



**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

August 23, 2024

Judah Grossman
Department of Water Resources
Division of Multibenefit Initiatives
P.O. Box 942836
Sacramento, CA 94236-0001

Delivered via email: tidesendmbp@water.ca.gov

**RE: Comments on Notice of Preparation of an Environmental
Impact Report for the Tide's End Multibenefit Restoration
Project, SCH# 2024070944**

Dear Judah Grossman:

Thank you for the opportunity to review and comment on the Tide's End Multibenefit Restoration Project (Tide's End project) Notice of Preparation (NOP) of an Environmental Impact Report (EIR). The Delta Stewardship Council (Council) recognizes the objective of the Tide's End project is to restore tidal marsh and associated floodplain habitat while also preserving and enhancing existing land uses as part of a voluntary agreement to support the Healthy Rivers and Landscapes Program.

The Council is an independent state agency established by the Sacramento-San Joaquin Delta Reform Act of 2009. (Wat. Code, § 85000 et seq., Delta Reform Act)

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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 Delta (Delta) ecosystem. (Water Code, §§ 85054, 85300.) 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. (Water Code, § 85054.)

The Council is charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan, a comprehensive long-term management plan for the Delta and Suisun Marsh. (Water Code, § 85300.) The Delta Plan contains regulatory policies, which are set forth in California Code of Regulations, title 23, section 5001 et seq. Through the Delta Reform Act, the Council was granted specific regulatory and appellate authority over certain actions of State or local public agencies that take place in whole or in part in the Delta. (Water Code, §§ 85210, 85225.30.) 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. (Water Code, § 85225.)

COVERED ACTION DETERMINATION AND CERTIFICATION OF CONSISTENCY WITH THE DELTA PLAN

Based on the Tide's End project location and scope, as provided in the NOP, the Tide's End project appears to meet the definition of a covered action. Water Code section 85057.5, subdivision (a), states that a covered action is a plan, program, or project as defined in the California Environmental Quality Act (CEQA) pursuant to Public Resources Code section 21065 and that meets all of the following conditions:

- (1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.* The Tide's End project would occur within the boundaries of the Legal Delta, as defined in Water Code section 85058.
- (2) Will be carried out, approved, or funded by a state or a local public agency.* The Tide's End project would be funded and carried out by the Department of Water Resources (DWR), a State agency.

(3) Is covered by one of the provisions of the Delta Plan. Delta Plan regulatory policies that may apply to the Tide's End project are discussed below.

(4) Will have a significant impact on the achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta. This multibenefit project would have a significant impact on the achievement of the coequal goal to protect, restore, and enhance the Delta ecosystem and on the implementation of a government-sponsored flood control program.

The state or local agency approving, funding, or carrying out the project is required to determine if a 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, subd. (k)(3).)

COMMENTS REGARDING DELTA PLAN POLICIES AND POTENTIAL CONSISTENCY CERTIFICATION

The following section describes the Delta Plan regulatory policies that may apply to the Tide's End project based on the available information in the NOP. This information is offered to assist DWR to prepare environmental documents that could be used to support a future Certification of Consistency for the Tide's End 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 is required to 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 that a project is required to fulfill to be considered consistent with the Delta Plan:

Mitigation Measures

Delta Plan Policy **G P1(b)(2)** (Cal. Code Regs., tit. 23, § 5002, subd. (b)(2).) requires that covered actions not exempt from CEQA 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 (<https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>).

If the Tide's End project EIR identifies significant impacts that require mitigation, DWR should review Appendix O and include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan or identify substitute mitigation measures that DWR finds are equally or more effective.

Best Available Science

Delta Plan Policy **G P1(b)(3)** (Cal. Code Regs., tit. 23, § 5002, subd. (b)(3)) requires that actions subject to Delta Plan regulations document the 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, subd. (f).) Best available science is also required to be consistent with the guidelines and criteria in Appendix 1A (Cal. Code Regs, tit. 23, app. 1A) and also found in the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>). The EIR should clearly document and communicate the process for analyzing the Tide's End project alternatives, impacts, and mitigation measures to foster improved understanding and decision-making.

Adaptive Management

Delta Plan Policy **G P1(b)(4)** (Cal. Code Regs., tit. 23, § 5002, subd. (b)(4)) requires that ecosystem restoration and water management covered actions include adequate provisions for the continued implementation of adaptive management, appropriate to the scope of the project. This requirement is satisfied through both a) the development of an adaptive management plan that is consistent with the framework described in Appendix 1B (Cal. Code Regs, tit. 23, app. 1B) and also found in 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 ecosystem restoration components of the Tide's End project would require the preparation of an adaptive management plan.

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 to be used to determine consistency with the Delta Plan. The Tide's End project's location within the Yolo Bypass as well as the proposed changes in land use, roughness, and geometry of the site mean that the Tide's End project is likely to affect flow in the Delta. The EIR and a future Certification of Consistency should analyze and document how the Tide's End project may impact or alter Delta flows that are subject to meeting the Bay-Delta Water Quality Control Plan flow objectives in place at the time of the filing a Certification of Consistency.

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 (Cal. Code Regs, tit. 23, app. 3). The elevation map (Cal. Code Regs, tit. 23, app. 4) also is included as Figure 4-6 in the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/figure-4-6-habitat-types-based-on-elevation.pdf>) and should be used as a guide for determining appropriate habitat restoration actions based on an area's elevation. Based on the Tide's End project description and figure included in the NOP, much of the Tide's End project site appears to be located in areas appropriate for intertidal habitat. This aligns with the Tide's End project design and objectives. DWR should consider analyzing in the Tide's End project EIR the elevation of the Tide's End 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.

Ecosystem Restoration Policy 3: Protect Opportunities to Restore Habitat

Delta Plan Policy **ER P3** (Cal. Code Regs., tit. 23, § 5007.) requires that, within the priority habitat restoration areas (PHRAs) depicted in Appendix 5 (Cal. Code Regs, tit. 23, app. 5), significant adverse impacts to the opportunity to restore habitat at appropriate elevations as described in ER P2 (Cal. Code Regs., tit. 23, § 5006.) are required to be avoided or mitigated. The Tide's End project is proposed to be located within the Yolo Bypass PHRA.

Based on the location and general Tide's End project attributes provided in the NOP, it appears the Tide's End project could improve the opportunity to restore native species at various elevations, including tidal and floodplain habitat. The Biological Resources section of the EIR should acknowledge ER P3 and describe how

the Tide's End project would avoid or mitigate impacts to the opportunity to restore habitat within the Yolo Bypass PHRA.

Delta Plan Policy ER P5: 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. Based on information provided in the NOP, the Tide's End project would result in greater hydraulic connectivity to the Toe Drain and would have potential to affect special status fish species, special-status terrestrial species, or their habitats. DWR should acknowledge Policy ER P5 in the Biological Resources section of the Tide's End project EIR. The EIR should analyze how the Tide's End project will address both nonnative wildlife species as well as terrestrial and aquatic weeds. The EIR should analyze how the Tide's End project will avoid or mitigate for conditions that would lead to the establishment of nonnative invasive species. In the event mitigation is warranted, mitigation and minimization measures are required to 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 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 uses, or those 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.

The Tide's End project would restore tidal marsh and associated floodplain habitat while preserving and enhancing existing land uses. The Land Use and Planning section of the Tide's End EIR should acknowledge Policy DP P2 in the regulatory setting and describe an analysis of current and planned uses, any potential conflicts, and how those would be avoided or reduced.

Risk Reduction Policy 4: Floodplain Protection

Delta Plan Policy **RR P4** (Cal. Code Regs., tit. 23, § 5015.) prohibits, unless it can be demonstrated by appropriate analysis that the encroachment will not have a significant adverse impact on floodplain values and functions, an encroachment from being constructed in the floodplain in certain areas within the Legal Delta, including the Yolo Bypass. The Tide's End project is restoring and reconnecting tidal and floodplain habitats, which would amplify the benefits of seasonal flows from the Big Noth project in the upper Yolo Bypass in the Tide's End project area. DWR should acknowledge Policy RR P4 in the regulatory setting for the Hazards and/or the Hydrology sections of the EIR. The Tide's End project EIR should analyze the impact of the Tide's End project on floodplain values and functions and document how the Tide's End project would be consistent with Delta Plan Policy RR P4.

CLOSING COMMENTS

As DWR proceeds with design, development, and environmental impact analysis of the Tide's End project, the Council invites DWR to engage Council staff in early consultation, prior to the 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 DWR proceeds in the next stages of its project and approval processes. Please contact Eva Bush at eva.bush@deltacouncil.ca.gov with any questions.

Sincerely,



Jeff Henderson
Deputy Executive Officer