *The proposed project may have a significant impact on the achievement of the coequal goal to protect, restore, and enhance the Delta ecosystem.*
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 proposed project are discussed below.*

Water Code section 85057.5(b) exempts certain activities from the definition of a covered action. A plan, program, project, or activity within the secondary zone of the Delta that the applicable metropolitan planning organization has determined is consistent with a sustainable communities strategy (SCS) is not considered a covered action. Thus, if the San Joaquin Council of Governments (SJCOG) has determined that the proposed project is consistent with the 2018

SJCOG SCS, then the project would not meet the definition of a covered action. The City should consult with SJCOG to determine if the proposed project is consistent with the SCS and should identify this in the Land Use and Planning section of the Draft EIR.

As the local agency responsible for approving the project, the City of Tracy 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).) Delta Stewardship Council staff are available to assist City staff in assessing whether the Tracy Alliance Project meets the conditions, or the exemption described above.

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 NOP. This information is offered to assist the City to prepare environmental documents that could be used to support a Certification of Consistency for the project. This information may also assist the City to describe the relationship between the proposed project and the Delta Plan in the project's EIR.

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 the state or local public agency proposing a covered action. The following is a subset of policy requirements which a project shall 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 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 the Tracy Alliance Project EIR identifies significant impacts that require mitigation, the City of Tracy 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.

Delta Plan Mitigation Measure (MM) 7-1 is of particular relevance to the proposed project, which would be located on prime agricultural land, including three parcels under a Williamson Act contract. **MM 7-1** requires projects that will result in permanent conversion of farmland to

preserve in perpetuity other farmland through acquisition of an agricultural conservation easement, or contributing funds to a land trust or other qualified entity, at a target ratio of 1:1.

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>).

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 City of Tracy should acknowledge Policy ER P5 in the Biological Resources section of the EIR. The EIR should analyze how the Tracy Alliance Project will address both nonnative wildlife species as well as terrestrial and aquatic weeds. The EIR should analyze how the project will avoid or mitigate for conditions that would lead to establishment of 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.

CEQA does not specifically require analysis of impacts to invasive species’ habitats. However, the EIR represents an important part of the record before the City as it formulates its certification of consistency for the covered action with respect to Delta Plan Policy ER P5. If information about whether the proposed project would provide habitat improvements for invasive nonnative species is not provided in the EIR, Council staff recommend that the City prepare additional information outside the CEQA process to provide substantial evidence for the City’s determination of consistency with Delta Plan Policy ER P5.

Delta as Place Policy 1: Locate New Urban Development Wisely

Delta Plan Policy **DP P1** (Cal. Code Regs., tit. 23, § 5010) places certain limits on new urban development within the Delta. As it applies to the proposed project, Policy DP P1 states that new residential, commercial, or industrial development must be limited to areas that city or county general plans designate for residential, commercial, and industrial development in

cities or their spheres of influence as of the date of the Delta Plan's adoption (May 16, 2013). This policy is intended to strengthen existing Delta communities while protecting farmland and open space, providing land for ecosystem restoration needs, and reducing flood risk.

As part of the proposed project, the City would annex multiple unincorporated, agricultural parcels located within its SOI and would pre-zone the site for industrial use. The NOP indicates that the current City General Plan designates the site as Industrial, while the current San Joaquin County General Plan designates the project site as Agriculture-Urban Reserve (A/UR) which "reserves areas for urban development if the area is designated for urban development in a city's general plan, and the County determines the area is a reasonable future expansion for the city" (NOP, p. 5). The City should acknowledge Policy DP P1 in the regulatory setting for the Land Use and Planning section of the EIR, and document how the proposed project would be consistent with Policy DP P1. Specifically, this analysis should identify the land use designations of the project site in the City of Tracy and San Joaquin County General Plans that were in effect on May 16, 2013.

The proposed project would also extend public utilities beyond the existing City of Tracy boundary, including water distribution lines, sewer collection lines, and stormwater drainage; and would set-aside land for a future freeway interchange at Paradise Road. As the project site lies at the outer edge of the City's SOI, these infrastructure extensions have the potential to induce additional urban development that would be inconsistent with Delta Plan Policy DP P1. In the EIR's analysis of growth inducing effects, the City should analyze these effects and describe how the proposed project would avoid the potential to induce new residential, commercial, or industrial development in the Delta that would be inconsistent with Delta Plan Policy DP P1.

Environmental Justice Impacts

The proposed project would expand the footprint of the Northeast Industrial Specific Plan area to the east of the existing City boundary, within 800 feet of the unincorporated community of Banta. The NOP notes the vicinity of the proposed project to Banta (p. 3). According to the California Communities Environmental Health Screening Tool (CalEnviroScreen), Banta is located within a census tract that ranks in the 99th percentile in the state for pollution burden.¹

The additional truck traffic associated with the proposed warehouse uses could have significant cumulative health effects on the residents of Banta, in combination with other recent and planned projects in the Northeast Industrial Specific Plan area and baseline noise, traffic, and air quality levels. The Air Quality section of the EIR should include an analysis of the cumulative health impacts on sensitive receptors in Banta and any other nearby

¹ OEHHA (2018). Results for Census Tract No. 6077005202. CalEnviroScreen 3.0. Accessed at: <https://oehha.ca.gov/calenviroscreen/maps-data>

disadvantaged communities. Delta Plan Mitigation Measure 9-3 (available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>) requires an evaluation of human health risks from potential exposures of sensitive receptors to substantial pollutant concentrations. The need for a human health risk analysis should be evaluated using approved screening tools, and discussed with the local Air Quality Management District or Air Pollution Control District at the time of preparation of the Air Quality Technical Report.

Closing Comments

As the City proceeds with design, development, and environmental impact analysis of the project, the Council invites City staff 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 the City of Tracy proceeds in the next stages of its project and approval processes. Please contact Avery Livengood at (916) 642-9089 or Avery.Livengood@deltacouncil.ca.gov with any questions.

Sincerely,



Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council

CC: Diane Nguyen, San Joaquin Council of Governments (nguyen@sjcog.org)