



**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

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Sacramento, CA 95814
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Posted Date: February 17, 2022

Notice of Public Hearing

On March 24, 2022, commencing at ~10:00 am, at the webcast remotely conducted location specified below, the Delta Stewardship Council (Council) will hold a public hearing regarding the appeals of the certification of consistency, Certification of Consistency Number C202110, submitted by the California Department of Water Resources (Department) on December 30, 2021, for the Lookout Slough Tidal Habitat Restoration and Flood Improvement (Lookout Slough) Project to address the Council's findings on Appeal Number C20215-A1 in its Determination dated July 16, 2021, for Certification of Consistency Number C20215.

The public hearing will occur on:

March 24, 2022, commencing at ~10:00 a.m.

The hearing will provide opportunity for the Delta Protection Commission, Appellants, and the Department of Water Resources to address the Council, followed by public comment. Following the hearing, the Council may take action to dismiss appeals in accordance with Administrative Procedures Governing Appeals (Section 9; Section 15(c)), and to direct staff to prepare findings for the Council's consideration on remaining issues.

Remote Participation

This meeting will be fully remote without a physical location, pursuant to Assembly Bill 361 (Government Code §11133) and the Governor's Executive Order N-1-22.

*To observe this hearing, visit Cal-Span (<https://www.cal-span.org>) and select the Council hearing. For optimal quality, use the Microsoft Edge or Mozilla Firefox browsers. The hearing may also be observed via Zoom (<https://us02web.zoom.us/j/82515356484>) or telephone at (669) 900-6833 with webinar ID **825 1535 6484**. Attendees will be automatically muted upon joining the hearing.*

Members of the public interested in providing comments should join the meeting via Zoom and contact the Council Clerk at engage@deltacouncil.ca.gov, or call (916) 798-9817, provide their name and remain on the line. When called on by the

Council Chair, Zoom attendees and telephone callers will be unmuted and able to provide oral comments.

All written comments will be distributed to the members and posted to the Council's website alongside the meeting materials on the Council meeting web page. Written comments received by mail or email by noon the day before a Council meeting will be distributed to members in advance of the meeting and posted online before the meeting. Written comments received after noon the day before a Council meeting will be distributed to the members and posted online with the meeting materials as soon as possible.

If you need accommodations, have technical issues, or have any questions, please contact the Public Participation Office at engage@deltacouncil.ca.gov or call (916) 798-9817.

Webcast:

The public hearing will be webcast on Cal-Span at <https://www.cal-span.org>. Select the Delta Stewardship Council meeting from the list under "Next Live State Meetings."

Direct Link to Meeting:

You can join the meeting directly as an Attendee at:

<https://us02web.zoom.us/j/82515356484>

Phone Number:

Please call (669) 900-6833

Webinar ID: **825 1535 6484**

Background

The Delta Reform Act of 2009 requires that a state or local public agency that proposes to undertake a covered action must, prior to initiating the implementation of that action, submit a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan. (Wat. Code, § 85225.) On December 30, 2021, the Department submitted a certification of consistency, Certification of Consistency Number C202110, to the Council for the Lookout Slough Project, a covered action, to address the Council's findings on Appeal Number C20215-A1 in its Determination dated July 16, 2021, for Certification of Consistency Number C20215.

The Delta Reform Act allows any person who claims that a covered action is inconsistent with the Delta Plan and, as a result of that inconsistency, the action will have a significant adverse impact on one or both of the coequal goals¹ or implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta, may file an appeal of a certification of consistency submitted to the Council. (Wat. Code § 85225.10, subd. (a); [Administrative Procedures Governing Appeals](#) § 6).

The Department first submitted a certification of consistency (Certification Number 202105) for this covered action to the Council on February 22, 2021. That certification of consistency was appealed by four parties. Following a public hearing on March 25-26, 2021, the Council adopted findings in a Determination dated July 16, 2021, remanding the matter, in part, to the Department for reconsideration on certain issues appealed under Delta Plan Policies G P1(b)(3) (Cal. Code Regs., tit. 23, § 5002(b)(3)) and DP P2 (Cal. Code Regs., tit. 23, § 5011) related to recreation, and denying or dismissing the appeals on all other issues.

The Department submitted a certification of consistency (Certification Number 202110), to address the Council's findings on Appeal Number C20215-A1 in its Determination dated July 16, 2021 for Certification of Consistency Number C20215, to the Council on December 30, 2021. The following parties (Appellants) have submitted timely appeals of Certification of Consistency Number C202110, which have been deemed filed pursuant to Section 7 of the Council's [Administrative Procedures Governing Appeals](#)² (Administrative Procedures):

Appeal Number	Appellant Name	Effective Date
C202110-A1	Solano County Water Agency	January 31, 2022
C202110-A2	Liberty Island Access	January 31, 2022

The Delta Reform Act requires that the Council hold a hearing within 60 days of the effective filing date of the appeals, and that the Council makes its decision on the appeals within 60 days of the hearing. (Wat. Code, § 85225.20.)

¹ "Coequal goals' means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall 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." (Wat. Code § 85054)

² <http://deltacouncil.ca.gov/docs/covered-actions-delta-plan/appeals-procedures>

Web Page

All Council notices, party submittals, and submittals from the public will be posted online at the Council's Lookout Slough Project [covered action web page](#).

Substantial Evidence Scope of Review

The scope of the Council's review in this matter is limited to whether or not the Certification is supported by substantial evidence in the record before the Department at the time it submitted the certification. (Wat. Code § 85225.25.)

Hearing Procedures

The hearing will be conducted in accordance with Chapter 3 of the Delta Reform Act (Wat. Code §§ 85225-85225.30) and the Council's Administrative Procedures. The Council Chair will serve as the Presiding Officer.

The Department, the Appellants, the Delta Protection Commission, or any other interested person will be able to submit written and/or oral testimony at the hearing, as described below. (Administrative Procedures § 11.) The Council prefers that all parties or interested persons desiring to provide statements at the hearing do so in writing. The Council encourages parties and/or interested persons with common interests to work together to make the hearing process more efficient. The Council reserves the right to issue further rulings clarifying or limiting the rights of any party where authorized under applicable statutes and regulations.

Following the hearing, the Council may take action to dismiss appeals in accordance with Administrative Procedures (Section 9; Section 15(c)), and to direct staff to prepare draft findings on remaining issues.

Consolidation of Appeals

The Council, at its discretion, may consolidate appeals raising similar issues. (Administrative Procedures § 31.)

Parties

The parties to the hearing are the Department and the Appellants listed above. Contact information for each of the parties is listed in the Service List (Attachment A hereto). The Council may update the Service List as necessary and will distribute any updated list to the parties. The current Service List will be available at the Council's Lookout Slough Project [covered action web page](#).

Hearing Presentations

The parties, along with the Delta Protection Commission, or any other interested person, may testify before the Council at the hearing regarding the appeals. (Administrative Procedures § 11.) **Presentations may be oral or in writing, shall address only whether substantial evidence in the record before the Department at the time it submitted the certification supports the certification of consistency, and shall be as brief as possible.** The time limits and order of presentations for the parties, the Delta Protection Commission, and public comment are provided below. (*Id.*)

The Council strongly prefers that parties and other interested persons submit written statements ahead of the hearing. Such written statements should be submitted electronically no later than **Monday, February 28, 2022 at 5:00 p.m.** to ensure that they may be circulated to the Council members for review ahead of the hearing.³ Please submit written statements to: lookoutsloughproject@deltacouncil.ca.gov, and **copy all parties on the Service List.** Please include "C202110" in the subject line of any email.

The Council encourages all parties and interested persons to submit any other materials to be presented at the hearing, including additional evidence, presentation slides and other visual displays, to the Council no later than **Monday March 14, 2022 at 5:00 PM.** Please submit any presentation materials to: lookoutsloughproject@deltacouncil.ca.gov, and **copy all parties on the Service List.** Please include "C202110" in the subject line of any email. If electronic submittal is not possible, you may mail or deliver your submittals to the following address: Clerk to the Council, ATTN: Lookout Slough Project C202110, Delta Stewardship Council, 715 P Street, Ste15-300, Sacramento, California 95814

To help with an orderly presentation, the Council Clerk requests that the titles of the submitted electronic presentations indicate the party name (e.g., Department, Appellant, Delta Protection Commission, other).

Please be advised that this is an appellate proceeding based on the record before the Department at the time it submitted the Lookout Slough Project Certification of Consistency Number 202110. The Council will not receive sworn testimony, and the parties shall not conduct cross-examination or provide rebuttal testimony. All presentations and written statements shall be based solely upon evidence and legal

³ In appropriate circumstances, Council staff may prepare summaries of the statements for circulation to Council members.

argument, and shall address only whether substantial evidence in the record before the Department supports the certification of consistency.⁴

Presentation Order and Time Limits

The order of presentation at the hearing shall be as follows:

1. Delta Protection Commission
2. Solano County Water Agency (Appellant C202110-A1)
3. Liberty Island Access (Appellant C202110-A2)
4. California Department of Water Resources
5. All Other Interested Persons (Public Comment)

The Delta Protection Commission and each Appellant will each be allowed up to 30 minutes for oral presentation. The Department will be allowed up to 60 minutes for oral presentation. All other interested persons will each be allowed three (3) minutes for public comment, following the parties. Additional time will be allowed for questions by the Council members or Council staff. The Presiding Officer retains discretion to shorten the public comment time limit prior to the commencement of the All Other Interested Persons (Public Comment) period.

If you have questions or need reasonable accommodation due to a disability, please contact the Delta Stewardship Council's Meeting Services office at (916) 445-5511, or TDD (800) 735-2929.

Questions for Parties

The Council has provided the following questions to the parties. Written responses should be provided electronically to the Council no later than **Monday, February 28, 2022 at 5:00 p.m.:**

The scope of the Council's review in this matter is limited to whether or not the December 30, 2021, Certification of Consistency for Lookout Slough Project Number C202110 was supported by substantial evidence in the record before the Department of Water Resources (DWR) at the time it submitted the certification. (Wat. Code § 85225.25.) **To assist in this review, the Council requests that the Department and the Appellants address the following**

⁴ "Legal argument" refers to the appellants' submittals pursuant to Section 6 of the Administrative Procedures, and testimony (written and/or oral) pursuant to Section 11 of the Administrative Procedures.

questions in written materials submitted to the Council prior to the hearing. Written responses are due no later than Monday, February 28, 2022 at 5:00 p.m.

The questions are organized by issue, and then by Delta Plan policy.

A. General Issues

Questions for the Department and Appellants:

1. For the factual allegations that you wish the Council to consider, please cite specific supporting evidence in the record.
2. For the document(s) cited as supporting evidence for a factual allegation, please cite the specific page(s) in that document to support the specific factual allegation.
3. For any evidence relied upon, but not included in the record filed by the Department, please provide:
 - a. the document to be considered for admission into the record;
 - b. an explanation of which specific allegation in the appeal the document is being used to support and how the documentation is being relied upon to support the appeal;
 - c. a citation to the specific pages in the documentation to support the applicable allegation in the appeal; and
 - d. A statement explaining in accordance with which of the Council's Administrative Procedures Governing Appeals (paragraph 10 or 29) the document is requested to be included.

Questions for Appellants:

1. For each of the Delta Plan policies you are appealing, please identify evidence in the record for this certification (202110) that is new or differs from the record for the previous certification (20215).

B. Policy DP P2 ([Cal Code Regs., tit. 23, § 5011](#)): Respect Local Land Use when Siting Water or Flood Facilities or Restoring Habitats

Questions for the Department

1. Please cite to evidence in the record of Project elements other than the boat ramp that are designed to reduce conflict with recreational use.
2. Please cite to evidence in the record of specific consideration of public access standards for paddle craft launching at the boat ramp, in consideration of LIA's statement that "This ramp doesn't meet current public access standards for paddle craft launch ramps." (LIA Appeal Letter, p. 4).
3. Please cite to evidence in the record demonstrating how the following concerns raised by CDFW were addressed: "The currently planned small turnout won't handle the traffic that comes out there, especially during waterfowl season, and the boat launch also won't cut it" (Certification Attachment 3A, p. 5).
4. Please cite to evidence in the record that a reduced area available for bank fishing along Liberty Island Road under the Project compared to existing conditions avoids or reduces conflict, when feasible, with existing recreational use of Liberty Island Road for bank fishing.
5. Please cite to evidence in the record demonstrating how the feasibility of applying for an amendment to the Project ITP to include limited public access on Project levees was considered, in consideration of LIA's statement that "CDFW must issue an amended ITP for [Giant Garter Snake] if the Project is meant to allow public access along the levees." (LIA Appeal Letter, p. 7)
6. Please cite to evidence in the record demonstrating how the feasibility of off-site options to avoid or reduce conflict with existing recreational use was considered.

Questions for Appellant SCWA:

1. For each of the Delta Plan policies you are appealing, please identify evidence in the record for this certification (202110) that is new or differs from the record for the previous certification (20215).

Questions for Appellant LIA:

1. Please cite to evidence in the record to support the statement that the agency boat ramp “is the only measure proposed to reduce or mitigate the project’s impacts to recreation” and “this boat ramp doesn’t meet the current public access standards for paddle craft launch ramps”. (LIA Appeal Letter, p. 4).
2. Please cite to evidence in the record demonstrating that “DWR has stated that users can park along the northern side of the remaining east-west portion of Liberty Island Road” (LIA Appeal Letter, p. 4).
3. Please cite to evidence in the record to support the statement that “DWR implies that the agency boat ramp that will be informally accessible to the public is sufficient mitigation for the loss of recreation access at the site” (LIA Appeal Letter, p. 4).
4. Please cite to evidence in the record to demonstrate that conversations with CDWF have occurred, including the timing and persons involved, and that such “(c)onversations with CDFW staff have indicated the more nuanced reality, which is that CDFW must issue an amended ITP for GGS if the Project is meant to allow public access along the levees” (LIA Appeal Letter, p. 7)

Record

The Department submitted and certified the record supporting the certification of consistency pursuant to Administrative Procedures Section 4.b. This is the record that must contain substantial evidence to support the Department’s findings within the certification of consistency. (See Wat. Code, § 85225.25.)

A copy of the entire record is available through a [download link](#). Record documents are also available by emailing lookoutsloughproject@deltacouncil.ca.gov or calling (916) 798-9817 and identifying the name(s) of the document(s) you are seeking.

The Council, or its Executive Officer, may supplement the Department's record if the Council or the Executive Officer determines that additional information was part of the Department's record, but was not included in the Department's Section 4.b submittal to the Council. (Administrative Procedures § 10.) The Council may also take official notice of any generally accepted technical or scientific matter within the Council's jurisdiction, and of any fact that may be judicially noticed by the courts. (Administrative Procedures § 29.) The Council may take such notice on its own motion, or at the request of any party or interested person. Such notice will be addressed on a case-by-case basis, considering the specific technical or scientific matters or facts.

Any party or other person seeking to request that the Council or the Executive Officer add any document to the Department's record under Section 10, or that the Council take official notice of any matter, document or fact under Section 29, should submit a written request, along with a copy of any document sought to be added to the record, no later than **Monday, February 28, 2022 at 5:00 p.m.** Any evidentiary requests must be identified regarding intended use and how it should be admitted (under Administrative Procedures § 10 or § 29). The Council will consider any such requests and include any necessary rulings in the determination on the appeals.

Please be advised that any oral requests or argument regarding Sections 10 or 29 shall count against the presentation time allotments described above.

Submittals to the Delta Stewardship Council

All documents, including written statements and other materials submitted prior to the hearing, should be submitted to the Council at the following email address: lookoutsloughproject@deltacouncil.ca.gov. **Parties listed on the Service List must copy all submittals to the Service List.** Please include "C202110" in the subject line of any email.

The Council strongly encourages all parties and interested persons to submit all submittals electronically and in compliance with Web Content Accessibility Guidelines, in order to facilitate distribution to the Council members and posting to the web page. If electronic submittal is not possible, you may mail your submittals to the following address:

Clerk to the Council
ATTN: Lookout Slough Project C202110
Delta Stewardship Council
715 P Street, Ste. 15-300
Sacramento, CA 95814

Interested persons who are not listed on the Service List may copy submittals to the Service List. All submittals that are in compliance with Web Content Accessibility Guidelines will be posted to the Council's Lookout Slough Project [covered action web page](#).

Prohibition on Ex Parte Communications

The Council's appellate proceedings are subject to the prohibition on ex parte communications. (Gov. Code § 11430.10 et seq; Administrative Procedures §§ 26-28.) Parties and interested persons, including any employees or representatives, may not communicate directly or indirectly with Council members or Council staff regarding any issue in this proceeding, without notice and opportunity for all parties to participate in the communication. (Gov. Code § 11430.10.) The only exceptions to this prohibition are communications required for disposition of an ex parte matter specifically authorized by statute, or communications concerning a matter of procedure or practice that is not in controversy. (Gov. Code § 11430.20.) Please see the Council's Notice of Appeals Filed, posted on the Council's Lookout Slough Project [covered action web page](#), for more details regarding Ex Parte restrictions for this matter.

If you have any questions concerning matters of procedure or process that are not in controversy, please contact lookoutsloughproject@deltacouncil.ca.gov. Please do not contact Council members directly as they are under ex parte communication restrictions.

Future Proceedings

In order to help the parties and other interested persons plan their schedules, the Council provides the following anticipated dates for future proceedings:

At its discretion, the Council may hold a workshop to receive comments on a draft determination regarding the appeals. If it holds a workshop, the Council will separately notice that workshop.

The Council anticipates that it will consider the final determination during a Council meeting on April 28, 2022. That meeting may occur remotely and/or in-person consistent with applicable public meeting guidance and legislation at that time.

The Council Clerk will separately post notices and agendas for any workshop and for the final Council hearing. Such notices will be distributed to the Service List.

Electronic Mailing List

After this initial notice, all future correspondence and information from the Council regarding this matter will be sent via electronic mail to the parties listed in the Service List (Attachment A hereto), and posted to the Council's Lookout Slough Project [covered action web page](#). All submittals to the Council should be made to: lookoutsloughproject@deltacouncil.ca.gov, and **copy all parties on the Service List**. Please include "C202110" in the subject line of any email.

Interested persons may receive future correspondence from the Council on this matter by subscribing to the Council's electronic mailing list. You may subscribe to the Council's electronic mailing list here: <http://deltacouncil.ca.gov> (scroll to "Get Updates" and click "Subscribe").

If you are unable to receive electronic mail, you must send your request to receive a hard copy of future correspondence via U.S. mail to the following address:

Clerk to the Council
ATTN: Lookout Slough Project C20210
Delta Stewardship Council
715 P Street, Ste. 15-300

Sacramento, CA 95814

If the current contact information we have for you does not contain an email address and you have access to email, please send your email address as soon as possible to lookoutsloughproject@deltacouncil.ca.gov. Please include "C202110" in the subject line of any email.

You should act as soon as possible to ensure you receive all future correspondence.