

MAY 2021

Public Hearing Regarding Appeal of the Certification of Consistency for the Lookout Slough Tidal Habitat Restoration and Flood Improvement Project



**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

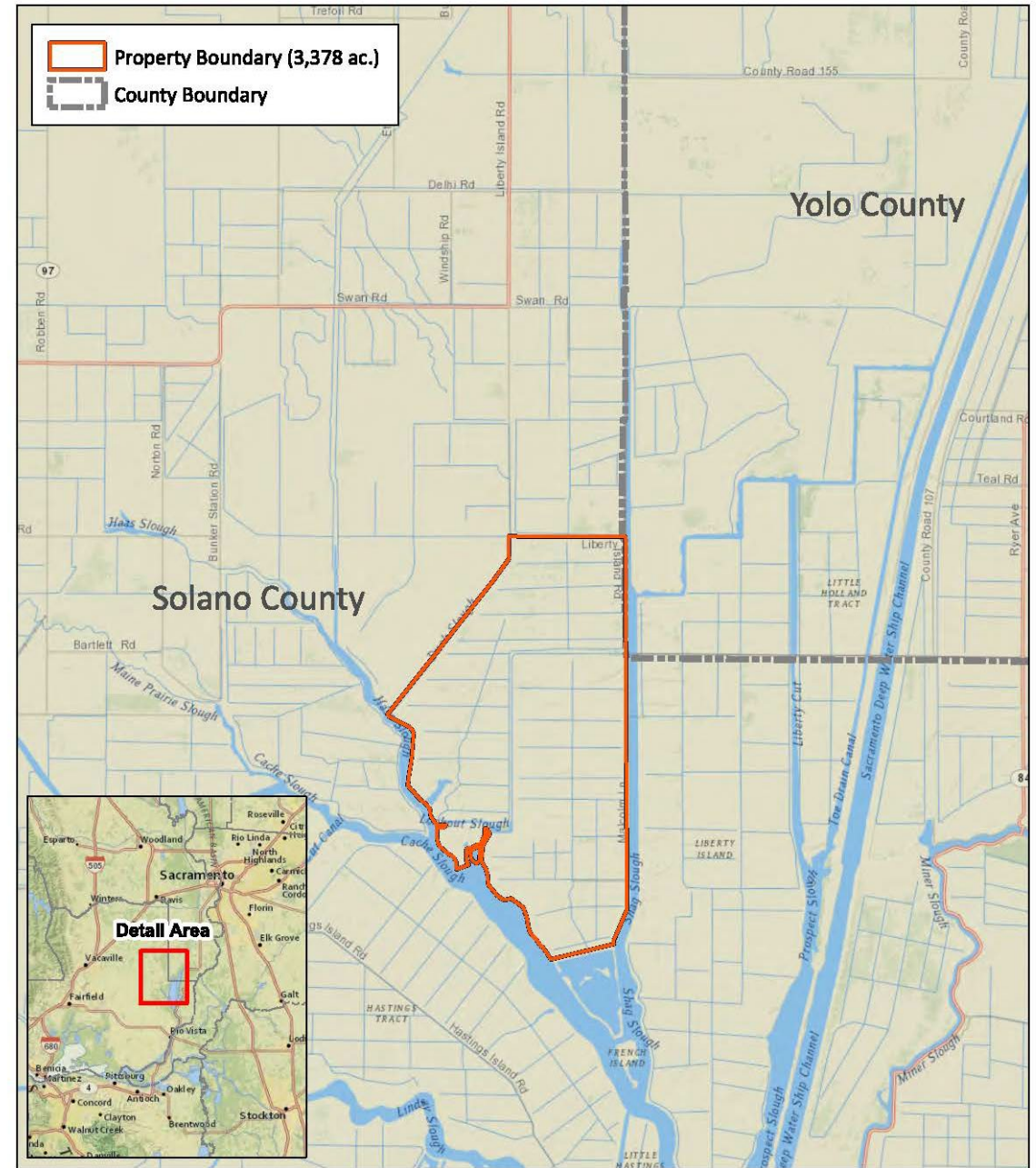
Overview

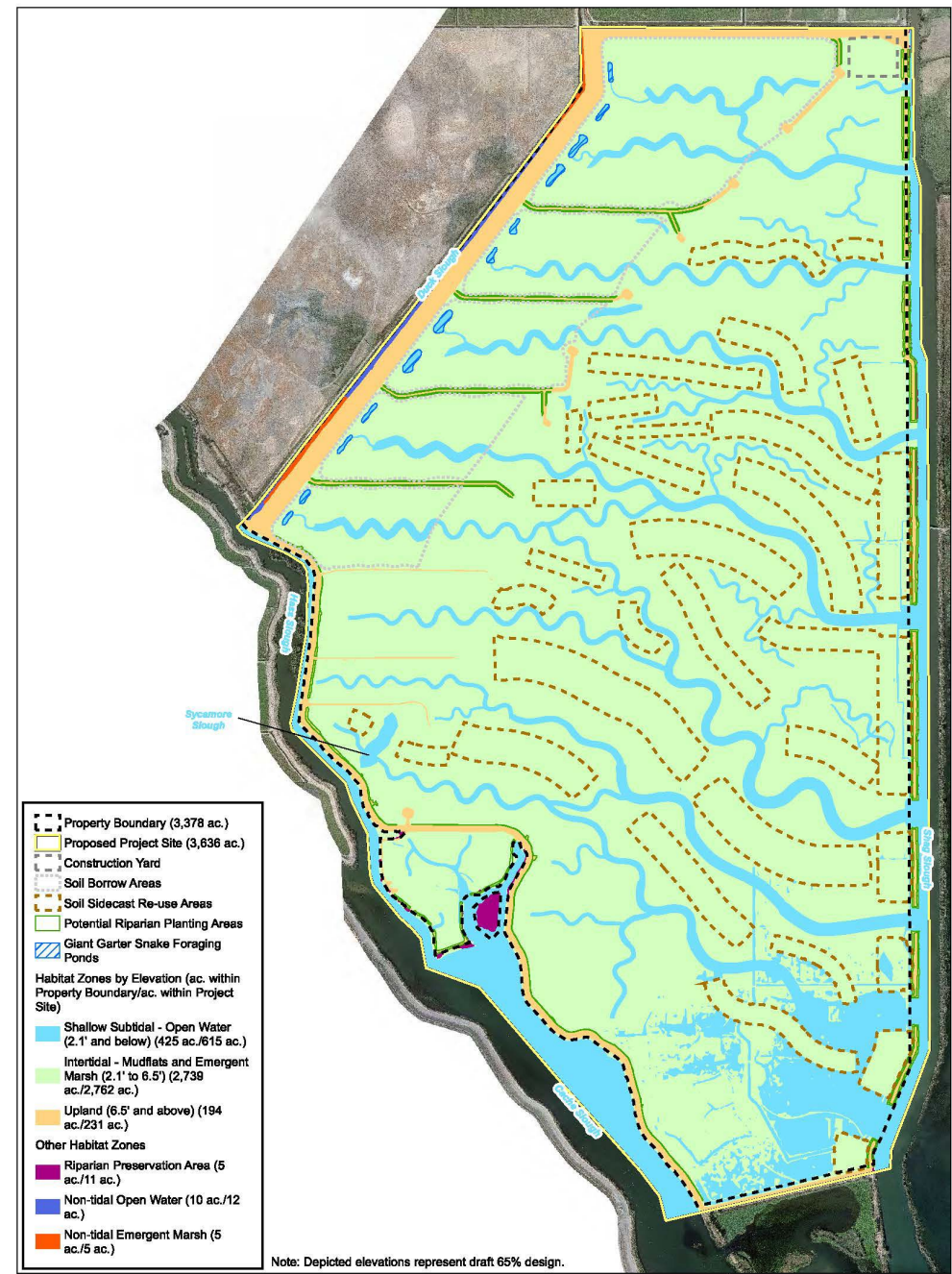
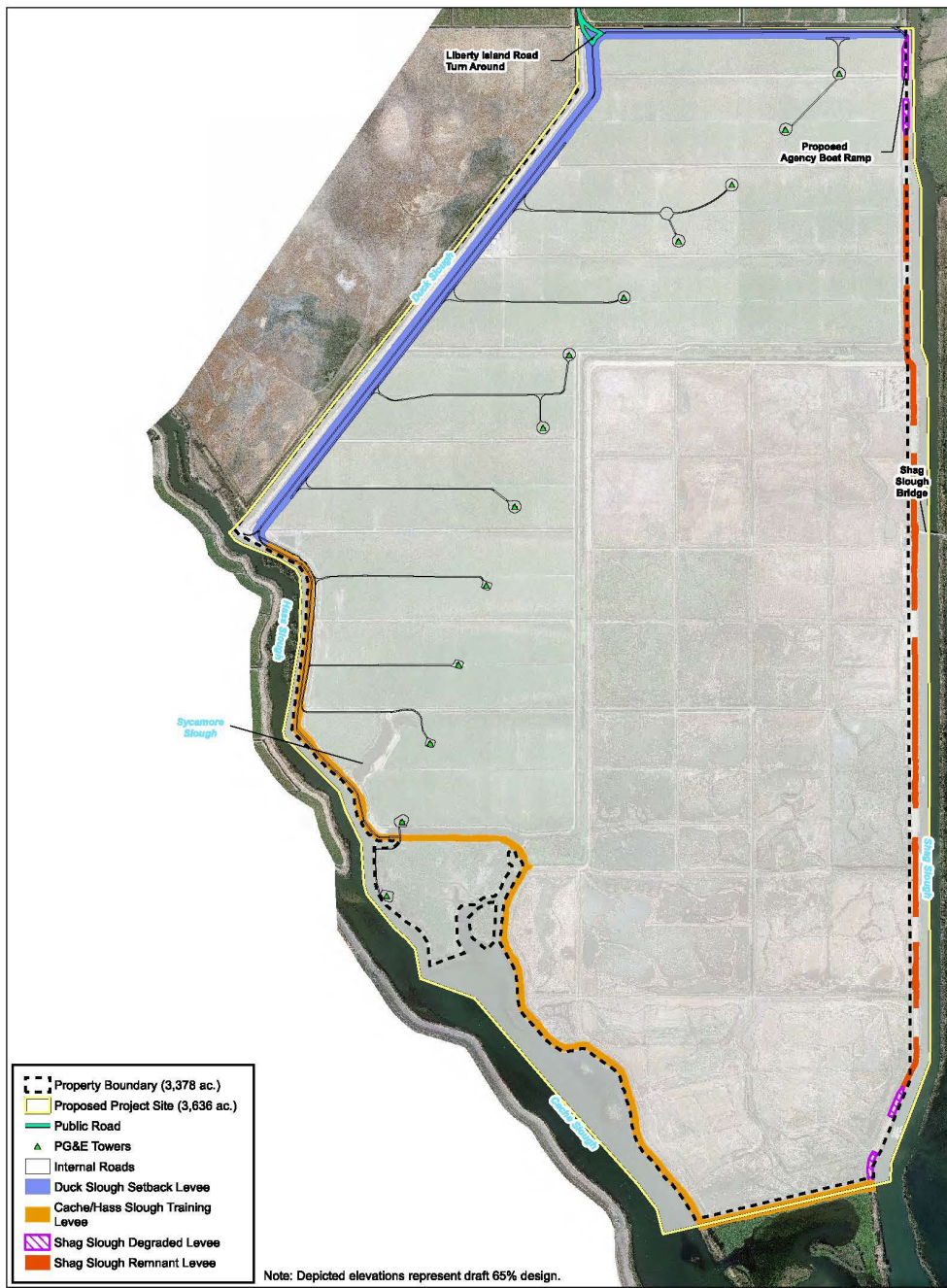
- Covered action description
- Council's covered action authority
- Certification and appeals
- Overview of today's activity



Covered Action Description

- Lead agency for the Covered Action: Department of Water Resources (Department)
- Restoration of 3,165 acres of tidal wetland habitat
- Creation of 40,000 acre-feet of transitory flood storage in the Cache Slough Complex





The Council's Covered Actions Authority

2009 Delta Reform Act

- Established the coequal goals
- Established the Council and authorized the Council to develop and implement the Delta Plan
- Granted Council regulatory and appellate authority over covered actions
- Regulatory policies must meet objectives the Legislature said were inherent in the coequal goals
- State and local agencies must demonstrate consistency with Delta Plan policies when carrying out, approving, or funding covered actions, prior to implementation

Certifications and Appeals

2009 Delta Reform Act

Certification of Consistency

- State or local public agency determines if a project is a covered action
- Covered actions require written certification with detailed findings as to whether the covered action is consistent with the Delta Plan

Appeals

- Any person who claims a covered action is inconsistent with the Delta Plan may file an appeal within 30 days
- Appeal must include specific factual allegations

Certifications and Appeals Noticed and Listed on Council Website

- <https://coveredactions.deltacouncil.ca.gov>

Substantial Evidence

Standard of Review

- Council does not independently review the covered action to determine if it is consistent with Delta Plan
- Council does determine if substantial evidence in record supports the Department's Certification that the covered action is consistent with Delta Plan, in light of appeals
- Scope of Council's review is whether the Certification is supported by substantial evidence in the record (Wat. Code, § 85225.25.)

Certification Summary

Date Filed

February 22, 2021

Delta Plan Policies

The Department's finding for each Delta Plan policy is summarized in the table:

Delta Plan Policies	Consistent	Not Applicable
G P1(b)(1) – Coequal Goals		X
G P1(b)(2) – Mitigation Measures	X	
G P1(b)(3) – Best Available Science	X	
G P1(b)(4) – Adaptive Management	X	
WR P1 - Reduce Reliance		X
WR P2 - Transparency in Water Contracting		X
ER P1 - Delta Flow Objectives		X
ER P2 - Restore Habitats at Appropriate Elevations	X	
ER P3 – Protect Opportunities to Restore Habitat	X	
ER P4 – Expand Floodplains and Riparian Habitat in Levee Projects	X	
ER P5 - Avoid Invasive Nonnative Species		X
DP P1 – Locate New Urban Development Wisely		X
DP P2 - Respect Local Land Use	X	
RR P1 - Prioritization of Levee Investments	X	
RR P2 – Require Flood Protection in Residential and Rural Areas		X
RR P3 – Protect Floodplain	X	
RR P4 – Floodplain Protection	X	

Appeals Summary

Appellants

- C20215-A1 Liberty Island Access (LIA)
- C20215-A2 Solano County Water Agency (SCWA)
- C20215-A3 Reclamation District 2060 & Reclamation District 2068 (Districts)
- C20215-A4 Central Delta Water Agency (CDWA)

Date Filed

- March 24, 2021

Appeals Summary

Appealed Policies (Short Title)	Appealed By			
	LIA	SCWA	Districts	CDWA
G P1(b)(1) – Coequal Goals		X	X	
G P(1)(b)(2) – Mitigation Measures	X	X	X	
G P(1)(b)(3) – Best Available Science	X	X	X	X
G P1(b)(4) – Adaptive Management		X	X	
WR P1 - Reduce Reliance				X
WR P2 - Transparency in Water Contracting		X		
ER P1 - Delta Flow Objectives				X
ER P2 - Restore Habitats at Appropriate Elevations				X
ER P5 - Avoid Invasive Nonnative Species		X	X	X
DP P2 - Respect Local Land Use	X	X	X	X
RR P1 - Prioritization of Levee Investments		X	X	X

Delta Protection Commission

Role in the Appeals Process

- Commission has important advisory role in Council proceedings
 - PRC section 29773 -Commission may review and provide comments and recommendations to Council on projects within the scope of the Delta Plan, including projects that affect Delta as Place
- Council's procedures invite Commission to address Council regarding appeals during public hearings
- Commission submitted comments and recommendations May 13, 2021
- Council and staff consider Commission's comments and recommendations related to issues raised by Appellants in filed appeals

Lookout Slough Appeals Timeline

- *February 22, 2021* – Certification of Consistency filed
- *March 24, 2021* – Appeals filed
- *April 8, 2021* – Council published notice of today's hearing
- Parties and Delta Protection Commission provided written statements for today's hearing
- Within 60 days of today's hearing Council must make a decision pursuant to Water Code section 85225.25 to either:
 - *Deny the appeals* – covered action may proceed; or
 - *Remand the matter* to the Department for reconsideration
- Staff to release draft findings for public review prior to Council consideration at future publicly noticed hearing

