



Delta Stewardship Council

A CALIFORNIA STATE AGENCY

January 8, 2021

Bees Lakes Habitat Restoration Project
Attn: Traci Michel, Director Parks and Recreation Department
City of West Sacramento
1110 West Capitol Avenue West Sacramento, CA 95691

Sent via email: tracim@cityofwestsacramento.org

RE: Comments on Initial Study/Mitigated Negative Declaration for the Bees Lakes Habitat Restoration Plan and Design Project (State Clearing House No. 2020120220)

To Traci Michel:

Thank you for the opportunity to review and comment on the City of West Sacramento (City) Initial Study/Mitigated Negative Declaration (IS/MND) for the Bees Lakes Habitat Restoration Plan and Design Project (Project). The Delta Stewardship Council (Council) recognizes the objective(s) of the Project to restore historic physical and ecological processes to optimize habitat function, enhance the existing habitat to better meet listed species needs, improve pond water quality, remove potential contaminants, and improve public access management (Douglas Environmental 2020¹). We further understand that the City was awarded a grant from the Sacramento/San Joaquin Delta Conservancy in 2018 to study the Bees Lakes area and develop a habitat restoration plan and designs for proposed improvements.

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.)

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¹ <https://www.cityofwestsacramento.org/home/showpublisheddocument?id=11329>

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.)

For the purposes of compliance with both the Delta Reform Act and California Environmental Quality Act (CEQA), we offer the following comments for your consideration prior to adoption of the IS/MND.

Covered Action Determination and Certification of Consistency with the Delta Plan

The IS/MND, Section 2.5 Required Permits and Approvals, lists certification of consistency with the Delta Plan as a permit or approval action needed by the Project (IS/MND, p. 2-6). Based on the project location and scope, as provided in the IS/MND, the proposed Project appears to meet the definition of a covered action. As the local agency carrying out the Project, the City must submit a certification of consistency to the Council prior to project implementation. (Wat. Code, § 85225; Cal. Code Regs., tit. 23, § 5001(j)(3).) The next section of this letter provides information to assist the City in preparing a certification of consistency for the Project.

Comments Regarding Delta Plan Policies

The following section describes Delta Plan regulatory policies that may apply to the Project based on the available information in the 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 by a state or local public agency for a project that is 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 that 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/MND identifies potential for the Project to cause adverse environmental impacts that require mitigation, including those related to biological resources, cultural resources, geology and soils, hazards and hazardous materials, and hydrology and water quality. The City should review the mitigation measures in Delta Plan Appendix O which correspond to the potentially significant impacts in these five resource areas, and ensure that the mitigation measures described in the IS/MND are equally or more effective than corresponding mitigation measures in Delta Plan Appendix O. In its certification of consistency for the Project, the City should document how proposed mitigation measures are equally 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. In its certification of consistency for the Project, the City should document the scientific rationale for applying these six criteria to the Project. The certification of consistency should also document how the Project has used best available science during the planning, design, construction, and implementation stages.

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.

The Project's adaptive management plan should focus on studying uncertainties relative to the Project's 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 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.

In its certification of consistency for the Project, the City should identify the elevation of the project site in relation to current water levels and projected sea level rise (based on best available science), and document how the proposed habitat restoration action is appropriate for these elevations. The certification of consistency should cite to information in the IS/MND or other documents in the record before the City to support its findings.

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/MND describes a water quality component of the Project consisting of one or more artificial floating wetland islands to provide benefits such as plant root growth. These floating island(s) would provide shade and result in expected improvement to "habitat quality for native and/or nonnative pond fish (which in turn should provide food for many wildlife species and provide mosquito larvae control)" (IS/MND, p. 2-4). The IS/MND does not further describe the potential for the Project to introduce or improve habitat for invasive nonnative species.

In its certification of consistency for the Project, the City should explain how the design, construction, and operations and maintenance elements of the Project, including the artificial floating wetland islands and restored habitats, fully consider and avoid or mitigate the potential for new introductions of, or improved habitat conditions for, nonnative invasive species. In the certification, the City should also explain how measures to avoid, minimize, or mitigate the potential for new introductions of, or improved habitat conditions for, nonnative invasive species, both aquatic and terrestrial, (such as Mitigation Measure BIO-1) are equally or more effective than Delta Plan Mitigation Measure 4-1 (available at:

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<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 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. The Project includes habitat restoration; therefore, the City should be prepared to explain in its certification of consistency whether and how the project is consistent with Policy DP P2. The City should cite to information in the IS/MND or other documents in the administrative record to support its findings.

Closing Comments

The Council invites the City to engage with Council staff in early consultation prior to submitting a certification of consistency to discuss project elements and mitigation measures that would promote the Project's consistency with the Delta Plan.

More information on covered actions, early consultation, and the certification process can be found on the Council website at <https://coveredactions.deltacouncil.ca.gov>. Please contact Avery Livengood at Avery.Livengood@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