

DPC March 17, 2022 meeting – Agenda Item 13 (Delta Stewardship Council certification of consistency appeal for Lookout Slough Tidal Habitat Restoration and Flood Improvement Project – Round 2)

**Delta Protection Commission Meeting**  
**March 17, 2022**

**AGENDA ITEM 13: Receive update on Delta Stewardship Council (DSC) certification of consistency appeal for Lookout Slough Tidal Habitat Restoration and Flood Improvement Project – Round 2 and consider approval of Commission letter to DSC**

Prepared by: Erik Vink

Presented by: Erik Vink

**Requested Action: Receive update and consider approval of a Commission letter to DSC on Lookout Slough Tidal Habitat Restoration and Flood Improvement Project – Round 2**

Type of Action: Action

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**Background:** California Department of Water Resources (DWR) filed a Delta Plan Certification of Consistency for Lookout Slough Tidal Habitat Restoration and Flood Improvement Project (Lookout Slough) with the Delta Stewardship Council (Council) on February 22, 2021; following appeals by four parties, the Council remanded the project on July 16, 2021 to DWR based on appeal arguments related to recreational use.

DWR resubmitted a Delta Plan Certification of Consistency for Lookout Slough Tidal Habitat Restoration and Flood Improvement Project (Lookout Slough – Round 2) on December 30, 2021. Two appeals were filed by the January 31, 2022 deadline. The Delta Reform Act specifies that the Council has 60 days to hear the appeal(s) and an additional 60 days to make its decision and issue a written determination. The scope of the Council’s review in this matter is limited to whether DWR’s Certification of Consistency for Lookout Slough is supported by substantial evidence in the record before DWR at the time it submitted the certification (Water Code § 85225.25).

The Council will conduct a hearing on March 24, 2022 to hear comments from DWR, appellants, the Commission, and interested parties. It is anticipated that the Council will consider the final determination during a hearing to be conducted in mid-May, 2022.

Based on the Commission’s statutory role to advise DSC on projects that would impact “Delta as Place,” the Commission is specifically invited to participate in appeal proceedings, pursuant to Section 11 of the Council’s *Administrative Procedures Governing Appeals*. At the hearing on March 24, Executive Director Vink plans to present a summary of the Commission’s concerns as outlined in the proposed March 17, 2022 letter to the Council (see attached).

The proposed Commission letter discusses the Commission’s statutory role representing “Delta as Place” and is based on our mission to protect, maintain, enhance and enrich the Delta environment and economy, focusing on the unique cultural, recreational, agricultural and

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natural resources of the Delta and its communities, as called for in Public Resources Code § 29773. The letter details inconsistencies between the Lookout Slough project and “Delta as Place” policies in the Delta Plan, specifically recreation impacts. These comments echo concerns expressed by the Commission on the Lookout Slough draft EIR as well as the previous Delta Plan appeal process.

While the Commission has long supported habitat restoration projects in the Delta and believes the Lookout Slough project can have beneficial effects, our specific concerns about this project relate to the unmitigated impacts on recreational uses at the project site and at Liberty Island Ecological Reserve (a California Department of Fish and Wildlife-managed property adjacent to Lookout Slough). As before, Commission staff continue to believe that these problems can be resolved with DWR determination and that the restoration project can proceed expeditiously.

Commission staff are requesting the Commission’s endorsement of the proposed March 17, 2022 letter.

**Requested Action:** Approve the proposed March 17, 2022 letter to Council regarding appeals of Lookout Slough Tidal Habitat Restoration and Flood Improvement Project Delta Plan Certification of Consistency

**Relationship to Vision 2030 (Commission strategic plan):**

**Levees and Emergency Response (Strategic Theme)**

L.2 *Advocate for reliable funding for Delta levee maintenance and improvements*

2.1 *Seek pro-Delta implementation of levee funding in the Water Quality, Supply and Infrastructure Improvement Act of 2014 and other sources.*

**Delta Heritage (Strategic Theme)**

H.4 *Promote and enhance the Delta’s heritage of natural resources, such as wildlife habitat, scenic value, soils, and water.*

4.1 *Facilitate habitat restoration and enhancement projects consistent with Delta values.*