

**CALIFORNIA STATE LANDS COMMISSION**  
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*Established in 1938*

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Governor's Office of Planning & Research

**Nov 30 2021**

## **STATE CLEARINGHOUSE**

November 30, 2021

File Ref: SCH #2020050219

Delta Stewardship Council  
Harriet Ross, Assistant Planning Director  
715 P St, Suite 15-300  
Sacramento, CA 95814

VIA ELECTRONIC MAIL ONLY ([ecosystemamendment@deltacouncil.ca.gov](mailto:ecosystemamendment@deltacouncil.ca.gov))

**Subject: Draft Program Environmental Impact Report for Delta Plan Ecosystem Amendment, multiple counties**

Dear Harriet Ross:

The California State Lands Commission (Commission) staff has reviewed the Draft Program Environmental Impact Report (PEIR) for the Delta Plan Ecosystem Amendment (Project), which is being prepared by the Delta Stewardship Council (Council). The Council, as the public agency established by the Delta Reform Act to develop and adopt the Delta Plan is proposing to carry out the Plan Amendment as the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Commission is a trustee agency for projects that could directly or indirectly affect State sovereign land and their accompanying Public Trust resources or uses.

### **Commission Jurisdiction and Public Trust Lands**

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its

admission to the United States in 1850. The state holds these lands for the benefit of all people of the state for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court.

Based on the review of the PEIR, Commission staff understands that the Project may result in future actions that fall within the Commission's jurisdiction. Therefore, a lease from the Commission may be required for any future actions that occur on or require improvements placed on State sovereign land. An application may be submitted to the Commission through the online application portal ([OSCAR.slc.ca.gov](https://oscar.slc.ca.gov)). If you have questions specific to jurisdiction, lease provisions, or the application process, please contact Public Land Management Specialist Al Franzoia (contact information below).

### **Project Description**

The Council proposes the Project to their original PEIR from 2013 to meet the Council's objectives and needs for ecosystem restoration, protection, and enhancement as follows:

- Create more natural, functional flows across a restored landscape to support native species recovery and provide the flexibility needed for water supply reliability.
- Implement large-scale restoration projects that restore ecosystem function, increase resilience to climate change, are compatible with adjacent land uses, and that support the cultural, recreational, agricultural, and natural resource values of the Delta as an evolving place.
- Protect opportunities to restore ecosystems and safeguard against land loss by taking sea level rise and long-term flood risk into consideration; protecting land from development; reducing, halting, or reversing subsidence; and incentivizing agricultural land management practices that support native wildlife and counter subsidence.
- Prevent introduction of non-native invasive species; manage non-native invasive species impacts; and improve fish management to support the reproductive success and survival of native fish.
- Facilitate implementation of ecosystem protection, enhancement, restoration, and mitigation projects in the Delta by improving the efficiency and effectiveness of actions by public agencies and private organizations engaged in proposing, approving, and permitting such projects.

From the Project Description, Commission staff understands that the Project would include the following components that have potential to affect State sovereign land:

- Project Component 1. Amendment of Chapter 4 of the Delta Plan to address the shift from the Bay Delta Conservation Plan to EcoRestore and provide a more

comprehensive approach to ecosystem protection, restoration, and enhancement in the Delta.

The PEIR identifies Alternative 3 – Reduced Restoration Footprint as the Environmentally Superior Alternative.

### **Environmental Review**

Commission staff request that the Council consider the following comments on the PEIR, to ensure that impacts to State sovereign land are adequately analyzed.

#### **Cultural Resources**

1. **Submerged Cultural Resources**: The PEIR evaluated potential impacts to submerged cultural resources in the Project area. The Commission maintains a shipwrecks database that can assist with this analysis. Commission staff request that the Council contact Staff Attorney Jamie Garrett (contact information below) to obtain shipwrecks data and Commission records for the Project area. The Commission's database includes known and potential vessels located on the State's tide and submerged lands; however, the locations of many shipwrecks remain unknown.

Please note that any submerged archaeological site or submerged historic resource that has remained in State waters for more than 50 years is presumed to be significant. Because of this possibility, please add a mitigation measure requiring that in the event historic or cultural resources are discovered during any potential construction activities as a result of the Project, personnel shall halt all activities in the immediate area and notify a qualified archaeologist to determine the appropriate course of action.

2. **Title to Resources Within Commission Jurisdiction**: The PEIR should state that the title to all abandoned shipwrecks, archaeological sites, and historic or cultural resources on or in the tide and submerged lands of California is vested in the state and under the jurisdiction of the Commission (Pub. Resources Code, § 6313). Commission staff request that the Council consult with Staff Attorney Jamie Garrett should any cultural resources on state land be discovered during any potential construction as a result of the Project.

Staff requests that the following statement be included in the PEIR's Mitigation Monitoring Program: "The final disposition of archaeological, historical, and paleontological resources recovered on State land under the jurisdiction of the California State Lands Commission must be approved by the Commission."

Thank you for the opportunity to comment on the PEIR for the Project. We request that you consider our comments before certifying the PEIR. Please send an electronic copy of the Final PEIR when it becomes available. Refer questions concerning environmental review to Christine Day, Environmental Scientist, at [christine.day@slc.ca.gov](mailto:christine.day@slc.ca.gov) or (916) 562-0027. For questions concerning archaeological or historic resources under

Commission jurisdiction, please contact Jamie Garrett, Staff Attorney, at [Jamie.Garrett@slc.ca.gov](mailto:Jamie.Garrett@slc.ca.gov) or (916) 574-0398. For questions concerning Commission leasing jurisdiction, please contact Al Franzoia, Public Land Management Specialist, at [al.franzoia@slc.ca.gov](mailto:al.franzoia@slc.ca.gov) or (916) 574-0992.

Sincerely,



Nicole Dobroski, Chief  
Division of Environmental Planning  
and Management

cc: Office of Planning and Research  
C. Day, Commission  
A. Franzoia, Commission  
J. Garrett, Commission