



# Delta Stewardship Council

A CALIFORNIA STATE AGENCY

November 16, 2020

Gilbert Labrie, AIA  
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Brannan-Andrus Levee Maintenance District  
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Sent via email: [glabrie@dccengineering.net](mailto:glabrie@dccengineering.net)

## **RE: Comments on Notice of Intent to adopt a Mitigated Negative Declaration for the Sacramento River Erosion Control and Habitat Enhancement Project**

Dear Gilbert Labrie:

Thank you for the opportunity to review and comment on the Notice of Intent (NOI) to adopt a Mitigated Negative Declaration (MND) for the Sacramento River Erosion Control and Habitat Enhancement Project (project). The Delta Stewardship Council (Council) recognizes the objective(s) of the project, as described in the Initial Study (IS), to resolve levee erosion issues and provide channel margin habitat at three locations along the east bank of the Sacramento River, and to minimize long-term levee maintenance and repair costs.

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

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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.) The IS acknowledges and references the need for consistency with the Delta Plan (IS, p. 103).

Thank you for meeting with Council staff on November 10, 2020 to discuss the proposed project. This early engagement enables Council staff to offer timely advice on the consistency of the proposed project with the Delta Plan.

### **Covered Action Determination and Certification of Consistency with the Delta Plan**

Based on the project location and scope, as provided in the IS, the proposed project appears to 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>. *According to the IS, the project is located in the Delta primary zone. The project would occur on the left bank of the Sacramento River on Brannan Island, near the confluence of Steamboat Slough, Cache Slough, and the Sacramento River, and extend upstream to the City of Isleton.*
2. Will be carried out, approved, or funded by the State or a local public agency. *The project would be carried out by the Brannan-Andrus Levee Maintenance District (BALMD), which is 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. *The project is a multibenefit flood control and habitat enhancement project that would have a significant impact on the achievement of the coequal goal to protect, restore, and enhance the Delta ecosystem, as well as the implementation of a government-sponsored flood control program.*
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.*

As the local agency carrying out the project, BALMD 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).) Section 3.11 of the IS indicates BALMD's intention to determine that the project is a covered action (IS, p. 103-104). The next section of this letter provides information to assist BALMD in preparing a Certification of Consistency for the project.

### **Comments Regarding Delta Plan Policies**

The following section describes the Delta Plan regulatory policies that may apply to the proposed project based on the available information in the IS.

#### **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 that are 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 IS identifies several significant impacts that require mitigation, including those related to air quality, biological resources, cultural resources, noise, and tribal cultural resources. BALMD should review the mitigation measures in Delta Plan Appendix O which correspond to the impacts to these five resource areas, and ensure that the avoidance, minimization, and mitigation measures (AMMs) described in the IS are equally as effective as or more effective than the corresponding mitigation measures in Appendix O. In its Certification of Consistency for the project, BALMD should explain how these AMMs are equally as effective as or more effective than the applicable mitigation measures contained in 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>).

Six criteria are used to define best available science: relevance, inclusiveness, objectivity, transparency and openness, timeliness, and peer review. BALMD should prepare a Certification of Consistency that documents the scientific rationale for applying these six criteria to the project. The Council’s Delta Science Program’s Adaptive Management Liaisons are available to provide further consultation and guidance regarding the use and documentation of best available science in BALMD’s future Certification of Consistency for the project.

### **Adaptive Management**

Delta Plan Policy **G P1(b)(4)** (Cal. Code Regs., tit. 23, § 5002(b)(4)) requires that ecosystem restoration 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.

An adaptive management plan consistent with the framework referenced above will be required as part of a Certification of Consistency with the Delta Plan for the project because of the multibenefit nature of the project. While some vegetation maintenance and monitoring activities are described in the IS (IS, pp. 16-17), these activities do not correspond to the full range of project objectives. In its Certification of Consistency, BALMD should document how its adaptive management plan is consistent with the framework in Appendix 1B, and how its provisions for adaptive management are appropriate to the scope of the project. In addition, BALMD should document the resources allocated to implement maintenance, monitoring, and any other adaptive management actions described in the Certification. Adaptive Management Liaisons are available to provide further consultation and guidance on documentation of adaptive management.

## **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>). Restoration means, “the application of ecological principles to restore a degraded or fragmented ecosystem and return it to a condition in which its biological and structural components achieve a close approximation of its natural potential, taking into consideration the physical changes that have occurred in the past and the future impact of climate change and sea level rise.” (Wat. Code, § 85066.) 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 contained in Appendix 4 of the Delta Plan should be used, along with Appendix 3, as a guide for determining appropriate habitat restoration actions based on an area’s elevation.

According to the IS, the project would create 1.2 nautical miles of channel margin and waterside levee habitat on the Sacramento River left bank by establishing three upland and wetland and/or riparian benches on newly re-shaped levee slopes (IS, p. 7). Riparian benches would be constructed at elevations that are intended to inundate during high flow events (from the Mean Lower Low Water (MLLW) elevation (+4.0 NAVD 88) upslope to approximately +8.0 feet NAVD 88) and wetland benches would be constructed at elevations intended to inundate relatively frequently (1.5 feet below the MLLW elevation (+4.0 NAVD88) (IS, p. 10). The higher portions of the benches would be planted with scrub-shrub and upland vegetation, ranging from 4 or 8 to 15 feet (IS, p. 10). In its Certification of Consistency for the project, BALMD should explain how the proposed plantings and habitat types are appropriate for the distinct elevations of the project site, referencing Appendices 3 and 4 and information contained in the IS.

## **Ecosystem Restoration Policy 4: Expand Floodplains and Riparian Habitats in Levee Projects**

Delta Plan Policy **ER P4** (Cal. Code Regs., tit. 23, § 5008) requires levee projects to evaluate and, where feasible incorporate, alternatives to increase floodplains and riparian habitats. Although the policy also requires the evaluation of setback levees in several areas of the Delta, the project is not located within one of these areas. The project is described in the IS as a multibenefit levee erosion improvement project that lists hydrologically connected wetland and riparian habitats as a core component of the design (IS, p. 7). In its Certification of Consistency for the project, BALMD should document the alternatives to increase floodplains and riparian habitats that were evaluated and, where feasible, incorporated into the project.

### **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 IS describes existing conditions that include invasive arundo (giant reed; *Arundo donax*), Largemouth Bass (*M. salmoides*), Smallmouth Bass (*M. dolomieu*), and Spotted Bass (*M. punctulatus*) in the project area. The IS states that *A. donax* would be removed from the project area and disposed of in a landfill in the site preparation process (IS, p. 9). During the establishment period, the IS indicates that best management practices listed in Mitigation Measure BIO-1 would help minimize the spread of invasive weedy species (IS, p. 54). The IS also states that the elevation and bank slopes selected for wetland benches are favorable as short-term habitat for native salmonids and reduce favorability for invasive bass (IS, pp. 73-74). Based on the IS, during the three year post-construction period, invasive weedy plant species observed above a threshold percent cover would be removed by BALMD staff annually (IS, pp. 16-17).

In its Certification of Consistency for the project, BALMD should explain how the design, construction, and operations and maintenance elements described above (as well as any other project elements) would avoid or mitigate the potential for new introductions of, or improved habitat conditions for nonnative invasive species, including those identified in the IS. BALMD should also explain how measures to avoid, minimize, or mitigate the potential for new introductions of, or improved habitat conditions for, nonnative invasive species (such as Mitigation Measure BIO-1) are equally or more effective than Delta Plan Mitigation Measure 4-1 (available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>).

### **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 requiring that the siting of water management facilities, ecosystem restoration, and flood management infrastructure to avoid or reduce conflicts with existing or planned future land uses, described or depicted in city and county general plans for their jurisdictions or spheres of influence, when feasible, considering comments from local agencies and the Delta Protection Commission.

BALMD refers to the Delta Plan in the regulatory setting of the Land Use section of the IS and describes the proposed process to avoid or reduce conflicts with existing or planned future land uses. The IS indicates that impacts to agricultural and urban lands would only result from temporary construction activities and would not alter existing land uses (IS, p.

104). The IS states that that the project would not conflict with goals or policies of the Sacramento County General Plan, City of Isleton General Plan, or the Delta Protection Commission's Resource Management Plan (IS, p. 104).

In its Certification of Consistency for the project, BALMD should document any conflicts with existing or future land uses, and should explain how the three erosion control and channel margin habitat segments were sited to avoid or reduce such conflicts, when feasible.

### **Closing Comments**

We understand that the Board of Directors of the BALMD is anticipated to consider approval of the MND at their regularly scheduled Board Meeting on December 10, 2020. The Council invites BALMD staff to continue engaging with Council staff in early consultation to discuss project elements and mitigation measures that would promote consistency with the Delta Plan. The Council's Delta Science Program's Adaptive Management Liaisons are also 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>. Please contact Kaylee Griffith at [Kaylee.Griffith@deltacouncil.ca.gov](mailto:Kaylee.Griffith@deltacouncil.ca.gov) with any questions.

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