



## PUBLIC NOTICE AND MEETING AGENDA

### **Delta Protection Commission**

Thursday, December 12, 2024, 5-7 p.m. (end time is approximate)  
Sacramento-San Joaquin Delta Conservancy Conference Room  
1450 Halyard Drive, Suite 6, West Sacramento  
(Main meeting location)

This meeting will be conducted in a hybrid format. Members of the public can choose to participate either via Microsoft Teams or in person at the location listed above.

Delta Protection Commission members will be participating virtually from the following publicly accessible locations. Members of the public may participate from these locations.

Teleconference Location #1: 4582 Pine Valley Circle, Stockton, CA  
Teleconference Location #2: 1806 W. Kettleman Lane, Suite L, Lodi, CA  
Teleconference Location #3: 4720 S. Dudley Street, Littleton, CO

To join the online Microsoft Teams meeting:

[Join the meeting now](#)

Meeting ID: 287 122 984 241

Passcode: yT3rn9hW

Questions and public comment can be directed to [dpc@delta.ca.gov](mailto:dpc@delta.ca.gov) prior to the meeting.

## **Agenda**

1. Call to order and Flag Salute
2. Welcome & Roll Call
3. Public Comment – an opportunity for members of the public to address the Commission regarding items not on the agenda

### **Consent Agenda**

4. Approval of Draft September 19, 2024, Meeting Minutes ([Page 4](#))
5. Approval of 2025 Meeting Schedule ([Page 10](#))

### **Regular Agenda**

6. Report on Delta Stewardship Council Activities – Chair Diane Burgis
7. Report on Delta Protection Advisory Committee (DPAC) Activities – Anna Swenson (DPAC Chair)
8. Consider Election of Chair and Vice Chair for 2025 – The Commission
9. Executive Director’s Report – Bruce Blodgett, Executive Director ([Page 11](#))
10. Consider Proposed Ex-Officio Appointments to the National Heritage Area Advisory Committee (NHAAC) – Blake Roberts, Program Manager ([Page 74](#))
11. Consider Approval of the Final NHA Management Plan Advisory Committee Meeting Minutes and Committee Closeout – Blake Roberts, Program Manager ([Page 76](#))
12. Consider Comments to the Department of Water Resources on its Geotechnical Activities for the Delta Conveyance Project – Bruce Blodgett, Executive Director ([Page 81](#))
13. Consider Participation in the Delta Stewardship Council’s Appeal of the Department of Water Resources’ Certification of Consistency for its Geotechnical Activities for the Delta Conveyance Project – Bruce Blodgett, Executive Director ([Page 112](#))
14. Commissioner Comments/Announcements
15. Adjourn

The agenda items listed above may be considered in a different order at the Commission meeting, subject to the discretion of the Chair. At the discretion of the Commission, all items appearing on this agenda, whether or not expressly listed for action, may be deliberated upon and may be subject to action. The Commission welcomes and encourages participation in its meetings. The Commission limits testimony to not more than three minutes per person, or more time at the discretion of the Chair.

## Questions, Comments, and Requests

If you have any questions or have a request for reasonable modification or accommodation due to a disability, please contact the Delta Protection Commission at [dpc@delta.ca.gov](mailto:dpc@delta.ca.gov) or (916) 375-4800. Attachments and additional information can be found on the Delta Protection Commission website: [delta.ca.gov](http://delta.ca.gov).

Comments submitted to [submit@delta.ca.gov](mailto:submit@delta.ca.gov) by noon on December 11, 2024, will be shared with Commissioners prior to the meeting to the extent possible. Public comments on each agenda item will follow the order of: 1) emailed comments, 2) those verbally requesting to make comments after notice offered by Chair during meeting.

## Delta Protection Commission Members

**Diane Burgis, Chair**, Contra Costa County Board of Supervisors | **John Vasquez, Vice Chair**, Solano County Board of Supervisors | **Oscar Villegas**, Yolo County Board of Supervisors | **Patrick Hume**, Sacramento County Board of Supervisors | **Tom Patti**, San Joaquin County Board of Supervisors | **Anissa Williams**, Cities of Contra Costa and Solano counties | **Paul Steele**, Cities of Sacramento and Yolo Counties | **Alan Nakanishi**, Cities of San Joaquin County | **Jim Paroli**, Central Delta Reclamation Districts | **Tom Slater**, North Delta Reclamation Districts | **TBD**, South Delta Reclamation Districts | **Toks Omishakin**, CA State Transportation Agency | **Karen Ross**, CA Department of Food and Agriculture | **Wade Crowfoot**, CA Natural Resources Agency | **TBD**, CA State Lands Commission

**EX OFFICIO MEMBERS:** **Carlos Villapudua**, California State Assembly | **Susan Talamantes Eggman**, California State Senate

**DRAFT Meeting Minutes**  
**Delta Protection Commission**

Thursday, September 19, 2024, 5 p.m.  
West Sacramento Community Center  
1075 West Capital Ave, West Sacramento, CA 95691

**Agenda**

**1. Call to Order and Flag Salute**

Chair Diane Burgis called the meeting to order at 5:16 p.m.

**2. Welcome and Roll Call**

Commission Clerk Heather McClure called the roll. Present at roll call: Chair Burgis, Vice Chair John Vasquez, Commissioners Oscar Villegas, Tom Slater, Alan Nakanishi, Josh Eddy (for Karen Ross), Gloria Sandoval (for Wade Crowfoot), and Brian Bugsch (for Jennifer Lucchesi). Commissioners Tom Patti, Paul Steele, Toks Omishakin, Patrick Hume, Anissa Williams, and Jim Paroli; and ex-officio members Senator Talamantes Eggman, and Assemblymember Carlos Villapudua were absent with no alternate present. At this time, a quorum was present.

**3. Public Comment**

Chair Burgis asked for public comment and there was one:

Art Darden from Rio Vista announced he is a member of a small Delta highway coalition that monitors traffic issues in the Delta. He commented that the severe traffic issues of Highway 12 and Highway 160 are a hindrance to the local economy and emphasized the need for regional solutions. Chair Burgis asked him if he had spoken to his Assemblymember or county supervisor. He replied that his coalition has a one-on-one scheduled with Assemblywoman Lori Wilson to go over its proposal.

**Closed Session Agenda**

**4. Closed Session – The Delta Protection Commission will meet in closed session to consider the evaluation of performance of one or more of its employees. This closed session is authorized by Government Code section 11126, subdivision (a)(1).**

The Commissioners moved to go into closed session at 5:36 p.m. Executive Director Blodgett and Deputy Attorney General Carlos Mejia joined the Commission members for the closed session.

Following the completion of the closed session, Chair Burgis reconvened in open session at 6:15 p.m. Mejia reported the Commission had created an ad hoc committee on employee performance evaluation, consisting of the Chair and Vice Chair of the Delta Protection Commission. No other reportable actions were made during the closed session.

At this time, Chair Burgis moved to Item 11, followed by Items 9, 8, and 5, in that order, to accommodate Commissioner Bugsch's need to leave the meeting early.

## **Consent Agenda**

### **5. Approval of Draft July 18, 2024, Meeting Minutes**

Chair Burgis asked for public comment and there was none.

**Motion:** It was moved by Commissioner Slater and seconded by Vice Chair Vasquez to approve the July 18, 2024, meeting minutes; in a voice vote, the motion passed 8-0-0, all Commissioners present voting aye.

## **Regular Agenda**

### **6. Report on Delta Stewardship Council Activities – DPC Chair Diane Burgis**

Chair Burgis provided a brief update on the Council's July 25 meeting, which covered the Delta Science Report. At its August 22 meeting, which she did not attend, it adopted regulations for the Delta Ecosystem Restoration Management project. The upcoming September 26 meeting will include a Tribal and Environmental Justice Issue Paper Public Review Draft Release, the Delta Plan Five-Year Review Report, a Lead Scientist Report with Lisamarie Myers, the Delta Watermaster Update from Jay Ziegler, and an update on the Delta Conveyance Project by the Department of Water Resources.

Chair Burgis asked for public comment and there was none.

### **7. Report on Delta Protection Advisory Committee (DPAC) Activities – Anna Swenson (DPAC Chair)**

DPAC Chair Swenson was not present, thus unable to deliver a report. Executive Director Blodgett stated DPAC's next meeting will be October 1 at Wimpy's Marina.

### **8. Delta Protection Advisory Committee Delta Waterways Cleanup project – Anna Swenson (DPAC Chair)**

Executive Director Blodgett stated the Committee proposed organizing a Delta cleanup event for next year to contribute alongside the annual Coastal Cleanup that takes place each September.

Commissioner Villegas commented that several Waterway Cleanup events are scheduled for September 21, and he is sponsoring one on the Sacramento River with approximately 40 participants.

Chair Burgis asked for public comment and there was none.

**Motion:** It was moved by Commissioner Villegas and seconded by Commissioner Slater to approve DPAC to organize a Delta Waterways Cleanup for 2025; in a voice vote, the motion passed 8-0-0, all Commissioners present voting aye.

### **9. Delta Protection Advisory Committee Gerry Goodie Memorial Seat – Anna Swenson (DPAC Chair)**

Executive Director Blodgett stated the Committee voted at its most recent meeting to recommend naming Public Seat 2, previously held by Gerry Goodie, the Gerry Goodie Memorial Seat in his honor following his sudden passing early this year.

Chair Burgis asked for public comment and there was none.

**Motion:** It was moved by Commissioner Slater and seconded by Commissioner Villegas to approve the DPAC Gerry Goodie Memorial Seat; in a voice vote, the motion passed 8-0-0, all Commissioners present voting aye.

### **10. Executive Director’s Report – Bruce Blodgett, Executive Director**

Executive Director Blodgett provided an update on the National Heritage Area Management Plan, which was expected back from National Park Service by September 12 but has been delayed while the Service consults with area tribes. He reported that West Sacramento is close to finalizing a contract with a consultant for the Clarksburg Branch Line Trail extension; mentioned the City of Isleton has been awarded a \$20,000 grant for broadband access; and spoke on two letters of support submitted by DPC staff for research projects on rice cultivation methods, and another on the possible link between Harmful Algal Blooms and human health in the Sacramento-San Joaquin Delta. He then drew attention to the Land Use Comments section in the packet and added that, in addition to what was included, extensive work is being done with Rio Vista and Contra Costa County to align their general plans with the Land Use and Resource Management Plan. He also mentioned a new proposal for a wind-solar data center array on Jersey Island that staff will continue to follow.

Chair Burgis clarified that, rather than a data center, it will be a battery used to store energy captured on site.

Executive Director Blodgett announced the Delta Leadership Program application process began on September 13, with a deadline of November 22. Eric Vink will continue as the DLP facilitator. He then touched on three items that had come up recently, which had not made it into the written report. First, Boating and Waterways is looking to pursue a NOAA grant for large debris removal and will be seeking partners for the project, presenting a potential for DPC collaboration. Second, the Empire Tract Road closure in San Joaquin County has raised concerns among landowners in that area, which may lead to an appeal being brought before the Commission. Lastly, with numerous proposed carbon sequestration projects in the Delta and surrounding areas, the need for an emergency response plan in the event of any issues has been raised and may be a future agenda item.

Chair Burgis commented that many people have concerns about the safety of carbon sequestration projects. She suggested contacting Lawrence Livermore National Laboratory, which has conducted research on carbon sequestration.

Chair Burgis asked for public comment and there was none.

#### **11. NHA Advisory Committee Appointments – Blake Roberts**

Blake Roberts spoke briefly about the formation of the new NHA Advisory Committee, a transition from the previous Management Plan Advisory Committee. The charter for the Advisory Committee was approved at the July Commission meeting, followed by an application period. Nineteen applications were received. A subcommittee consisting of Chair Burgis and Commissioner Villegas reviewed the applications and made recommendations for the Commission, with considerations for geographic and agency representation.

Chair Burgis asked for public comment and there was none.

**Motion:** It was moved by Vice Chair Vasquez and seconded by Commissioner Villegas to approve the proposed appointments to the NHA Advisory Committee; in a voice vote, the motion passed 8-0-0, all Commissioners present voting aye.

#### **12. Delta as Place Presentation: Delta Agriculture – Tom Slater, Board of Directors, North Delta Water Agency**

Chair Burgis introduced Tom Slater, a third-generation farmer born and raised in Clarksburg, who serves on four boards: Reclamation District 999 as Manager, the Yolo Subbasin Groundwater Agency, the California Central Valley Flood Control

Association, and the North Delta Water Agency. He is also a Commission member for the Delta Protection Commission.

Commissioner Slater expressed his love for agriculture and all that embodies the Delta. He provided an update on the grape harvest, noting it ended earlier than usual due to weather conditions, with light yields across California. He mentioned that this lighter crop comes at a fitting time, given the decline in wine consumption over the last few years. Pears also experienced a lighter harvest, which he again attributed to weather, though their economic value remains strong. Despite the ups and downs in agriculture, Slater emphasized that the Delta remains healthy and continues to thrive. He highlighted the importance of the agritourism industry, particularly with small boutique wineries, which contribute significantly to the Delta's economy through their impact on local businesses. He contrasted this with large-scale production agriculture, which brings in more revenue and affects the region's tax base.

Slater then shifted focus to reclamation districts, discussing their role in generating assessment fees and the critical responsibility they have to maintain levees, which protect both agricultural land and the state's water supply. Commissioner Slater concluded by emphasizing the importance of communication between farmers, environmentalists, and state agencies. He stressed that this collaboration is essential for developing and implementing effective solutions to maintain the Delta's levees and agricultural sustainability.

Chair Burgis asked if the water used for agriculture is coming from wells or surface water and he responded that in the Delta there are very few wells.

Chair Burgis asked for public comment and there was one: Art Darden commented on the importance of addressing the salinity issue in the Delta, which affects farmers and water quality.

DPC staff member Mike Aviña commented that large-scale restoration projects in the Delta, which help maintain the Delta's salinity barrier, such as through the Fall X2 action, seem to be pursued over ag land conservation. He noted that, to the extent these projects use less water than agriculture, they may reflect a broader strategy to increase the amount of water available for export.

Chair Burgis replied that many of these studies are not necessarily conducted to further those outcomes, but rather, are meant to explore and better understand those ideas.

Commissioner Slater replied to Aviña saying he is unaware of any concerted effort to that extent but made it clear that the Delta uses very little applied water, citing the work of Jay Zeigler and Michael George to support this claim.



Commissioner Villegas suggested that the DPC take a more proactive role in making recommendations to our legislative representatives. Slater agreed, noting that the Delta caucus is available, and offered his assistance if the Commission decides to organize a committee.

Executive Director Blodgett pointed out that managed wetlands use more water than farmland due to evapotranspiration and added that leaving a field fallow still results in nearly the same water usage because something will always naturally grow in the Delta.

Commissioner Slater agreed with Blodgett and concluded by emphasizing the importance of collaboration with elected officials and agencies to address these Delta challenges.

### **13. Commissioner Comments/Announcements**

Chair Burgis announced the next meeting will be November 21.

### **14. Adjourn**

Chair Burgis adjourned the meeting at 7:21 p.m.

## Delta Protection Commission Meeting

December 12, 2024

### AGENDA ITEM 5: 2025 Commission Meeting Dates

**Prepared by:** Debra Waltman

**Presented by:** Bruce Blodgett

**Requested Action:** Approve Commission's 2025 meeting calendar

**Type of Action:** Vote

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The 2025 Commission meeting calendar is based on the 2024 Commission meeting calendar with meetings occurring on the third Thursday of odd-numbered months, with alternate meeting dates on the third Thursday of even-numbered months with an exception for the November meeting date. The proposed November meeting date is on the second Thursday of November due to an annual conference that occurs the third week of November. The 2025 meeting schedule is proposed as follows:

- January 16, 2025
- March 20, 2025
- May 15, 2025
- July 17, 2025
- September 18, 2025
- November 13, 2025\*\*

In addition, the alternate Commission meeting dates would be scheduled as noted below. These meetings would only be held if called by the Commission Chair.

- April 17, 2025
- June 19, 2025
- August 21, 2025
- October 16, 2025
- December 18, 2025

**Recommended Action:** Commission staff recommends the Commission approve the Commission meeting calendar.

# Delta Protection Commission Meeting

December 12, 2024

## AGENDA ITEM 9: Executive Director’s Report

**Prepared by:** Bruce Blodgett, Executive Director

**Presented by:** Bruce Blodgett, Executive Director

**Recommended Action:** Receive the Executive Director’s Report

**Type of Action:** Receive

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## Commission Budget Update

Budget and Spending for Delta Protection Commission - FY 24/25  
Projected Budget

<b>FY 24/25 Categories</b>	<b>Budget Amount</b>	<b>Total Expenses and Projections</b>	<b>Difference</b>
Salaries and Wages	\$1,515,000	\$1,404,805	\$110,195
Operating Expenses	\$821,000	\$666,842	\$154,158
8% Reduction Estimate (State funds only)	(143,000)	0	(143,000)
Total	\$2,193,000	\$2,071,647	\$121,353

## National Heritage Area Management Plan

National Park Service and Department of the Interior staff are reviewing the management plan submitted March 12. The plan requires Secretary of the Interior approval. National Park Service officials had consultation meetings with two tribes in November and will provide their recommendation on Management Plan approval to the Secretary of the Interior. Commission staff are continuing to conduct outreach to Tribes as part of our tribal consultation process for the Management Plan.

## National Heritage Area Advisory Committee

The National Heritage Area (NHA) Advisory Committee had its first meeting on Thursday, October 31, at the Oakley Recreation Center. The agenda included an update on NHA activities, election of a vice chair, establishing term duration for specific public seats, formation of task groups, and the NHA partnership program. The second NHA Advisory Committee meeting is scheduled for Friday, December 6, from 10 a.m. to noon at the 1883 Clarksburg Schoolhouse. The agenda will include approval of the 2025 meeting calendar,

discussion of match funding, updates on the passport program, a summary of the Delta Heritage Forum, and a presentation on the Clarksburg schoolhouse.

### **Delta Heritage Forum**

More than 80 heritage professionals and aficionados attended the DPC's sixth annual Delta Heritage Forum on Friday, November 15, at the Antioch Historical Museum. The free, full-day event included:

- Three panel discussions designed to help heritage professionals (leveraging partnerships to get more done, getting youth excited about heritage, placemaking with public art).
- Four Delta storytellers (a Delta mystery, sandhill cranes, tribal life, and the Delta adventures of Jack and Charmian London).
- Three lightning talks (Rancho Project, the Delta's fine arts, bootlegging in the Delta)
- A scavenger hunt for items throughout the museum.

Preliminary feedback has been overwhelmingly positive, especially in terms of the stated goal of giving participants inspiration and information they can put to good use. The speakers connected well with a very engaged audience, and participants said they enjoyed the venue.

Staff will begin planning the 2025 Delta Heritage Forum in early 2025 utilizing community feedback and lessons learned.

### **Delta Conveyance**

The Delta Conveyance (Tunnel) Project is engaged with multiple permitting agencies currently, as reported by the Department of Water Resources (DWR) widely at various public meetings. Permits and upcoming regulatory procedures anticipated in late 2024 and in 2025 include California and federal Endangered Species Act permits and Biological Opinions. The Petitions for Change of Water Rights (Change in Point of Diversion) hearing before the State Water Resources Control Board Administrative Hearings Office is anticipated to begin in January 2025.

DWR submitted a Certification of Consistency with the Delta Plan to the Delta Stewardship Council for 2024-2026 Proposed Geotechnical Investigations. We received notice on October 9 that this certification was filed on October 8 with comments due on November 7. Staff reviewed thousands of pages of material to prepare comments. The Executive Director submitted a comment letter on the certification to meet the deadline; that letter was not submitted for review by the Commission's counsel prior to its transmission and it inaccurately stated that the letter was submitted on the Commission's behalf, in conflict

with Public Resources Code section 29755. Counsel alerted the Executive Director that he lacked authority to comment on the Commission's behalf and that the letter should have been vetted by counsel prior to transmission. Following consultation with the Commission's counsel, an amended letter was prepared and sent to the Council to make it clear the letter had not been approved by the Commission prior to its transmission and reflected only the views of the Executive Director and staff. We anticipate DWR submitting the Certification of Consistency for the Delta Conveyance Project itself in mid-2025.

Separate staff reports on this agenda address staff comments provided to the Department of Water Resources (DWR) on the proposed geotechnical activities, and planning for participation in hearings before the Delta Stewardship Council on appeals filed on DWR's Certification of Consistency for the 2024-2026 Proposed Geotechnical Investigations and for future action with the Stewardship council related to the conveyance project.

Staff also continues to participate with the Delta counties in consultation with the US Army Corps of Engineers on the Programmatic Agreement prepared under Section 106 of National Historic Preservation Act. Most recently staff comments advocated adoption of a much wider area of potential effects ("APE") in order to capture indirect visual effects on landscapes and buildings that are eligible for or listed on the National Register of Historic Places. Staff also continue to attend the Delta Conveyance Authority Board meetings which recently include Independent Technical Review report presentations of specific engineering problems which add significant detail on the design and construction.

DWR presented its Community Benefit Program to the Delta Stewardship Council September 26, 2024 meeting, laying out the components and timing of a Delta Community Fund, economic development strategies and infrastructure and facility improvements that are described as beyond the requirements of required mitigation. Staff will monitor publication of guidelines for the program and potentially develop comments on this effort for Commission consideration.

DWR also made a presentation to the Delta Protection Advisory Committee (DPAC) at the October 1, 2024 meeting on Operations of the State Water Project. A separate DPAC report will be made on this agenda.

### **Delta Socioeconomic Indicators Report Update**

The update to the Commission's Socioeconomic Indicators covering the period 2017-2022 has been completed. Preliminary findings were presented to the Commission at the January 2024 meeting, and staff anticipate presenting the full report at the January 2025 meeting. With this update the categories of Community Anchor Institutions and Broadband

have been introduced. Several other streamlining elements were incorporated for future updates.

A few key takeaways: Given the pressure from state-mandated increased housing, the relationship between urban development, agricultural production and fallowed or idled lands should continue to be monitored. Staff is investigating the potential to produce such a report in coordination with Delta counties and others. In addition, follow-up regarding the deterioration of state highway road conditions in the Delta could be prioritized. Delta Plan policies that could have effects on the Delta economy have been adopted in the past several years including the Ecosystem and Delta Levee Investment Strategy amendments. These changes and related regulations are recent enough that effects, if any, would not be reflected in the study period. Finally, the Delta Conveyance Project will also have significant effects that could be reflected in future updates to the Socioeconomic Indicators.

Staff is working to coordinate outreach efforts of the Socioeconomic Indicators with outreach presenting the results of the Delta Stewardship Council's recently published Delta Resident Survey (DRS). This would be in the form of postcards sent to participants in the DRS announcing the availability of the results for both studies, with follow-up outreach.

### **Great California Delta Trail – Clarksburg Branch Line Trail Extension**

The Commission's Great California Delta Trail Master Plan trail corridor includes the general alignment of the Clarksburg Branch Line Trail extension, a proposed 6.4-mile, Class I multi-use trail with buried fiber optic conduit along the former Short Line Rail in West Sacramento, unincorporated Yolo County and the Clarksburg community.

The Commission is part of the Yolo-Delta Trail Coalition that applied for grant funds to augment funding from the City of West Sacramento. Preliminary outreach began with a presentation to the Clarksburg Advisory Committee at its regular meeting on September 5, 2024. On September 18, 2024, the City of West Sacramento approved a contract with Mark Thomas consultants. With the consultant team now on board, in preparation for field survey work on the City right-of-way, notices were sent to property owners adjacent to the former Sierra Northern Railway on November 14, 2024. Wider project outreach is expected to kick off in early 2025 to engage key project partners, including agricultural and adjacent property owners, tribal representatives, local businesses, community organizations, and residents through one-on-one interviews, workshops and other outreach. As the project description is developed and refined during this process, staff will provide further updates.

## **Commission Science Support**

Commission staff participated in the Bay Delta Science Conference held in Sacramento September 30-October 2, 2024, joining with the Delta Stewardship Council, Stanford University, Sacramento Coalition to End Homelessness, Department of Water Resources, and University of California, Davis, to present the poster “Mapping Factors to Consider in Emergency Management Planning within Sacramento Delta Legacy Communities.”

## **Commission Land Use Comments**

Commission staff engaged in both routine review of local government land use decisions and worked on specific land use applications and processes, such as review of the proposed Rio Vista General Plan Update and the Delta Conveyance Project Geotechnical (“Geotech”) Investigations Consistency Certification application to the Delta Stewardship Council. Staff prepared a memorandum summarizing the informal comment process and collaboration with Rio Vista. Rio Vista contains only a small area in the Primary Zone. The collaboration process resulted in Rio Vista adopting a policy to encourage continued grazing activity in the portion of the City in the Primary Zone where it is appropriate.

Staff also prepared, and the Executive Director reviewed a letter sent to Ironhouse Sanitary District, encouraging them to continue cattle grazing on land where a giant garter snake mitigation bank is proposed in the Delta Primary Zone.

### ***Routine Land Use Reviews***

- Staff continue to review local agency agendas and the Office of Planning and Resource postings for CEQA actions for all local agencies that make land use decisions in the Delta Primary and Secondary zones. This weekly review process also includes public notices for permits for selected regulatory agencies such as the US Army Corps of Engineers. The total weekly review of agendas and updates includes approximately 65 different agencies or local government departments.

Per the Commission’s request all comment letters and comments prepared in 2024 have also been provided.

## **Other Planning Activities**

### **Delta Leadership Program**

The DLP opened its application process Sept. 13. The DPC received 20 by the November 22 deadline.

## Commission Communications

### ***Our content***

Fall has been extremely busy for external communications; since our last report to you, we have posted:

- Two website stories highlighting data from the Delta Residents Survey (to which the DPC was a party) – one on [sustainable agriculture](#) and the other on [flood insurance](#) – both were picked up by Maven’s Notebook – California Water News Central.
- The opening of nominations for the Delta Leadership Program and registration for the Delta Heritage Forum.
- Two news items from the September Commission meeting ([NHA Advisory Committee appointments](#) and the [Gerry Goodie Memorial Seat](#) on DPAC), and a [photo gallery of the Delta Heritage Forum](#).
- Three job postings, including two for the NHA.
- A “5 Ways to Honor the Delta” slideshow for social media and [article for the website](#) during Delta Week.

### ***Engagement***

The following content received the most audience engagement across platforms – we share this as a measure of what most interests Delta residents and stakeholders:

- Sustainable agriculture article – most reach, most clicked and most shared on Facebook; the most clicks on DPC original content from *Delta Happenings*, 2<sup>nd</sup> most reach on Instagram
- Delta Leadership Program announcement – most reach on Instagram
- Delta Week/5 Ways to Honor the Delta – most-played reel on Instagram
- Delta Heritage Forum announcement – 2<sup>nd</sup> most reach on Facebook
- NHA Advisory Committee appointments – 2<sup>nd</sup> most clicks on DPC original content from *Delta Happenings*
- Flood Preparedness Week/DeltaFloodready.com - 3<sup>rd</sup> most clicked on Facebook

### ***Newsletters***

The DPC has two newsletters: *Delta Happenings* (biweekly) and *Delta Heritage Courier* (bimonthly). Both have high engagement.

Engagement with newsletters is measured primarily by open rates (percentage of emails opened) and click rates (percentage of recipients who click on links in emails).



Here is how DPC email engagement averages from Sept. 5 to Oct. 22 compared with all email sent using the GovDelivery email system:

<b>Newsletters</b>	<b>Open rate</b>	<b>Click rate</b>
<i>All GovDelivery newsletters</i>	21.5%	2.9%
DPC newsletters	37.3%	24.3%
DPC meeting notices	39.5%	14.4%
DPC announcements (Heritage Forum, Leadership Prog.)	36.6%	4.1%

### Commission Follow-Up Log

<b>Meeting Date</b>	<b>Action Item</b>	<b>Requested by</b>	<b>Assigned to</b>	<b>Notes</b>
Sept. 19, 2024	Include all comment letters in the Commission packet	Oscar Villegas	Bruce Blodgett	Letters included in packet.
July 18, 2024	Add State Lands Commission's Commercial Abandoned Vessels as agenda item	Oscar Villegas	Bruce Blodgett	Will place on an upcoming agenda.
May 16, 2024	Analysis of funding need per county to move Clean CA sign project forward	Tom Patti	Bruce Blodgett	Program as a whole ended by Cal Trans. District 3 is moving forward with signs in their area. District 10 is also moving forward with sign installation in SJ county.
March 7, 2024	NHA funding discussion to be brought back to Commission to decide on use of funds	Oscar Villegas	Blake Roberts	Use of NHA funding will be brought to a future Commission meeting.
March 9, 2023	Suggested establishing a protocol for tracking decisions surrounding the DLIS	Oscar Villegas		Expressed danger of potential confusion between what has been done and what has been decided in relation to this project. To date, there has not been an impact.

Meeting Date	Action Item	Requested by	Assigned to	Notes
Jan.19, 2023	Ad hoc committee	The Commission	Commissioners Villegas and Hume	Villegas and Hume were appointed to review comments on the Delta Conveyance Project Draft EIS. Comments were prepared and submitted.

**Upcoming Delta Events**

For the most current event listings, subscribe to *Delta Happenings* at [delta.ca.gov/get-connected](https://delta.ca.gov/get-connected). For access to recent newsletters, go to [delta.ca.gov/newsletters](https://delta.ca.gov/newsletters).

## DELTA PROTECTION COMMISSION

*Diane Burgis, Chair (Contra Costa County Board of Supervisors)*

2101 Stone Blvd., Suite 200, West Sacramento, CA 95691

(916) 375-4800 | [delta.ca.gov](http://delta.ca.gov)

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October 22, 2024

Secretary Toks Omishakin  
California State Transportation Agency  
400 Capitol Mall, Suite 2340  
Sacramento, CA 95814

Dear Secretary Omishakin:

The Delta Protection Commission (Commission) is the state agency voice for the people who live, work and recreate in the Sacramento-San Joaquin Delta region. Although largely comprised of local officials (County Supervisors, City Council members and reclamation districts trustees) from the Delta region, the Commission also has participation from state entities, including your own.

The local agency members of the Commission greatly appreciated the contributions of Dennis Agar (former Caltrans District 10 Director) as your designee on the Commission. Dennis worked to strengthen the important connections between Caltrans staff and the Commission, in addition to representing the State Transportation Agency perspective on Commission deliberations. We wish him well in his retirement.

We hope soon to welcome a new designee to represent you on the Commission. I encourage you to consider one of the Caltrans District Directors who cover part of the Delta region. Each Caltrans District (3, 4, 10) is responsible for infrastructure both iconic and critical to the Delta, from District 3's lead on Highway 160 as it travels from the Contra Costa County line to Sacramento, District 4's lead on the Rio Vista Bridge and Ryer Island ferries, and District 10's lead on Highways 12 and 4 as they pass through the Delta region. The Commission continues to prioritize attention to Delta transportation challenges in our effort to support improved quality of life and safety for Delta residents and smooth traffic flow for local agriculture and businesses.

The local agency members of the Commission have very much valued and appreciated a committed Caltrans connection and hope to see it continue.

Thanks for your consideration.

Sincerely,

Diane Burgis  
Chair

Members, Deta Protection Commission

## DELTA PROTECTION COMMISSION

*Diane Burgis, Chair (Contra Costa County Board of Supervisors)*

2101 Stone Blvd., Suite 200, West Sacramento, CA 95691

(916) 375-4800 | [delta.ca.gov](http://delta.ca.gov)

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March 4, 2024

Leanne Mueller, Senior Planner  
Sacramento County  
Planning and Environmental Review  
827 7th Street, Room 225  
Sacramento, CA 95814

Dear Ms. Mueller:

We are providing comments on the application for a use permit for the Twin Cities Composting Facility located on the north side of Twin Cities Road, west of Interstate 5, in the Delta community on Parcel 146-0080-040-0000. As defined in the Delta Protection Act (the "Act,"), this proposed facility occurs in the Primary Zone of the Delta. As used in the Act the Primary Zone means "*the delta land and water area of primary state concern and statewide significance which is situated within the boundaries of the delta*" (California Public Resources Code Section 29728).

The Delta Protection Commission is a state agency charged with ensuring orderly, balanced conservation and development of Delta land resources and improved flood protection in the Primary Zone. The Commission reviews projects within the broad framework of the Delta Protection Act of 1992 and Delta Reform Act of 2009, which declare that the State's basic goals for the Delta are to provide a more reliable water supply for California and protect, restore and enhance the Delta ecosystem "*in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place*" (Public Resources Code section 29702(a) and Water Code section 85054).

We understand that the County must issue a discretionary use permit for this facility and must conduct design review. This letter provides our comments and the results of our

initial review of the project for consistency with the Act (California Public Resources Code Section 29700 et seq.) as well as our Land Use and Resource Management Plan (required by California Public Resources Code Section 29760), and our Economic Sustainability Plan (required by California Public Resources Code Section 29759).

Proposed local government-approved projects within the primary zone of the Legal Delta must be consistent with the Commission's Land Use and Resource Management Plan (LURMP) (California Public Resources Code Sections 29700-29780). California Public Resources Code Section 29760(b) states that the Land Use and Resource Management Plan "*shall. . .preserve and protect agricultural viability*" and "*shall. . .protect the delta from any development that results in any significant loss of habitat or agricultural land.*" "Development" is defined by the Delta Protection Act as "*the placement of. . . any solid material or structure*" over land or water in the Primary Zone of the Delta (California Public Resources Code Section 29723(a)). A list of excepted activities that are not regulated as development are provided in California Public Resources Code Section 29723(b). None of these exceptions apply to the proposed facility thus it is regulated "development" within the meaning of the Act.

The Land Use and Resource Management Plan provides the following policy:

*"The priority land use of areas in the Primary Zone shall be oriented toward agriculture and open space. If agriculture is no longer appropriate, land uses that protect other beneficial uses of Delta resources and that would not adversely affect agriculture on surrounding lands or the viability or cost of levee maintenance, may be permitted"* (Delta Protection Commission 2010:12).

In addition to regulating development, the Delta Protection Commission is required to plan for and promote the economic sustainability of the Delta under the Act. The Commission prepares an economic sustainability plan to promote the "*continued socioeconomic sustainability of agriculture and its infrastructure*" in the Delta (California Public Resources Code Section 29759(b)(2)).

The applicant's biological assessment indicates that the current project would result in the permanent loss of 39.4 acres of agricultural land (Madrone 2023). Between present and 2014, over 12,000 acres of farmland have been lost in the Delta (Delta Stewardship Council 2024). Our planning work documents that agriculture is the main economic driver of the Delta economy (Delta Protection Commission 2012:274). A dollar of agricultural crop revenue generates three to five times greater regional income than other leading revenue sources such as recreation or tourism (Delta Protection Commission 2012:274).

For these reasons, the project would contribute to the incremental loss of agricultural land and the reduction of economic sustainability in the Delta.

The natural resource goals for the Delta also include the goal to “*preserve and protect the natural resources of the Delta [and to] encourage compatibility between agricultural practices and wildlife habitat.*” (Delta Protection Commission 2010:18).

The land in the project area proposed for conversion serves as foraging habitat for various raptor species including but not limited to Swainson’s hawk (*Buteo swainsoni*) (Madrone 2023). Swainson’s hawk is listed as a threatened species by the California Department of Fish & Wildlife (CDFW 2024). CDFW must make the determination for a “threatened” listing based on facts demonstrating the presence of one or more of the factors provided in California Code of Regulations Title 14, Section 670.1(i)(1)(A), including “*present or threatened modification or destruction of [a species]’ habitat.*” The primary threat to Swainson’s hawk is loss of suitable foraging habitat, including suitable agricultural foraging habitat (CDFW 2016:3). The conversion of this parcel would reduce habitat for a threatened species that CDFW has identified as contributing factor to decline of the species consistent with its listing process and five-year review under California law (CDFW 2016).

To review the facts, the proposed facility:

- Falls inside the Primary Zone of the Delta subject to our Plan,
- Is inconsistent with the statutory mandates of California Public Resources Code Sections 29759 and Section 29760(b) to protect agricultural land and economic sustainability because it would permanently convert agricultural land to non-agricultural uses in the Primary Zone,
- Is inconsistent with the natural resource policy goals of our Land Use and Resource Management Plan adopted under California Public Resources Code Section 29760 because it would reduce habitat for a threatened species, and thus contribute to one of the factors CDFW has identified as a cause of the species’ decline.

Note that California Public Resources Code Section 29770 allows “any aggrieved person” the right to appeal land use decisions taken in the primary zone for inconsistency with the Act or our Plan. The exact language states: “*the ground for an appeal and the commission consideration of an appeal shall be that an action, as to land located exclusively within the primary zone, is inconsistent with the resource management plan, the approved portions of local government general plans that implement the resource management plan, or this division [i.e. the Act]*” (California Public Resources Code Section 29770).

In closing, our contention with this project is not about its merits. It appears to be a valuable facility; however, it is in a location that makes it incompatible with California law and our mandate to protect the Primary Zone of the Delta.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bruce Blodgett". The signature is stylized and cursive.

Bruce Blodgett, Executive Director  
Delta Protection Commission

CC: Patrick Hume, Supervisor, Sacramento County

**References Cited**

Delta Protection Commission. *Economic Sustainability Plan for the Sacramento-San Joaquin Delta*. 2012. West Sacramento, California.

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## DELTA PROTECTION COMMISSION

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April 8, 2024

William R. Nelson  
Principal Planner, Contra Costa County  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553

Dear Mr. Nelson:

The Delta Protection Commission (Commission) is providing comments on the Draft EIR (EIR) for the Contra Costa County General Plan update in anticipation of our duty to make findings required by California Public Resources Code (PRC) Section 29763.5. Our review focuses on the impact analysis sections and conclusions that would materially affect our ability to endorse findings that the General Plan update is consistent with Section 29763.5, and our duty to minimize impacts in the area of our jurisdiction (the Delta Primary Zone) as a CEQA responsible agency. We first discuss the scope of our review and the necessary findings we must prepare before we can submit a staff report proposing that the General Plan is consistent for Delta Protection Commission (Commission) approval. We then provide specific comments.

### **Scope of Review and Required Findings**

The Delta Protection Act requires the Commission to review General Plan updates for “local governments” as defined in the Delta Protection Act (PRC Section 29763.5). Because Contra Costa County is a “local government” within the meaning of the Act, your update requires these findings (PRC Section 29725). The findings required in Section 29763.5 are limited to the Primary Zone. In addition, we may rely upon your CEQA analysis

to support our approval of the General Plan, if we find it consistent with the Delta Protection Act under Section 29763.5.

## **Specific Comments Regarding Impacts in the General Plan EIR**

### **Comment 1: The Draft EIR Will Support Tiering Best if It Makes Clear How General Plan Policies Will be Enforceable.**

The Draft EIR (DEIR) is a program EIR as described in your text:

*“This Draft EIR fulfills the requirements for a Program EIR ... Once a Program EIR has been prepared, subsequent activities within the program must be evaluated to determine whether an additional CEQA document is necessary. However, if the Program EIR addresses the program’s effects as specifically and comprehensively as possible, many subsequent activities may be within the Program EIR’s scope, and additional environmental documents may not be required (CEQA Guidelines Section 15168[c]). When a lead agency relies on a Program EIR for a subsequent activity, it must incorporate feasible mitigation measures and alternatives from the Program EIR into the subsequent activities (CEQA Guidelines Section 15168[c][3]).”* (DEIR at 1-3 to 1-4).

While the DEIR properly relies on General Plan policies to explain why some impacts are reduced or avoided, this approach would be reinforced if more actions were included that specifically stipulate that relevant policies or goals will be translated into Zoning Code amendments as provided for in Cal. Government Code Section 65860. This section allows cities and counties to amend their ordinances to enforce land use policies related to their general planning duties under Cal. Government Code Section 65850. This would document how the General Plan policies, goals, and actions will be enforced.

Section 1.2.2 would also better support findings of consistency with Section 29763.5 if it provided, in the text, or an appendix, a short summary of all the kinds of discretionary actions that would be tiered projects, with a citation to the relevant County ordinance or code requiring a discretionary approval. By discretionary actions we do not mean specific projects as this cannot be known at this time; we mean the kinds of approvals that would be tiered from the General Plan EIR and subject to review for consistency with the General Plan and/or zoning code. This would allow us to show how future actions would be reviewed for consistency with the General Plan and zoning code as relevant. This would then show how consistency with the Delta Protection Act would be ensured via review of future projects.

### **Comment 2: Buildout Projections for the Horizon Year Comments**

As a global issue it is hard to determine if there is consistency between impacts in different chapters and what the potential impact of the General Plan would be without a visual depiction of the full buildout that may occur for the horizon-year projection described in page 3-24. We would appreciate a figure for our use that shows the projected buildout assumption as a graphic depicting all land that would be developed based on the methodologies used in Section 3.7.

**Comment 3: *Impact 5.1-2: Development under the proposed project would alter visual appearance in the county but would not substantially degrade its existing visual character or quality [Threshold AE-3] May Benefit from Additional Substantiation or Mitigation***

This impact statement concludes the impact would be less than significant before mitigation (DEIR at 5.1-15). This conclusion is at odds with Figure 5.2-4 which shows farmland conversion in the Delta Primary Zone and other areas. In addition, Impact 5.2-1 concludes that up to 13,816 acres of farmland could be converted (total, not just in the Delta Primary Zone).

Based on conversations with your agency we understand that some or all of the agricultural land conversion shown in the Primary Zone on Figure 5.2-4 may be, in fact, under the jurisdiction of special districts or other entities and may be attributed to projects that are under way. If the adoption of the General Plan will not itself contribute to these conversions, that should be clarified in the Final Environmental Impact Report (FEIR) so that it is clear that the impact conclusion in Impact 5.1-2 is sound, and that these conversions are not attributable to your project.

The current document as it exists in the DEIR, suggests that you will cause agricultural land conversion in the Delta Primary Zone. Agricultural land is the primary constituent of the visual landscape in the Primary Zone and conversion of that land is a visual impact. If these conversions are effects of the project, it undermines the credibility of your impact conclusion. The text of the impact thus needs to better substantiate the impact conclusion. Note that a leading desk book states “*an EIR must set forth the bases for its findings on a project’s impacts; a bare conclusion without explanation of its factual and analytical basis is not sufficient analysis of an environmental impact*” (Kostka and Zischke 2023, Section 13.27, citing *Laurel Heights Improvement Association v. Regents of University of California*, 1988, 47 Cal. 3d. 376, 404).

**Comment 4: *Impact 5.1-3: The proposed project would not generate substantial light and glare [Threshold AE-4], Requires Better Substantiation***

Please provide a citation to the relevant County Code with the CalGreen building standards to support this impact. This impact states that these standards will be enforced but a search of the County Code we found online does not contain the sections 74-8.002 to 74-8.006 that correspond to this material in the “CODE COMPARATIVE TABLE AND DISPOSITION LIST.” The online version may be out of date; please clarify. This statement regarding CalGreen building standards supports the overall conclusion that the General Plan will not generate substantial light or glare. This conclusion needs to support the conclusion that the project will not adversely affect aesthetic resources in the Delta Primary Zone which we must also confirm for our findings. The relatively dark, rural character of the Delta Primary Zone is an integral aspect of the feeling of the landscape.

**Comment 5: Impact 5.2-1: The proposed project could convert approximately 13,816 acres of Important Farmland to nonagricultural use, [Threshold AG-1] Requires Additional Explanation, Mitigation, and Possibly Policy Controls**

This impact includes farmland conversion in the Delta Primary Zone near Discovery Bay, near Knightsen, and on Jersey Island, in the Delta Primary Zone (see Figure 5.2-4 and 5.11-1).

The text of the DEIR for this impact, in its current form, will not support our required findings under PRC Section 29763 subsections (a) “*The general plan, and any development approved or proposed that is consistent with the general plan, are consistent with the resource management plan*”, and (h) “*The general plan, and any development approved or proposed that is consistent with the general plan, will not adversely impact agricultural lands. . .*”

The text in the DEIR states: “*Agricultural conservation easements are a possible mitigation measure under CEQA. Programs that establish agricultural conservation easements and in-lieu fees for mitigation banking are most effective when determined concurrent with project approval. However, the effectiveness and extent to which future projects would opt-in to agricultural conservation easements as mitigation measures cannot be determined in this analysis; therefore, this impact would remain significant and unavoidable.*”

We have concerns regarding this language and your need to support CEQA findings for significant and unavoidable impacts required in PRC Section 21081, which require a showing that:

- Mitigation has been adopted to reduce the impact (PRC Section 21081(a)(1), or

- That mitigation is the responsibility of another entity or agency (PRC Section 21081(a)(2), or
- Such mitigation is infeasible (PRC Section 21081(a)(3)).

There is a feasible mechanism for the County to avoid this farmland conversion: a policy against farmland conversion in the Primary Zone. If the agricultural conversion in the Delta Primary Zone show on Figure 5.2-4 is, in fact, an effect of the General Plan policies and buildout, the County cannot rely on the second and third prongs of PRC Section 21081 (i.e. that the mitigation that could reduce the impact is the responsibility of another entity or agency, or that such mitigation is infeasible). See PRC Section 21002, which states that public agencies shall not approve projects if there is feasible mitigation that would reduce significant effects.

Communications with the County suggest these farmland conversions are under the jurisdiction of special districts and may already be underway. The impact language for agricultural and conversion is problematic and highlights the need to clarify this issue. Please work with us to resolve this issue and update the impact text for the FEIR accordingly.

**Comment 6: *Impact 5.2-5: The proposed project could potentially result in other agricultural impacts not related to the above, such as diminishing available water quality and supply for agricultural uses. [Threshold AG-5] Would Benefit from Better Substantiation.***

This impact states that *“future development under the proposed General Plan would increase water demands, as further described in Section 5.17, Utilities and Service Systems, which would diminish the available water supply for agricultural uses. Such development would occur throughout the county, which spreads the impact over a large geographic area”* (EIR at 5.2-24).

It is clear that the General Plan itself does not approve a *“project”* subject to a water supply analysis as required in Cal. Water Code Section 10912 (which requires strong proof of adequate water availability). Nonetheless more analysis is required. The assertion that the distribution of the development would occur *“over a large geographic area”* as support for its insignificant water demand would benefit from additional support.

The EIR projects 23,200 housing units and 65,600 residents in the county for the horizon-year project at page 3-25. Assuming a water usage of 48 gallons per person per day, this results in a total additional consumption, assuming full buildout, of 3,160 acre-feet of water per year. While water consumption varies by agricultural land use type and is

becoming more efficient over time, using 1.6 acre-feet per acre per year as a rough metric, this is equivalent to water that could support roughly 1,975 acres of irrigated farmland. While not all of this water would be diverted from Delta sources, the multiple demands on Delta water supplies and connected groundwater basins as well as the general water scarcity in the state suggest more facts are needed to substantiate this conclusion. This is especially important because the water consumed by residential buildout would not be available for other uses, including agricultural uses.

Please provide stronger support for this assertion showing how the water consumption is accounted for, at least at a program level of analysis, by briefly summarizing relevant water supply planning for utilities serving unincorporated areas of the County. In the alternative or in addition to these revisions, please clarify the status and seniority of water rights held by water districts serving the Delta Primary Zone in Contra Costa County. Communications with the County suggest that these rights may be “pre-1914 rights,” i.e. very senior rights that are likely to be stable over time and relatively immune to curtailment to fulfill other water needs. If these facts are correct, please provide them in the FEIR.

In the FEIR, please also provide a citation to and summary of the requirement that future developments above relevant thresholds must satisfy the requirements of Cal. Water Code Section 10910 in the impact analysis. See Section 10910 for the general requirement and Section 10912 for the definition of “*projects*” subject to the requirement. This information will better support the conclusion of less than significant, and in turn support our ability to rely on your impact analysis and also make our findings.

***Comment 7: Impact 5.4-1: Implementation of the proposed project would not have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plan, policies, or regulations or by the CDFW or USFWS [Threshold B-1] is Not Consistent with the Facts Provided in Other Impact Analysis Sections***

The biological resources chapter provides a summary of a robust set of policies designed to avoid impacts on natural resources. However, the significant and unavoidable impact for agricultural and conversion in Impact 5.2-1 contradicts this impact conclusion (5.4-1).

Agricultural land also typically provides foraging habitat for raptors and dispersal habitat for other species. Table 5.4-3 indicates Swainson’s hawk and other raptors are present in Contra Costa County. Swainson’s hawk is a state-listed species.

CDFW must make the determination for a “*threatened*” listing based on facts demonstrating the presence of one or more of the factors provided in California Code of

Regulations Title 14, Section 670.1(i)(1)(A), including “*present or threatened modification or destruction of [a species’] habitat.*” The primary threat to Swainson’s hawk is loss of suitable foraging habitat, including suitable agricultural foraging habitat (CDFW 2016:3).

The impact conclusion of less than significant for Impact 5.4-1 is not consistent with the impact conclusions of significant and unavoidable for Impact 5.2-1 because the magnitude of farmland loss in the Delta Primary Zone suggests, absent other facts, that you are contributing to the factors that have caused the of threatened status of certain raptor species per the CDFW listing criteria and analysis. This reinforces the need to clarify the cause of and jurisdiction over the agricultural land conversion you depict in Figure 5.2-4. Please revise the relevant agricultural impact language text and Impact 5.4-1, to show that this conversion is not an effect of the General Plan itself, if true.

**Comment 8: Please Provide Mapping of Pacific Flyway Habitat in the Delta Primary Zone to Support Our Review and Ensure Impacts Are Minimized by Policy of Mitigation Measure**

Please include in the EIR some mapping or analysis of Pacific Flyway habitat. We need this impact analysis for our consistency review process.

PRC Section 29726 states:

- *“Pacific Flyway” means the identified migratory bird flight path, including feeding and nesting habitat, as described in the Central Valley Habitat Joint Venture component of the North American Waterfowl Management Plan (NAWMP-1986).*

PRC Section 29763.5 requires us to show that:

- *“The general plan, and any development approved or proposed that is consistent with the general plan, will not result in the degradation or reduction of Pacific Flyway habitat.”*

If the existing mapping is not sufficiently granular to allow us to show it is being avoided by comparison with your Urban Limit Line and buildout assumptions, please work with us to adopt policy language for protection of Pacific Flyway habitat and mitigation, as need be, in the Delta Primary Zone.

**Comment 9: Impact 5.4-4: Implementation of the proposed project could interfere substantially with the movement of any native resident or migratory fish or wildlife species, or with established native resident or migratory wildlife corridors, or impede**

***the use of native wildlife nursery sites. [Threshold B-4] Would Benefit from Additional Policy Language to Support the Impact Analysis***

We support the overall policy approach of avoiding impacts on wildlife movement corridors in the General Plan EIR. The proposed Mitigation Measure BIO-1 states the County will “Encourage development plans that maximize wildlife movement,” which is not adequately specific. We support this mitigation measure but feel it could go further. The County could also adopt a general plan policy that new roads will assess the potential to impact wildlife movement and incorporate crossing opportunities as relevant. This will reduce impacts on wildlife movement in the Delta Primary Zone and other locations.

The Federal Highway Administration (FHWA) reports that “roads are a serious obstacle to maintaining population connectivity and a threat to the long-term survival of some regionally important wildlife populations” (FHWA 2011:1). This is an especially important issue in light of climate change, which will change the location of suitable habitats and require opportunities for populations to shift accordingly (Costanza et al. 2020). These facts suggest a policy framework for mitigating the effect of any new roadway development would be beneficial from a conservation perspective.

***Comment 10: Impact 5.5-1: Implementation of the proposed project could cause a substantial adverse change in the significance of a historic a historical resource pursuant to CEQA Guidelines, Section 15064.5. [Threshold C-1] and Impact 5.5-2: Implementation of the proposed project could cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines, Section 15064.5. [Threshold C-2] Are Not Consistent***

The cultural resources policies in the draft General Plan are mostly a robust and sound approach to managing cultural resources impacts. We want to offer minor clarifications regarding the language in the chapter and suggestions regarding the impact conclusions and mitigation approach.

The impact analysis for Impact 5.5-1 concludes impacts on “*historical resources*” are potentially significant and unavoidable. Under California law, a “*historical resource*” is “*any object, building, structure, site, area, place, record, or manuscript which is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California*” (Cal. Public Resources Code Section 5020.1). The eligibility criteria for the California Register of Historical Resources includes but is not limited to resources that have information important in prehistory (i.e. archaeological resources, Cal. Public



Resources Code Section 5024.1(c)(4) – thus “*historical resources*” include archaeological resources.

Impact 5.5-2 then concludes that impacts on archaeological resources are less than significant (EIR at 5.5-15), based on mitigation consisting of a record search and retention of an on-call archaeologist.

It is unclear why impacts on historical resources, which include archaeological resources by definition, are significant and unavoidable but impacts on archaeological resources are less than significant. In addition, the mitigation measure for impacts on archaeological resources could be stronger. It would be prudent, especially in the Delta Primary Zone, to require future projects to conduct an assessment for buried archaeological sites that may not be detected in a records search. Infrastructure and development projects can inadvertently damage archaeological sites and buried human remains despite a complete and robust environmental review process. Levee repairs along the Feather River, for example discovered 230 plus burials associated with extensive cultural deposits, only in the construction phase (CapRadio, 2015).

See Meyer and Rosenthal (2007) for an example of an assessment for archaeological sensitivity including the presence of buried sites. Please clarify the inconsistency between these two impacts and also work with us to ensure that mitigation and/or policy controls to minimize cultural resource impacts for any discretionary projects in the Delta Primary Zone are provided in your General Plan and/or EIR. This would also reinforce the significance analysis for Impact 5.5-3, which concludes that impacts on buried human remains would be less than significant.

In addition, mitigation for potential impacts on archaeological resources (Mitigation Measure CUL-1) should consist of a survey, recording, and evaluation of resources found in the survey, and implementation of discovery protocols if resources are inadvertently found in construction, at a minimum.

**Comment 11: *Impact 5.11-2: Project implementation would not conflict with applicable plans adopted for the purpose of avoiding or mitigating an environmental effect [Threshold LU-2] Should Be Supported by Additional Analysis***

The agricultural land conversion identified in the EIR as a significant and unavoidable impact occurs largely in the Delta Primary Zone. The setting and impact analysis for Impact 5.11-2 do not meaningfully summarize how consistency with the Delta Protection Act and Land Use and Resource Management Plan will be achieved. This gap diminishes the credibility of the impact conclusion for this impact (less than significant). We encourage

you to work with us to prepare in revised text or in an appendix, an analysis of how consistency will be achieved to better support this impact statement.

**Comment 12: Text Summarizing the Land Use and Resource Management Plan Should be Updated**

The EIR provides a cursory statement regarding the Land Use and Resource Management Plan on page 5.11-12. It fails to mention the standards the County must meet for approval of their General Plan under PRC Section 29763.5. It also provides no meaningful summary of the content of the Land Use and Resource Management Plan. Please work with us to obtain proposed text revisions to better support this section.

If you have questions regarding our comments, please direct them to Mike Aviña, Senior Environmental Planner, at [Mike.Avina@Delta.ca.gov](mailto:Mike.Avina@Delta.ca.gov), or (530)750-6727.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bruce Blodgett".

Bruce Blodgett, Executive Director  
Delta Protection Commission

**References Cited**

California Department of Fish & Wildlife (CDFW). *Five Year Status Review for Swainson's Hawk (Buteo swainsoni)*. 2016. Sacramento, California.

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## DELTA PROTECTION COMMISSION

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June 7, 2024

Leanne Mueller, Senior Planner  
Sacramento County  
Planning and Environmental Review  
827 7th Street, Room 225  
Sacramento, CA 95814

Dear Ms. Mueller:

We are providing a second set of comments on the application for a use permit for the Twin Cities Composting Facility located on the north side of Twin Cities Road, west of Interstate 5, in the Delta community on Parcel 146-0080-040-0000. This proposed facility occurs in the Primary Zone of the Delta, as defined in the Delta Protection Act (the “Act,”). The purpose of this letter is to respond to the applicant’s “*Project Justification Statement, Twin Cities Greenwaste Composting Facility Project*” (“Justification Statement,” Abbott and Kindermann 2024).

The Justification Statement provides an analysis of consistency with the Land Use and Resource Management Plan (LURMP, Delta Protection Commission 2010). This analysis concludes the project is consistent with the LURMP. *We disagree*. This letter provides an administrative record of the factual and analytical deficiencies in the applicant’s analysis in the Justification Statement. This letter also serves to document the evidence that supports the Delta Protection Commission’s current determination that the project is inconsistent with the LURMP and Delta Protection Act.

### **Response to the Applicant’s Justification Statement**

The Justification Statement provides the following assertions:

- **One:** The project is consistent with the LURMP Agriculture Element *because* it supports agriculture by providing a necessary service and is thus oriented towards agriculture (Abbott and Kindermann 2024:21).
- **Two:** The project will serve Delta agriculture by providing a location for processing “clippings, prunings, and other byproducts ... via composting” which is required by law (Abbott and Kindermann 2024:21).
- **Three:** The project is consistent with the LURMP Land Use element because it is an agriculturally oriented business (Abbott and Kindermann 2024:22).
- **Four:** The project is consistent with the LURMP Land Use element because it “is suitably located to serve local Delta communities and agricultural operators as both a service provider and producer of organic soil amendments” (Abbott and Kindermann 2024:22).

Each assertion is addressed below.

**Assertion One:** The assertion that the facility is oriented toward agriculture is not consistent with the applicant’s own Statement of Intent (Zanker 2023:1). This document states: “Zanker is proposing this project to assist the local jurisdictions in complying with SB1383 organics diversion requirements” (Zanker 2024:1). The applicant’s Statement of Intent goes on to say: “Zanker is proposing to add a green waste and composting facility capable of processing and composting up to 145,000 tons per year of organic waste (**i.e., residential and commercial yard waste, residential food scrap and source separated food waste**)” (Zanker 2024:3, emphasis added).

Here, because the applicant’s own statement concedes the orientation of the facility is toward residential and commercial yard waste and food waste, the facts contradict the conclusion that the facility is oriented toward agriculture. The referenced law, SB 1383 (Senate Bill 1383) is codified in various parts of the California Health and Safety Code and California Public Resources Code. Health and Safety Code Section 39730.6 indicates the broad policy goal of this law is to reduce **landfill organic waste** that decays into methane, which is a greenhouse gas (California Health and Safety Code Section 39730.6(a)). The applicant provides no facts showing that agricultural operations are a significant and substantial source of organic landfill waste.

The Public Resources Code amendments created by SB 1383 authorize the Department of Resource Recovery and Recycling (CalRecycle) and the State Air Resources Board (CARB) to adopt regulations oriented toward recapturing **food waste, i.e., waste that is fully processed food originating in residences, restaurants, and other commercial venues. Agricultural greenwaste is not the focus of this law** (California Public Resources Code

Section 42652.5(a)(2)). These facts demonstrate the facility is oriented toward municipal *not agricultural* organic waste.

**Assertion Two:** The applicant provides no record supporting the conclusion that the facility will provide a *substantial or meaningful* alternative to burning agricultural greenwaste. The primary reason the applicant’s analysis is deficient is that the orientation of the facility is toward municipal greenwaste with limited capacity remaining, if any, for other greenwaste sources (see below). The second reason is that the CARB agricultural waste burning prohibition and the incentives program for alternatives to burning agricultural waste are mischaracterized. Each of these concerns is addressed below.

The applicant’s own analysis states the facility would process 145,000 tons per year of waste originating in cities that would otherwise go to landfills (Abott and Kindermann 2024:4). The Statement of Intent echoes the general goal of processing up to 145,000 tons per year of municipal (*not agricultural*) greenwaste (Zanker 2023:3). The “Traffic Volume Assumptions” worksheet at the end of the Statement of Intent assumes a “Design or Peak Capacity” of 425 “TPD” (Zanker 2023:12). If we reasonably assume TPD is “tons per day” and an optimistic operation of 365 days per year of operation the total capacity under optimal conditions is 155,125 tons per year. If one subtracts the 145,000 tons of municipal waste the applicant states the facility will process, this leaves only 10,125 tons of capacity for other uses (less than 10% of total capacity). Given the vastness of the surrounding agricultural landscape to the east and west, it is implausible that the 10,125-ton capacity for agricultural greenwaste processing is substantial or meaningful.

The second issue is that the applicant’s analysis mischaracterizes the CARB prohibitions on agricultural burning and the feasibility of alternatives. The CARB discourages agricultural waste burning because it adversely affects air quality (CARB 2021). The description of incentives for alternatives to burning for the nearby San Joaquin Valley Air Pollution Control District (SJVAPCD) includes grants for chipping on-site, and on-site mulching and composting (SJVAPCD 2024). The current regulatory scheme to reduce burning of agricultural greenwaste is oriented toward chipping and mulching onsite with composting offsite as one option that is not required. In addition, the monetary incentives program that offsets the cost of alternatives to burning exists only in the San Joaquin Valley Air Pollution Control District (SJVAPCD), not the Sacramento Metropolitan Air Quality Management District (SMAQMD) (Scheele, pers. Comm. 2024). Thus the incentive program does not cover the entire Delta.

In summary, the capacity for processing agricultural greenwaste is very small and not the primary orientation of the facility. Even if composting capacity was present, composting is

only *one of a palette of options* available to agricultural operations, and economic incentives to use that option are not extensive and continuous across the Delta.

**Assertion Three:** The applicant’s Justification Statement argues that the facility is consistent with the LURMP because it is an agriculturally oriented business. As demonstrated above in our response to assertions one and two, the applicant’s own statements show the primary orientation is toward municipal not agricultural greenwaste. Little capacity for other waste types would remain. This assertion is not supported by fact.

**Assertion Four:** The applicant’s Justification Statement concludes that the project is consistent with the LURMP Land Use Element because it “is suitably located to serve local Delta communities and agricultural operators as both a service provider and producer of organic soil amendments” (Abbott and Kindermann 2024:22). This statement is not grounded in fact.

First, the portions of the Delta in the SJVAPCD where greenwaste disposal incentives would apply includes operations over 33 miles away. The applicant has not demonstrated that this is an economically practicable distance for hauling greenwaste. This undermines their assertion that the location is suitable.

Second, the applicant’s own statements demonstrate that the facility is not oriented toward, nor has a design capacity to process, significant quantities of *agricultural* greenwaste (Zanker 2023:12, Abott and Kindermann 2024:4). This further undermines the argument that the location is suitable.

Because the applicant has little capacity to serve agricultural facilities and the agricultural operations that would most benefit from the project are remote from the facility (i.e. portions of the Delta in the SJVAPCD), this assertion is not based in fact.

*Finally, even if the applicant’s assertions were true, that the facility was oriented toward, and could meaningfully serve, agricultural operations, these benefits do not require the facility to occur in the Delta Primary Zone. There is abundant undeveloped land immediately outside the Delta Primary Zone that is connected to the existing road network.*

### **Additional Reasons the Facility is Inconsistent with the Delta Protection Act**

This section of our letter repeats analysis we have previously provided and adds additional analysis regarding inconsistency with the Delta Protection Act.

The natural resource goals for the Delta include the goal to “*Protect and restore ecosystems and adaptively manage them to minimize impacts from climate change and*

*other threats and support their ability to adapt in the face of stress.*” (Policy P-9, Natural Resources Element, Delta Protection Commission 2010:19).

The project is inconsistent with Policy P-9 and the Delta Protection Act because it would convert habitat for large number of special-status species. Taking one species, as an example, the land in the project area proposed for conversion serves as foraging habitat for Swainson’s hawk (*Buteo swainsoni*) (Madrone 2023). Swainson’s hawk is listed as a threatened species by the California Department of Fish & Wildlife (CDFW 2024). CDFW must make the determination for a “threatened” listing based on facts demonstrating the presence of one or more of the factors provided in California Code of Regulations Title 14, Section 670.1(i)(1)(A), including “*present or threatened modification or destruction of [a species’] habitat.*” The primary threat to Swainson’s hawk is loss of suitable foraging habitat, including suitable agricultural foraging habitat (CDFW 2016:3). The conversion of this parcel would reduce habitat for a threatened species and CDFW has identified habitat conversion as contributing factor to decline of the species consistent with its listing process and five-year review under California law (CDFW 2016). *The effect on this species is but one impact among the 51 special-status species that have the potential to occur in the project area (Madrone 2023:14).*

The project is also inconsistent with the Delta Protection Act, and our Land Use and Resource Management Plan (LURMP), Natural Resources Element Policy P-9, because it would occur inside the boundaries of the Stone Lakes National Wildlife Refuge (Delta Protection Commission 2010, United States Fish & Wildlife Service [USFWS] 2009). The boundaries of the Refuge include lands owned in fee by the USFWS, and lands managed through cooperative agreements and conservation easements. The project area thus is part of a mosaic of land that contributes to the overall functionality of the refuge. The USFWS acquires parcels for Stone Lakes NWR in fee, when feasible.

The project is inconsistent with the Delta Protection Act and the LURMP because it would convert agricultural land in the Delta Primary Zone. The Land Use and Resource Management Plan provides the following goal: *To support long-term viability of agriculture and to discourage inappropriate development of agricultural lands* (Delta Protection Commission 2010:13).

The applicant’s biological assessment indicates that the current project would result in the permanent loss of 39.4 acres of agricultural land (Madrone 2023). Between 2014 and the present, over 12,000 acres of farmland have been lost in the Delta (Delta Stewardship Council 2024). Our *Economic Sustainability Plan for the Sacramento-San Joaquin Delta* documents that agriculture is the main economic driver of the Delta economy (Delta



Protection Commission 2012:274). In addition to regulating development, the Delta Protection Commission is required to plan for and promote the economic sustainability of the Delta under the Act. The Commission conducts planning work to promote the “*continued socioeconomic sustainability of agriculture and its infrastructure*” in the Delta (California Public Resources Code Section 29759(b)(2)). Agricultural crop revenue generates three to five times more regional income than other leading revenue sources, such as recreation or tourism (Delta Protection Commission 2012:274). Under these facts, the conversion of useful agricultural land in the Delta Primary Zone is not consistent with the LURMP goals of protecting agricultural land and the viability of Delta agriculture because it permanently reduces the acreage of land contributing to the agricultural economy.

It is useful to review the relevant facts that show why the project is inconsistent with the Delta Protection Act and LURMP policies of protecting agriculture and natural resource functionality of the Delta Primary Zone:

- The project falls inside the Primary Zone of the Delta and is thus subject to our review authority,
- The applicant’s own statements demonstrate the primary orientation of the facility is toward municipal instead of agricultural greenwaste. Little capacity would remain for additional compost types,
- Because the facility is oriented toward municipal waste and is remote from many portions of the Delta agricultural landscape, it is not an “agriculturally-oriented” facility, nor can it provide a substantial alternative to burning of agricultural greenwaste,
- The project would convert habitat for up to 51 special-status species, which is contrary to the natural resource protection goals of the LURMP and the Delta Protection Act,
- The project would also convert land that occurs inside the boundary of and contributes to the functionality of the Stone Lakes National Wildlife Refuge,
- The applicant concedes approximately 38 acres of farmland will be converted into an industrial facility (Abbott and Kinderman 2024:21).

If the project is approved, it would almost certainly be subject to appeal to our Commission, which has the power to set aside local land use decisions that are inconsistent with the Delta Protection Act (California Public Resources Code Section 29770).

If you have any questions feel free to contact me directly at [Bruce.Blodgett@delta.ca.gov](mailto:Bruce.Blodgett@delta.ca.gov) or at (530) 650-6811.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bruce Blodgett", with a long horizontal stroke extending to the right.

Bruce Blodgett, Executive Director  
Delta Protection Commission

CC: Patrick Hume, Supervisor, Sacramento County

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## DELTA PROTECTION COMMISSION

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July 19, 2024

Chris Wilkinson  
Environmental Program Manager,  
Division of Integrated Science and Engineering,  
Department of Water Resources  
P.O. Box 942836  
Sacramento, CA 94236-0001

Shelly Amrhein  
Manager, Habitat Conservation Planning Section  
Department of Water Resources  
Operations and Maintenance, Environmental Assessment Branch  
P.O. Box 942836  
Sacramento, CA 94236-0001

Dear Mr. Wilkinson and Ms. Amrhein:

We are providing combined comments on the Draft Environmental Impact Report (DEIR) for the Long-Term Operation of the State Water Project and the Notice of Preparation (NOP) for the State Water Project Operations and Maintenance Habitat Conservation Plan (HCP).

The Delta Protection Commission (Commission) is a state agency charged with ensuring orderly and balanced conservation and development of Delta land resources and improved flood protection in the Primary Zone. The Commission performs planning work to further the State's basic goals for the Delta which are to provide a more reliable water supply for California and protect, restore and enhance the Delta ecosystem *"in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place"* (Public Resources Code section

29702(a) and Water Code section 85054). It is also the policy of the State of California to reduce reliance on water exports from the Delta, as further discussed below (California Water Code Section 85021). The Commission is thus providing comments as a Delta stakeholder, with an interest in the best environmental outcomes for the Delta.

### **The Separation of the Analysis of the Operational Impacts of the State Water Project and the Habitat Conservation Plan Is Piecemealing**

The DEIR for operations states that it will support the amendment or re-issuance of an incidental take permit (ITP) required under the California Endangered Species Act (CESA) (DWR 2024:2-1). The NOP for the HCP indicates it is intended to provide mitigation to support CESA mitigation requirements for the ITP (DWR 2024a:1).

Piecemealing occurs in CEQA practice when a lead agency impermissibly separates environmental analysis of two projects that depend upon one another for completion and thus fails to analyze the “whole of an action” consistent with the definition of a CEQA project (14. Cal. Code of Regulations, Section 15378(a)).

The Courts have provided the additional test that agencies must analyze the “reasonably foreseeable consequences” of a project (*Laurel Heights Improvement Ass’n v. Univ. of California* (47 C3d. 376, 396 [1988])). Typically piecemealing questions involve projects that have some degree of separation, but factually may be intertwined. Here the mitigation needed to support maintenance of the SWP is part and parcel of the operations of the SWP because a complex conveyance system cannot be operated without maintaining it. The HCP or equivalent mitigation thus meets the “reasonably foreseeable” test of *Laurel Heights* as a component of operations.

In addition, the mitigation the HCP will provide is necessary to meet the legal requirements of CESA permits needed for operations. CESA requires that all the impacts of take are “fully mitigated” (Cal. Fish & Game Code Section 2081(b)(2)). This requirement is separate from the duty to mitigate environmental impacts under CEQA. Because operations depend on maintenance and mitigation needed to meet the fully mitigated standard for CESA, conveyance and the HCP are components of a single project.

The error created by separation of these two documents exceeds a mere technicality. The scope of covered species for the HCP includes all the aquatic species analyzed in the operational EIR and a host of terrestrial species (DWR 2024a: Table 1). The operations DEIR specifically screens out terrestrial biological species from review (DWR 2024:3-1). By failing to analyze the environmental consequences of operations in combination with a vast HCP that is required to support operations DWR may be missing effects that will

emerge when both elements of the project are analyzed together. In addition, DWR may be separating effects for terrestrial species from operations, by associating those effects only with the HCP and maintenance. The cumulative context also notably omits the HCP, while acknowledging other mitigation projects such as the *Suisun Marsh Habitat Management, Preservation, and Restoration Plan* (DWR 2024, Chapter 10).

As stated, the geographic scope of the HCP is vast (DWR 2024: Figure 1). The area within which conservation actions may occur encompasses the equivalent of several California counties. Because the HCP area is so vast, and there are species for which conservation actions may occur that are not analyzed in the operational EIR, the effects of both mitigation and conveyance should be analyzed in one document to meet the intent of CEQA and provide a meaningful and full consideration of impacts.

### **The Less Than Significant Conclusion for All Aquatic Species and White Sturgeon in Particular May Require Better Substantiation**

DWR concludes that impacts on all aquatic species affected by operations are less than significant (DWR 2024: Chapter 6). The California Fish & Game Commission recently designated white sturgeon (*Acipenser transmontanus*) as a candidate for listing (CDFW 2024). The petition for listing specifically identifies reduced Delta outflow as a contributing factor to the decline of the species (Baykeeper 2023:18-19). The DWR conclusion that impacts on white sturgeon are less than significant stands in contrast to the independent findings of the Fish & Game Commission (DWR 2024:6-212). Because reduced Delta outflow caused by conveyance is a major contributing factor to the decline of the species, we urge DWR to revisit the analysis of impacts and mitigation that may be required by the project.

Independent agency studies also show that key indicator species for Delta are in decline (SWRCB 2017: 3-96). These studies demonstrate that most Delta fish species respond positively specifically to increased Delta outflow with population rebounds occurring during wet years (SWRCB 2017, Figure 3.13-2, 3-99). The focus on avoiding entrainment neglects the significance of Delta outflow as a key component of a successful strategy to avoid take and to reverse the decline of Delta aquatic species (SWRCB 2017, Rosenfield pers. comm. 2024).

This mitigation approach is also consistent with the state policy of reducing reliance on Delta water supplies for export. The California Water Code Section specifically states, “*The policy of the State of California is to reduce reliance on the Delta in meeting California’s future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency*” (California Water Code Section 85021).

## **The Operations DEIR May Omit Actions Needed to Support CESA Authorization**

The “take” prohibitions of CESA apply to Candidate Species (Cal. Fish & Game Code Section 2085). Because white sturgeon is thus subject to take authorization and the fully mitigated standard of CESA, actions needed to meet the fully mitigated standard for take authorization, are independent of the CEQA duty to mitigate significant impacts. Put another way, even if the impact conclusion of less than significant is valid, mitigation needed to meet the fully mitigated standard is required, because CESA is a separate law from CEQA (Cal. Fish & Game Code Section 2081(b)(2)). Mitigation required by a project must be analyzed under CEQA (14 Cal. Code of Regulations Section 15126.4(a)(1)(D)). DWR provides three alternatives to the project, none of which consider increasing Delta outflow, which would directly ameliorate the conditions leading to the decline of white sturgeon (DWR 2024: Chapter 10).

## **The Separation of the HCP and the Operational Impact Analysis May be Inconsistent with *Banning Ranch Conservancy v. City of Newport Beach***

In *Banning Ranch Conservancy v. City of Newport Beach* (2 Cal.5th 918 [2017]) the City of Newport Beach failed to integrate consideration of mitigation and alternatives to avoid resources regulated by the Coastal Commission with environmental analysis of a development project in the Coastal Zone). The city thus failed to satisfy the general requirement that local agencies integrate CEQA review with other planning and permitting requirements (Cal. Public Resources Code Section 21003(a)). The court observed that “*Information highly relevant to the Coastal Commission’s permitting function was suppressed. The public was deprived of a full understanding of the environmental issues raised by the Banning Ranch project proposal*” (*Banning Ranch*, 942). California Public Resources Code Section 21003(a) applies to “local agencies” rather than state agencies; however, the *Banning Ranch* decision provides an example of how failure to integrate environmental review with permitting may materially impair the informational purpose of CEQA generally. CEQA also requires that agencies conduct environmental review efficiently, to further the goals of mitigating environmental impacts (Cal. Public Resources Code Section 21003(f)).

By failing to integrate analysis of operations and the mitigation needed to support permitting of those operations (i.e. the HCP and any omitted actions needed to fully mitigate take) DWR may be missing environmental effects that will only be identified when both the conveyance and mitigation components of the project are considered together. These considerations are not speculative or technical. The scope of both the HCP and conveyance operations is vast. The failure to consider all components of the same action together thus avoids a robust analysis of a geographically large project of great significance to the Delta and the State of California.

## **We Urge Department of Water Resources to Commit to Meeting the Requirements of California Constitution Article XIII D Section 4**

The Delta is a fragile and complex mosaic of agricultural and natural uplands and waterways. The upland areas in the Delta frequently depend on levees and other complex flood control infrastructure for protection. These levees and other critical infrastructure are funded by county-level property taxes and special benefits assessed by reclamation districts and other special districts. Because agencies of the state and the United States exist at a level of authority that supersedes the Delta counties, there is always a risk with large public projects that special benefits assessments will not be paid. This issue is of such a magnitude that the California Constitution was amended to require that *“Parcels within a district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit”* (California Constitution Article XIII D, Section 4). We urge DWR to make a commitment to meeting this standard in the environmental documentation for long-term operations and mitigation such as the HCP in particular.

## **Please Consider the Impact of Habitat Conservation Plan Conservation Actions on Delta Agriculture and Ecosystems**

The Delta Protection Act (Cal. Public Resources Code Section 29700 et seq.) codifies the policies of the State of California to protect the sustainability of Delta agriculture and ecosystems. While DWR is not a “local government” within the meaning of the Delta Protection Act (i.e. subject to the land use authority of the Delta Protection Commission) the Delta Protection Act is a statement of policy regarding the goals of the State of California for the Delta. We thus encourage DWR to consider the impact of conservation actions on Delta agriculture and ecosystems relative to the current baseline.

## **We Encourage Department of Water Resources to Clarify the Project Description for the Habitat Conservation Plan**

In the NOP DWR states that *“A new type of activity not specifically identified in the HCP might be covered under the HCP ITPs if DWR determines adequate take coverage remains available and if the activity has not already been considered but rejected for coverage”* (DWR 2024a:8). The wording of this language suggests that currently undefined covered actions may subscribe to the HCP in the future only if take coverage remains. While this language is apparently innocuous, the geographic scale of the HCP suggests that the exact location and magnitude of all conservation actions is already potentially unclear for a



project level of analysis. Because the geographic scope of the HCP is so large, future covered actions that are not currently defined may, if approved, drive the implementation of a significantly different scale or scope of conservation actions than are contemplated in the NOP or will be analyzed in the EIR for the HCP. The open-ended project scope and undefined covered actions create an unstable project description for purposes of CEQA that deprives the public of the opportunity to review the full effect of the project. Please see *Save our Capitol v. Department of General Services* which illustrates the duty of lead agencies to fully disclose a stable project description (*Save our Capitol v. Department of General Services*, 87 Cal. App. 5th 655, 2023).

We look forward to following the development of these two important documents that encompass analysis relevant to the Delta and its unique resources. If you have any questions feel free to contact me directly at [Bruce.Blodgett@delta.ca.gov](mailto:Bruce.Blodgett@delta.ca.gov) or at (530) 650-6811.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bruce Blodgett", with a long horizontal flourish extending to the right.

Bruce Blodgett, Executive Director  
Delta Protection Commission

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## DELTA PROTECTION COMMISSION

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August 13, 2024

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

Dear Mr. Grossman:

We are providing combined comments on the notice of preparation (NOP) for the Tide's End Multibenefit Restoration Project Supplemental Environmental Impact Report. This project would convert approximately 2,212 acres of agricultural land in the Delta Primary Zone.

The Delta Protection Commission (Commission) is a state agency charged with ensuring orderly and balanced conservation and development of Delta land resources and improved flood protection in the Primary Zone. The Commission performs planning work to further the State's basic goals for the Delta consistent with the Delta Protection Act (California Public Resources Code Section 29700 et seq.). The Commission is thus commenting as a state agency concerned with the best environmental outcomes for the Delta, consistent with state policy as defined in the Delta Protection Act.

### **The Notice of Preparation Mischaracterizes the Relationship to the SRGO EIR; a Subsequent Environmental Impact Report Is Required**

The notice of preparation (NOP) indicates that the project is tiered from the State Water Resources Control Board (SWRCB) programmatic environmental impact report (PEIR) for the *Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge*

*Requirements for Restoration Projects Statewide* also referred to as the “Statewide Restoration General Order” (SRGO). The NOP further states that a supplemental environmental impact report (SEIR) is appropriate because “only minor changes or additions would be necessary to make a previous EIR adequately apply to the project. . .” (14 Cal. Code of Regulations Section 15163). Because the SWRCB PEIR does not consider the Delta as a place of special designation, and impacts associated with conversion of agriculture in the Delta specifically, the scope of impacts exceeds minor changes or additions to the SWRCB PEIR. For this reason, a subsequent EIR is more appropriate. A subsequent EIR is used when “Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects” (14 Cal. Code of Regulations Section 15162(a)(1)). The next heading explains the facts supporting this assertion.

### **The Impacts Associated with Conversion of Agricultural Land Are Substantially More Severe and Different Than Those Analyzed in the SWRCB PEIR**

The project area contains unique farmland and other farmland as mapped by the California Department of Conservation (DOC 2022). The project area also occurs in the Primary Zone of the Sacramento-San Joaquin Delta. The State of California has adopted a policy of protecting the agricultural landscape of the Delta through specific policies in the Delta Protection Act (Cal. Public Resources Code Section 29702). To further these goals the Commission has adopted a Land Use and Resource Management Plan (LURMP) that is also incorporated into the California Code of Regulations. These regulations include the policy of supporting the viability of agriculture and discouraging inappropriate development (14 Cal. Code of Regulations Section 20070(b)). In addition, the State of California has adopted a policy of protecting the economic sustainability of the Delta via economic sustainability planning (Cal. Public Resources Code Section 29759). Agricultural land uses and activities are the cornerstone of the Delta economy. A dollar of agricultural crop revenue generates three to five times greater regional income than other leading revenue sources such as recreation or tourism (Delta Protection Commission 2012:274).

Because the project area contains agricultural land that is subject to the protective policies of the Delta Protection Act and the regulations adopted by the Commission, the conversion of this land will create significant and unavoidable impacts different than those identified in the SWRCB PEIR. The SWRCB PEIR does conclude that conversion of agricultural land is significant and unavoidable (SWRCB 2022:3.3-9), but it does not consider the Delta Protection Act or the Commission’s regulations. In addition, the SWRCB concludes that indirect conversion of farmland created by restoration work tiered from the

PEIR will not result in significant indirect impacts associated with conversion of agricultural land (see Impact 3.3-3, SWRCB 2022:3.3-16). Because the Delta economy consists of an integrated array of agricultural producers, transporters, and packing and processing facilities, the decline in agricultural land use diminishes the sustainability of associated necessary services such as trucking, packing and shipping. The decline in the viability of these ancillary industries then has a feedback loop on the sustainability of agriculture itself. In summary, the impact on Delta agriculture specifically, and the indirect effects on agricultural sustainability are not contemplated in the SWRCB PEIR.

### **Recommendations for Analysis and Mitigation**

We recommend that the EIR for the project:

- Specifically analyze the impact on Delta agriculture relative to the State policy of protecting these land uses,
- Analyze and mitigate indirect impacts on agricultural sustainability,
- Incorporate and adopt the mitigation in the SWRCB PEIR, which includes conservation of equivalent land at least a 5:1 ratio (5 acres preserved for each acre the project converts),
- Consider in the cumulative impact section the full suite of cumulative projects including but not limited to the Zacharias Ranch Mitigation Bank proposed in Sacramento County, and the Habitat Conservation Plan for which DWR recently issued a NOP for mitigation of the long-term operations of the State Water Project, and,
- Commit to complying with the legal duty to pay relevant special benefit assessments for maintenance of levees and other services that apply within the project boundaries, consistent with California Constitution Article XIII D, Section 4.

If you have any questions, please contact our Senior Environmental Planner, Mike Aviña at Mike.Avina@delta.ca.gov, or at (530) 750-6727.

Sincerely,



Bruce Blodgett, Executive Director  
Delta Protection Commission

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**From:** Avina, Mike@DPC

**Sent:** Wednesday, August 21, 2024 10:38 AM

**To:** [CJLum@solanocounty.com](mailto:CJLum@solanocounty.com) <[CJLum@solanocounty.com](mailto:CJLum@solanocounty.com)>

**Cc:** Blodgett, Bruce@DPC <[Bruce.Blodgett@delta.ca.gov](mailto:Bruce.Blodgett@delta.ca.gov)>

**Subject:** Comments on Cache Slough

Dear Mr. Lum:

Per your request please find high level comments attached (using your comment form) on the Cache Slough project. I am also submitting a letter we previously provided to the CVFPB.

Mike Aviña

*Senior Environmental Planner*

**Delta Protection Commission – a California state agency**

Mobile: (530) 750-6727

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 Cities of Contra Costa and  
 Solano Counties

**Paul Steele**  
 Cities of Sacramento and Yolo  
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**Alan Nakanishi**  
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**Jim Paroli**  
 Central Delta Reclamation  
 Districts

**Tom Slater**  
 North Delta Reclamation  
 Districts

**Nick Mussi**  
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 Districts

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**Karen Ross**  
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**Wade Crowfoot**  
 CA Natural Resources Agency

**Brian Bugsch**  
 CA State Lands Commission

Ex Officio Members

**Honorable Susan Eggman**  
 California State Senate

**Honorable Carlos Villapudua**  
 California State Assembly



December 23, 2022

Cynthia D. Ovdenk  
 Senior Project Manager  
 CA Delta Section  
 US Army Corps of Engineers, Sacramento District

Re: Public Notice SPK-2022-00357, Public Notice of Proposed Cache Slough  
 Mitigation Bank

Dear Ms. Ovdenk:

Thank you for providing the Delta Protection Commission (Commission) the opportunity to provide comments on Public Notice SPK-2022-00357, Public Notice of Permit Application for the proposed Cache Slough Mitigation Bank (Project). The Project is a request by Westervelt Ecological Services (project proponent) to establish an approximately 350-acre mitigation bank immediately north of the City of Rio Vista in Solano County.

The Commission is a state agency charged with ensuring orderly, balanced conservation and development of Delta land resources and improved flood protection. The Commission reviews projects within the broad framework of the Delta Protection Act of 1992 and Delta Reform Act of 2009, which declare that the State's basic goals for the Delta are to provide a more reliable water supply for California and protect, restore and enhance the Delta ecosystem "in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place" (Public Resources Code section 29702(a) and Water Code section 85054).

Proposed local government-approved projects within the primary zone of the Legal Delta must be consistent with the Commission's Land Use and Resource Management Plan (LURMP) (California Public Resources Code Sections 29700-29780). Proposed US Army Corps of Engineers (Corps) actions are not subject to consistency with the LURMP. However, since Solano County will take the LURMP policies we cite below, in addition to the County's applicable General Plan policies, into their future reviews, the Commission has reviewed the Project for potential impacts on the resources of the primary and secondary zones. We suggest that the Corps and project proponent to take them into consideration as well.



While the Commission supports efforts to protect, restore, and enhance the Delta ecosystem, we are concerned about the potential Project impacts on agriculture, land use, and water quality. The Commission urges the project proponent to review the Project for compliance with LURMP policies, particularly those related to acquisition of agricultural conservation easements, protection of natural resources, and compatibility between agricultural and natural habitat uses.

The Commission encourage the Corps to consider potential Project impacts to surrounding properties, including impacts to surrounding agriculture operations and seepage. The Project should include appropriate buffers and setback to adjacent agriculture parcels and implement “good neighbor” policies and practices, as directed in the following LURMP policies:

Land Use Policy 3. New non-agriculturally oriented residential, recreational, commercial, habitat, restoration, or industrial development shall ensure that appropriate buffer areas are provided by those proposing new development to prevent conflicts between any proposed use and existing adjacent agricultural parcels. Buffers shall adequately protect integrity of land for existing and future agricultural uses and shall not include uses that conflict with agricultural operations on adjacent agricultural lands. Appropriate buffer setbacks shall be determined in consultation with local Agricultural Commissioners, and shall be based on applicable general plan policies and criteria included in Right-to-Farm Ordinances adopted by local jurisdictions.

Natural Resources Policy 6. Support the implementation of appropriate buffers, management plans and/or good neighbor policies (e.g. safe harbor agreements) that among other things, limit liability for incidental take associated with adjacent agricultural and recreational activities within lands converted to wildlife habitat to ensure the ongoing agricultural and recreational operations adjacent to the converted lands are not negatively affected.

The Commission encourages the project proponent to review the attached “Good Neighbor Checklist” from Appendix Q2 of the Delta Plan. The Checklist identifies considerations for habitat restoration project planning that can support agricultural communities, reinforce the benefits of conservation partnerships, reduce conflict and project delays, and help achieve sustainable conservation. The Project proponents should include the Checklist to reduce project impacts on neighboring landowners and local agencies.

The project proponent should also ensure that creation of new riparian habitat would not create seepage onto adjacent parcels. LURMP Land Use Policy 14 states that:

The conversion of an agricultural parcel, parcels, and/or an agricultural island for water impoundment, including reservoirs, water conveyance or wetland development may not result in the seepage of water onto or under the adjacent parcel, parcels, and/or island. These conversions shall mitigate the risks and adverse effects associated with seepage, levee stability, subsidence, and levee erosion, and shall be consistent with the goals of this Plan.

Thank you for the opportunity to provide input. Please contact Kirsten Pringle, Senior Environmental Planner, at (530) 650-6327 for any questions regarding the comments provided.

Sincerely,

*Bruce Blodgett*

Bruce Blodgett  
Executive Director

cc: John Vasquez, Solano County Supervisor

Attachments: *Good Neighbor Checklist from Delta Plan Appendix Q2. Key Considerations and Best Available Science for Protecting, Restoring, and Enhancing the Delta Ecosystem (June 2022)*

## Planning Application Review and Response

Resource Management Division:			
Application No.	U-23-03	Date Routed: 8/7/24	Completed by:
Date Comments Due to Planning:	08/20/24	Planning Email: cjlum@solanocounty.com	

Please provide the following information to the Planning Services Division by email no later than August 20, 2024.

- I. What permits will be required from your Division to implement the project described in the attached application?**
  - Response: The Delta Protection Commission is not a permitting agency; we review local government land use decisions and can set aside land use decisions in the Delta Primary Zone under certain conditions.
- II. What additional information will your Division require from the applicant in order to analyze the project?**
  - Response: Please see our previously submitted letter to the CVFPB.
- III. What conditions of approval will be required from your Division for this project to proceed?**
  - Response: we do not approve projects in the first instance, but comment on projects, and have the power to appeal and set aside certain land use decisions.
- IV. Are there any additional comments or concerns your Division has regarding this project?**
  - Because the project occurs in the Delta Primary Zone, we encourage the County to mitigate for agricultural land loss at a suitably high ratio, consistent with the State of California’s goals of protecting Delta agriculture, as further elaborated in our Land Use and Resource Management Plan which has been adopted into the California Code of Regulations. Specific sources are provided below.
    - The Delta Protection Act (Public Resources Code Section 29703(c)) states *“Agricultural lands located within the primary zone should be protected from the intrusion of nonagricultural uses.”* This goal is also described in our Land Use and Resource Management Plan (LURMP) which has been adopted into the California Code of Regulations and states that one of the goals for the Delta Primary Zone is to “. . .support long-term viability of agriculture and to discourage inappropriate development of agricultural lands” (14 Cal. Code of Regulations Section 20070(b)).

**From:** Avina, Mike@DPC

**Sent:** Wednesday, August 21, 2024 1:57 PM

**To:** Grube, Mitsuko@Wildlife <[Mitsuko.Grube@wildlife.ca.gov](mailto:Mitsuko.Grube@wildlife.ca.gov)>; Dela Vega, Desiree@Wildlife <[Desiree.Delavega@Wildlife.ca.gov](mailto:Desiree.Delavega@Wildlife.ca.gov)>; Stuhldreher, Michael@Wildlife <[Michael.Stuhldreher@Wildlife.ca.gov](mailto:Michael.Stuhldreher@Wildlife.ca.gov)>; Chappell, Erin@Wildlife <[Erin.Chappell@Wildlife.ca.gov](mailto:Erin.Chappell@Wildlife.ca.gov)>

**Cc:** Blodgett, Bruce@DPC <[Bruce.Blodgett@delta.ca.gov](mailto:Bruce.Blodgett@delta.ca.gov)>

**Subject:** Zacharias Ranch Mitigation Bank SERP Status

To Whom It May Concern:

The Delta Protection Commission (Commission) is writing CDFW to express concern regarding the potential use of the Statutory Exemption for Restoration Projects (SERP) for the proposed mitigation bank at the Zacharias Ranch in Sacramento County (see attachment).

The proposed project would convert an approximately 600-acre site into a mitigation bank with floodplain and tidal marsh in the Delta Primary Zone. We support the enhancement of natural resource values but this project conflicts with the goal of agricultural land preservation and economic sustainability for the Delta, as expressed in the Delta Protection Act.

Public Resources Code Section 29703(c) states “*Agricultural lands located within the primary zone should be protected from the intrusion of nonagricultural uses.*” This goal is also described in our Land Use and Resource Management Plan (LURMP) which has been adopted into the California Code of Regulations and states that one of the goals for the Delta Primary Zone is to “. . .*support long-term viability of agriculture and to discourage inappropriate development of agricultural lands*” (14 Cal. Code of Regulations Section 20070(b)).

We feel that the project should be screened through standard CEQA review. The standard CEQA review process would ensure that any agricultural land conversion is mitigated as required for all potentially significant impacts under CEQA. We defer to CDFW, but we are concerned that the use of an exemption may be contrary to the requirements of Public Resources Code Section 21080.56 which requires that the project:

- Includes procedures and ongoing management for the protection of the environment (Section 21080.56(c)(2))

The use of an exemption may not adequately include procedures for mitigation of agricultural land loss required by (Section 21080.56(c)(2)). We encourage CDFW to either condition the exemption on an appropriate and high ratio of mitigation for agricultural land

loss or consider denying the exemption so that the standard CEQA screening process for impacts related to agricultural land loss (among other thresholds) applies.

Feel free to contact me with any questions.

Mike Aviña

*Senior Environmental Planner*

**Delta Protection Commission – a California state agency**

Mobile: (530) 750-6727

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## DELTA PROTECTION COMMISSION

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### Memorandum

**To: Bruce Blodgett, Executive Director**

**From: Mike Aviña, Senior Environmental Planner**

**Date: October 7, 2024**

**Subject: Rio Vista 2045 General Plan Update**

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#### Introduction

Rio Vista, a city in Solano County, is updating its general plan. The incorporated limits of Rio Vista include lands in the Delta Primary Zone. Because Rio Vista is incorporated in the Primary Zone, it is a “local government” under the Delta Protection Act. The Act states that “local governments” subject to the Act include, in addition to certain named cities and counties, “any other cities that may be incorporated in the future in the Primary Zone” (Public Resources Code Section 29725). Local governments are required to submit general plan amendments to the Delta Protection Commission (DPC) following DPC updates to the Land Use and Resource Management Plan (LURMP, Public Resources Code Section 29763). The DPC updated the LURMP in 2010 and Rio Vista has not submitted plan amendments for alignment with the LURMP. In recent practice, the DPC has provided informal comments and policy suggestions on general plan updates rather than going through the formal review process under Public Resources Code Section 29763.5 and Section 29763.8.

Rio Vista is currently conducting a general plan update and has prepared the draft *Rio Vista 2045 General Plan Update* (Rio Vista 2024). This memorandum describes the land and land use policies relevant to the portion of Rio Vista in the Primary Zone in order to document the consistency of the new General Plan with the LURMP. This memorandum first describes the land in the Primary Zone and then provides a high-level analysis relative to the elements of Public Resources Code Section 29763.5.

As this memorandum describes, the proposed land uses in the draft General Plan appear consistent with the Delta Protection Act. Because the city has agreed to adopt the policy

language provided below, this memorandum to file documents the consistency of the General Plan with the LURMP.

**Summary of Existing Land Uses**

The area of Rio Vista in the Primary Zone is small – it consists of land northeast of Airport Road, which runs northwest to southeast, bisecting the City. Existing land uses consist of an existing airport, a wastewater treatment facility, and industrial uses. Open space surrounds the wastewater treatment facility and is subject to grazing (Paul Junker, pers. comm., 2024). This open space also serves as a landscape for settling of treated water at times. Table 1 describes the land use designations in effect under the current (2001) General Plan in comparison with the draft 2045 General Plan land use designations.

**Policy Language Rio Vista Will Include**

Rio Vista agreed to adopt the following policies through consultation with the Delta Protection Commission, conducted by their consultant planner, Paul Junker, Contract Planner.

- **Goal LU-8:** To promote land uses in the Delta Primary Zone that further the goals of the Delta Protection Act and the planning documents adopted by the Delta Protection Commission, to the extent feasible.
- **Policy LU-8.** Continue to allow grazing in the Open Space/Natural Resources Land Use designation, in the Delta Primary Zone north of Airport Road, to the extent it is compatible with other land uses in the zone and adjacent land uses.

**Table 1. Land Uses in the Primary Zone**

<b>Draft 2045 General Plan</b>	<b>General Plan 2001</b>
<p>Public/Quasi-Public</p> <p>“The Public/Quasi Public designation encompasses existing facilities serving various community functions, including the airport; fire; wastewater treatment facilities and other core public facilities. Facilities constructed in on Public/Quasi Public lands would be developed consistent with the underlying zoning designation. Permitted uses in this designation vary significantly based on the underlying zoning designation” (Rio Vista 2024:2-16).</p>	<p>Airport/Transportation:</p> <p>“[These land uses consist of] the current Rio Vista Airport (Baumann Field) and vicinity owned by the City of Rio Vista. General aviation facilities; support services; and compatible office, industrial, and related businesses. Airport-related industrial, service, and retail businesses are encouraged, along with other employment-generating uses that are compatible with an airport environment” (Rio Vista 2001:4-36).</p>

<b>Draft 2045 General Plan</b>	<b>General Plan 2001</b>
<p>The Industrial/Employment-Limited</p> <p>“The industrial/employment-limited designation provides for small-scale industrial, parts assembly, distribution and storage uses, research and development, and distribution, storage, warehouse, and office uses. This designation differs from Industrial/Employment-General in that uses typically have more employees per acre and have less potential for negative impacts on adjoining properties” (Rio Vista 2024:2-16).</p>	<p>Industrial/Employment Limited (IE):</p> <p>“Uses are intended to generate employment—intensive industrial, service, research &amp; development, and manufacturing” (Rio Vista 2001:4-32).</p>
<p>Open Space/Natural Resources</p> <p>“The Open Space and Natural Resources designation is applied to areas where urban development is either inappropriate or undesirable. Specifically, it is intended to preserve and protect lands that are considered environmentally unsuitable for development, including natural resource areas or mineral deposits as well as lands known to be subject to regular flooding. While some limited activities and structures may be allowed, such uses would be subject to site specific environmental review and must be limited in scope to ensure preservation of natural resources and protection of public health and safety. For example, there may be an opportunity to allow public access to Open Space lands for limited activities, such as hiking and bicycling. Park facilities might be compatible within this designation, depending on the character and resources of an individual site” (Rio Vista 2-17).</p>	<p>Agriculture / Open Space with a Wastewater Treatment Plan Overlay (Rio Vista 2001:4-19)</p> <p>This land use is not further described except to state “The Delta Protection Commission was charged with preparation of a regional land use and resource management plan for the Primary Zone of the Delta, which was adopted in February 1995. Rio Vista’s general plan is required to conform to the Commission’s regional plan. The Commission’s plan acknowledges the planned construction of the Northwest Wastewater Treatment Plant in the Primary Zone near the airport—the final environmental document for the wastewater treatment plant was approved prior to the Commission’s adoption of the plan” (Rio Vista 2001-4-49).</p>

The draft 2045 General Plan acknowledges the role of the Delta Protection Commission in oversight of lands north of airport road, stating “*North of Airport Road lies a large expanse of*



*open land and some developed urban uses within the city limits. Lands north of Airport Road are within the boundaries of the Primary Delta as defined by the State of California Delta Plan and are subject to review by the Delta Protection Commission and the Delta Stewardship Council” (Rio Vista 2024:7-3).*

### **Analysis of Consistency with Public Resources Code Section 29763.5**

This section of this memorandum provides a high-level overview of the consistency of the land use designations in the new draft 2045 General Plan relative to the existing General Plan and land uses with Public Resources Code Section 29763.5.

***Public Resources Code Section 29763.5. (a) The general plan, and any development approved or proposed that is consistent with the general plan, are consistent with the resource management plan.***

The area in the Primary Zone consists of an airport, industrial and municipal (wastewater treatment), and open space land uses. The new general plan policies are generally equivalent to the existing land use designations. The airport and the industrial land uses do not contain, nor contribute to, the natural resource, scenic, or agricultural values protected by the LURMP. To the extent the open space and agricultural land around the wastewater treatment plant contributes to or contains values protected under the LURMP, these land uses would continue, and the status quo would be maintained. For these reasons, the new general plan land use designation of Open Space/Natural Resources would be consistent with the LURMP.

***Public Resources Code Section 29763.5. (b) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in wetland or riparian loss.***

Because no development or change in land use designation for the open space land would occur, any wetlands or riparian areas in this land would not be immediately altered or affected. In addition, any action affecting these resource types would be subject to permitting and mitigation at a ratio of at least 1:1 under Section 404 of the Clean Water Act (33 US Code Section 1344), the Porter-Cologne Water Quality Control Act (Water Code Section 13260 et seq.), and Section 1602 of the California Fish & Game Code.

***Public Resources Code Section 29763.5. (c) The general plan, and development approved or proposed that is consistent with the general plan, will not result in the degradation of water quality.***

No new development is proposed under the General Plan in the Primary Zone. Any new change in land use that would fill waters or disturb more than an acre of land would be

subject to permitting as describe above for fill of wetlands and be required to obtain coverage to protect stormwater under the statewide General Construction Permit that implements Section 402 of the Clean Water Act. For this reason, the draft General Plan is consistent with this requirement.

*Public Resources Code Section 29763.5. (d) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in increased nonpoint source pollution.*

For the same reasons the draft General Plan would not adversely affect water quality, non-point source pollution would not increase. Existing land uses would continue, and no new land uses are proposed that would increase non-point source runoff.

*Public Resources Code Section 29763.5. (e) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in the degradation or reduction of Pacific Flyway habitat.*

Because agricultural and open space land uses would be maintained, to the extent they contribute to the Pacific Flyway, that resource value would be maintained. For this reason, the draft General Plan is consistent with this requirement.

*Public Resources Code Section 29763.5. (f) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in reduced public access, provided the access does not infringe on private property rights.*

The industrial land uses in the Primary Zone are not appropriate for public access. There is open space around the wastewater treatment facility, but this open space is restricted because it functions to support the wastewater treatment plant. For these reasons, public access is not relevant to areas of Rio Vista in the Primary Zone.

*Public Resources Code Section 29763.5. (g) The general plan, and any development approved or proposed that is consistent with the general plan, will not expose the public to increased flood hazard.*

Because no residential development is proposed in the Primary Zone, no new land uses subject to potential flooding would be created. For this reason, the draft General Plan is consistent with this standard.

*Public Resources Code Section 29763.5. (h) The general plan, and any development approved or proposed that is consistent with the general plan, will not adversely impact agricultural lands or increase the potential for vandalism, trespass, or the creation of public or private nuisances on public or private land.*

Because the public does not currently have access to the open space in the Primary Zone, and the industrial land uses will continue unchanged relative to existing conditions, the new plan will not increase the risk of vandalism or trespass, and will not adversely affect agricultural land.

*Public Resources Code Section 29763.5. (i) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in the degradation or impairment of levee integrity.*

No changes in land use or development is proposed that would affect levee integrity.

*Public Resources Code Section 29763.5. (j) The general plan, and any development approved or proposed that is consistent with the general plan, will not adversely impact navigation.*

Because no navigable waters occur in the area subject to the draft General Plan, the draft General Plan would be consistent with this policy.

*Public Resources Code Section 29763.5. (k) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in any increased requirements or restrictions upon agricultural practices in the Primary Zone.*

Because Rio Vista has agreed to adopt policies allowing agricultural land uses to the extent feasible, in the open space areas of the Primary Zone, the general plan update is consistent with this requirement.

## **References Cited**

City of Rio Vista. Rio Vista 2045 General Plan Update (Draft). Rio Vista, California.

## DELTA PROTECTION COMMISSION

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November 13, 2024

Tyson Zimmerman, Assistant General Manager  
Ironhouse Sanitary District (ISD)  
450 Walnut Meadows Drive  
Oakley, CA 94561

Dear Mr. Zimmerman:

We are providing comments on the proposed *Initial Study/Mitigated Negative Declaration for the Giant Garter Snake Mitigation Bank* (Initial Study).

The Delta Protection Commission (Commission) is a state agency charged with ensuring orderly and balanced conservation and development of Delta land resources and improved flood protection in the Primary Zone. The Commission performs planning work to further the state's basic goals for the Delta consistent with the Delta Protection Act (California Public Resources Code Section 29700 et seq.). The Commission is thus commenting as a state agency concerned with the best environmental outcomes for the Delta, consistent with state policy as defined in the Delta Protection Act.

### **Our Review of the Initial Study and Comments**

We have reviewed the draft Initial Study posted by your agency. We commend Ironhouse Sanitary District (District) on preparing a robust document based on facts that are reasonably available to the District. Part of the process for initial studies under the California Environmental Quality Act (CEQA) is the public review period, of which you are aware. The purpose of the public review period is to allow the public, state and federal agencies, and other stakeholders, to provide comments. The comment process thus allows public agencies to consider information they did not have nor could be reasonably

expected to have in preparing the draft study. With this in mind, we are submitting comments to add to the record in front of the District and support your environmental analysis.

### **Thresholds for Considering Impacts on Agriculture**

At page 14, the Initial Study makes the statement that “*Conversion of Farmland of Local Importance is not a significant impact for purposes of CEQA*” (Ironhouse Sanitary District 2024:14). We would like to take this opportunity to clarify the nature of CEQA significance thresholds and the Appendix G checklist for purposes of CEQA review. The leading desk book on CEQA practice states “*the questions in the checklist do not necessarily cover all potential impacts that may result from a particular project*” (Kostka and Zischke 2023:13.15). CEQA common law echoes this rule (*Joshua Tree Downtown Bus. Alliance v. County of San Bernardino*, [2016] Cal.5th 677,689). Courts have overturned CEQA conclusions based on a literal reading of the Appendix G checklist when other impacts beyond the checklist were not fully analyzed (*Protect the Historic Amador Waterways v. Amador Water Agency* [2004] 116 CA4th 1099, 1110-1112). Put another way, the District’s reliance on the Appendix G checklist is a reasonable starting point for analysis but is not, by itself, adequate to screen for all potential environmental impacts.

### **Agricultural Land Use in the Delta, and State Policy**

Agriculture is a significant driver of the Delta economy. Agriculture is economically important and conversion of agricultural land threatens this economy. Between 2014 and present, over 12,000 acres of farmland have been lost in the Delta (Delta Stewardship Council 2024). Our planning work documents that agriculture is the main economic driver of the Delta economy (Delta Protection Commission 2012:274). A dollar of agricultural crop revenue generates three to five times greater regional income than other leading revenue sources such as recreation or tourism (Delta Protection Commission 2012:274).

The policy of the State of California is to protect the agricultural economy of the Delta (Cal. Public Resources Code Section 29702(b)). Grazing is a significant part of that economy. Irrigated pasture alone covered 41,000 acres in 2013 (Delta Stewardship Council 2013:184). Dry pasture (i.e., grazing land that is not irrigated) contributes significantly to total grazing land in the Delta. The conversion of agricultural land of any type can lead to diminished viability of associated and necessary processing and transportation facilities required for the ultimate agricultural product. Put another way, conversion of farmland may undermine the viability of associated services, making the primary agricultural practice less viable.

## **Conversion of Farmland Generally, and Grazing Land in Particular, is Cumulatively Considerable in the Delta**

The Delta Protection Commission tracks land use patterns and agricultural land use conversion on an ongoing basis. In 2024, the list of proposed projects that would convert agricultural land in the Delta, includes, but is not limited to:

- The Zanker Greenwaste Processing Facility (Sacramento County)
  - This facility would convert 39 acres of grazing land in Sacramento County.
- The Tide's End Multibenefit Project
  - This project will convert 2,212 acres of agricultural land, including land suitable for grazing in Yolo County.
- The Department of Water Resources Habitat Conservation Plan to Support Maintenance Activities of the State Water Project
  - This project spans the entire Delta and will convert agricultural land of all types over a sustained period as specific conservation actions are identified and implemented.
- The Cache Slough Mitigation Bank
  - This project would convert 350 acres of grazing land to create wetlands and special status species habitat in Solano County.

Note that sale of cattle and calves (rangeland agricultural products) accounts for \$4.76 billion annually in California (California Department of Food and Agriculture: 2024). The California Department of Conservation reports a total loss of California grazing land of 1.6 million acres between 1984 and 2018 (Department of Conservation: 2024). Urbanization is a leading cause of grazing land loss identified by the Department of Conservation, with ecological restoration projects being another significant cause (Department of Conservation: 2024). While grazing land and grazing are significant drivers of the California agricultural economy, it is relatively rare in the Delta (Delta Stewardship Council 2013: Chapter 5, Figure 5-3), which also weighs in favor of preserving grazing when it can be harmonized with other land uses.

Based on these facts, the ongoing conversion of farmland of all types is a cumulatively considerable problem. The decline in farming also has a synergistic effect. Agricultural land conversion (a physical impact) fuels the loss of individual farm revenue (an economic impact) that in turn fuels ongoing farmland conversion (a physical effect on the environment) as agricultural viability is diminished because the web of services and processing that support agriculture is undermined. Economic effects are relevant under

CEQA to the extent they cause physical environmental changes (14 Cal. Code of Regulations Section 15131(b)).

In addition, the CEQA Guidelines require that public agencies make a mandatory finding of significance when:

*The project has possible environmental effects that are individually limited but cumulatively considerable. “Cumulatively considerable” means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects (14 Cal. Code of Regulations Section 15065(a)(3)).*

The total size of the proposed mitigation bank is 189 acres and the existing land use on site includes grazing (Ironhouse Sanitary District 2024:1). Here because the bank has the potential to alter the land use and end an agricultural practice, it has the potential to effectively convert land from agricultural use. While the Initial Study states no permanent conversion would occur (Ironhouse Sanitary District 2024:18), the facts are slightly more complex. The bank proposes to create aquatic habitat for giant garter snake accompanied by upland basking habitat by grading to create a sinuous landscape of waterways and berms. This land will then be sold on credit basis for mitigation purposes to mitigation consumers. If grazing is not a project commitment through either environmental commitments or adopted and enforceable mitigation, the bank creation may effectively lock in a new land use where grazing is disallowed or discouraged and create a significant cumulative impact.

Communications with the District indicate that grazing would be compatible with the mitigation bank functions of the site. We encourage and welcome a land use approach where the District affirmatively commits to continued grazing in a manner that is consistent with the mitigation bank function. Absent such a commitment, the conversion of 189 acres would constitute an incremental effect that contributes to the cumulatively considerable loss of agricultural land triggering CEQA Guidelines Section 15065(a)(3)). Our review of the framework for CEQA analysis provided above demonstrates that the fact that farmland of local importance is not in the Appendix G checklist is not, by itself, persuasive that the project’s potential for conversion of farmland is insignificant. Here because the change in land use has the potential to diminish agricultural land use, it will make a

significant contribution to a cumulatively considerable loss of agricultural land unless mitigated<sup>1</sup>.

The most succinct and direct means of addressing this issue isto make minor revisions to the impact analysis in the agricultural and cumulative sections and adopt a mitigation measure committing to continuing grazing to avoid a cumulative impact.

### **Closing Comments**

We appreciate the opportunity to comment on your document and to provide facts regarding Delta-wide trends. To reiterate, we appreciate the District’s analysis in the draft document, and simply intend to provide facts to support your administrative record in making a robust and well supported mitigated negative declaration, with an appropriate suite of mitigation.

If you have any questions, feel free to contact Mike Aviña at [Mike.Avina@delta.ca.gov](mailto:Mike.Avina@delta.ca.gov) or at (530) 750-6727.

Sincerely,



Bruce Blodgett, Executive Director  
Delta Protection Commission

<sup>1</sup> Note that CEQA imposes an affirmative duty to mitigate environmental effects where feasible (Cal. Public Resources Code Section 21002). Where mitigation is necessary to avoid significant effects, and that mitigation is not adopted, an Environmental Impact Report is required (*No Oil, Inc. v. City of Los Angeles* (1974) 13 C3d 68, 75).



## **References Cited**

California Department of Conservation. Fast Facts. 2024. Available:  
<https://www.conservation.ca.gov/dlrp/fmmp/Pages/Fast-Facts.aspx>

California Department of Food and Agriculture. California Agricultural Production Statistics. 2024. Available:  
[https://www.cdfa.ca.gov/Statistics/#:~:text=California's%20Top%2010%20Agricultural%20Commodities,the%202023%20crop%20year%20are:&text=Dairy%20Products%2C%20Milk%20%E2%80%94%20\\$8.13%20billion,Almonds%20%E2%80%94%20\\$3.88%20billion](https://www.cdfa.ca.gov/Statistics/#:~:text=California's%20Top%2010%20Agricultural%20Commodities,the%202023%20crop%20year%20are:&text=Dairy%20Products%2C%20Milk%20%E2%80%94%20$8.13%20billion,Almonds%20%E2%80%94%20$3.88%20billion)

Delta Protection Commission. *Economic Sustainability Plan for the Sacramento-San Joaquin Delta*. 2012. West Sacramento, California.

Delta Stewardship Council. *The Delta Plan*. 2013. Sacramento, California

Ironhouse Sanitary District. *Initial Study/Mitigated Negative Declaration for the Giant Garter Snake Mitigation Bank*. 2024. Oakley, California.

Kostka, Stephen L, and Michael H. Zischke. *Practice Under the California Environmental Quality Act*. 2023. Oakland, California

## **Delta Protection Commission Meeting**

Dec. 12, 2024

### **AGENDA ITEM 10: Approval of National Heritage Area Advisory Committee Ex Officio Members**

**Prepared by:** Blake Roberts

**Presented by:** Blake Roberts

### **Recommended Action: Appointment of National Heritage Area Advisory Committee Ex Officio Members**

**Type of Action:** Vote

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#### **Background**

The Delta Reform Act of 2009 and Delta Plan Recommendation DP R1 called on the Delta Protection Commission (Commission) to pursue federal designation of the Delta as a National Heritage Area (Water Code Section 85301(b)(1)). Legislation establishing the Sacramento-San Joaquin Delta National Heritage Area (NHA) and designating the Commission as the local coordinating entity was signed into law on March 12, 2019.

The Commission's first primary task was to prepare and receive approval from the Secretary of Interior for a management plan to guide the NHA's activities for the next ten years. After the Commission approved the management plan on March 7, 2024, Commission staff formally submitted the plan to the Secretary of Interior on March 12.

The Commission approved a draft charter for the new National Heritage Area Advisory Committee (NHA Advisory Committee) on July 18, 2024. The NHA Advisory Committee succeeds the NHA Management Plan Advisory Committee, whose work is complete now that the Management Plan has been submitted to Secretary of the Interior. The 15-member NHA Advisory Committee will ensure partner and public engagement in achieving the goals set out in the management plan. The Commission appointed 12 public members, 4 alternate members, and 2 ex officio members at their September 19 meeting. The newly formed NHA Advisory Committee met on Thursday, October 31 in Oakley.

In addition to the 2 current ex officio members, representatives from five additional public agencies have requested to serve as ex officio members on the NHA Advisory Committee. These agencies and their representatives are listed below:

- Delta Stewardship Council – Julie Lee, Chair, or Jeff Henderson, Deputy Executive Officer for Planning and Performance
- East Bay Regional Park District – Mike Moran, Regional Interpretive and Recreation Services Manager
- National Park Service (John Muir National Historic Site and Port Chicago Naval Magazine National Memorial) – Trevor Rice, Outdoor Recreation Planner
- Sacramento-San Joaquin Delta Conservancy – Karen Buhr, Deputy Executive Director
- Suisun Resource Conservation District – John Takekawa, Operations Manager

These representatives may have alternates from the agency serve in their place.

**Recommended Action**

Appoint ex officio members to the National Heritage Area Advisory Committee.

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

*Delta Heritage (Strategic Theme)*

- H.2 Protect and promote the tribal, cultural, and historical resources of the Delta.*
- 2.1 Implement the Sacramento-San Joaquin Delta National Heritage Area.*

## **Delta Protection Commission Meeting**

December 12, 2024

### **AGENDA ITEM 11: Consider Approval of the Final NHA Management Plan Advisory Committee Meeting Minutes and Committee Closeout**

**Prepared by:** Blake Roberts

**Presented by:** Blake Roberts

**Recommended Action: Approve the Final NHA Management Plan Advisory Committee Meeting Minutes and Dissolve the Committee**

**Type of Action:** Vote

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#### **Background**

The Delta Reform Act of 2009 and Delta Plan Recommendation DP R1 called on the Delta Protection Commission (Commission) to pursue federal designation of the Delta as a National Heritage Area (Water Code Section 85301(b)(1)). Legislation establishing the Sacramento-San Joaquin Delta National Heritage Area (NHA) and designating the Commission as the local coordinating entity was signed into law on March 12, 2019.

The Commission's first primary task was to prepare and receive approval from the Secretary of Interior for a management plan to guide the NHA's activities for the next ten years. The Commission established the NHA Management Plan Advisory Committee in September 2020 to ensure public engagement in the management plan process. The NHA Management Plan Advisory Committee met 22 times, starting on January 5, 2021, and ending on June 18, 2024.

After submitting the plan to the Secretary of the Interior on March 12, Commission staff determined that a new charter was needed to shift the committee's focus from plan preparation to plan implementation. The Commission approved a charter for the new National Heritage Area Advisory Committee (NHA Advisory Committee) on July 18, 2024. The new committee first met on October 31 and will meet again on December 6.

#### **Recommended Action**

Approve the minutes for the final NHA Management Plan Advisory Committee meeting on June 18, 2024, and dissolve the NHA Management Plan Advisory Committee.

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

*Delta Heritage (Strategic Theme)*

- H.2 Protect and promote the tribal, cultural, and historical resources of the Delta.*
- 2.1 Implement the Sacramento-San Joaquin Delta National Heritage Area.*

Meeting Minutes (DRAFT)  
**National Heritage Area Management Plan Advisory Committee  
(NHA Advisory Committee)**

Tuesday, June 18, 2024, 1:30 – 3:30pm  
Rio Vista Senior Center, 25 Main Street, Rio Vista, CA 94571

**1. Call to Order - Bruce Blodgett, NHA Advisory Committee Chair**

Bruce Blodgett, NHA Management Plan Advisory Committee Chair, called the meeting to order at 1:40 p.m.

A quorum was present with voting members Blodgett, Vice Chair Elizabeth Patterson, Jan Vick, Lenora Clark, Dave Stuart, Janet Lake, Matt Holmes, Paulette Hennem, and Jean Yokotobi. Ex-officio members present were Maya Garrett, Trevor Rice, and Mike Moran.

DPC staff present were Blake Roberts, Holly Heyser, and Debra Waltman.

**2. Public Comment**

There were no comments from members of the public.

**3. Approval of January 11, 2024, meeting minutes**

DPC staff member Blake Roberts made one correction to the January 11, 2024, minutes: The Clarksburg Schoolhouse held an Open House on July 4, 2024, not a grand opening.

Committee member Vick motioned to approve the meeting minutes with the stated correction. Committee member Hennem seconded. The motion passed unanimously with one abstention.

**4. NHA Advisory Committee Updates**

There were no NHA Advisory Committee updates.

**5. Status of Management Plan - Blake Roberts, Delta Protection Commission**

Roberts reported that the Management Plan is with the National Park Service (NPS) and is working its way through the approval process, and he anticipates hearing from NPS by the September deadline. DPC staff are anticipating that NPS will request changes to

the Management Plan. DPC staff already know there is one potential issue with tribal engagement that will need to be addressed.

## **7. Restructuring of NHA Advisory Committee and Advisory Task Groups – Bruce Blodgett and Blake Roberts, Delta Protection Commission**

Roberts reported on changes to the charter that will be brought before the Delta Protection Commission for approval at the July Commission meeting. The current charter is set to sunset upon NPS approval of the Management Plan. Now that we are shifting from developing the plan to implementing the plan, DPC staff want to make sure the new Committee has set term limits for continuity of work.

Other proposed revisions to the charter are to the scope of work, setting member terms, adding alternate seats, and new advisory task groups as well as small housekeeping changes and removing the sunset provision.

The new NHA Committee scope reflects what the Committee is responsible for in the Management Plan. The new Committee will provide recommendations and feedback to the Commission. The advisory task groups and committee members will serve as a bridge between the community and the Commission. The Management Plan included reviewing and evaluating grant applications as a new responsibility for the Committee.

Roberts also briefly discussed the potential new advisory task groups that are outlined in the Management Plan and term limits for the Committee seats, which will be determined at a later meeting.

## **8. Delta Heritage Forum – Holly Heyser and Blake Roberts, Delta Protection Commission**

Heyser reported that the date for the Delta Heritage Forum is November 15. The theme is Creating Community through Heritage. It will be held at the Antioch Historical Museum. It is an all-day event and will consist of four 1-hour sessions with storytellers throughout the day. The day will end with lightning talks and a potential happy hour. Food and drink will be provided throughout the day.

## **9. Passport Program – Blake Roberts, Delta Protection Commission**

Roberts reported that many National Heritage Areas have passport programs, and the Sacramento-San Joaquin Delta NHA will follow the same programming. Roberts presented examples of other NHA passport programs and described the general process for all passport programs.

## **10. Member Announcements and Adjourn**

Pear Fair is the last weekend in July.

Vice Chair Patterson gave an update that the trial of the 1000 Friends Protecting Historic Benicia will have its court hearing soon.

Chair Blodgett updated the Committee on the Aurora cruise ship that is leaking oil into the Delta.

The meeting was adjourned at 3:38pm.



## **Delta Protection Commission Meeting**

December 12, 2024

### **AGENDA ITEM 12: Consider Comments to the Department of Water Resources on its Geotechnical Activities for the Delta Conveyance Project**

**Prepared by:** Mike Aviña, Senior Environmental Planner

**Presented by:** Bruce Blodgett, Executive Director

**Recommended Action:** Review Staff Comment Letter and Consider Providing Further Direction

#### **Background**

The Delta Reform Act and Delta Stewardship Council (Council) regulations require entities proposing “covered actions” within the meaning of the Delta Reform Act to file certifications of consistency with the Delta Plan (California Water Code Section 85225) with the Council.

The California Department of Water Resources (DWR) filed a consistency certification with the Council on October 8, 2024. Staff reviewed the administrative record, which consisted of approximately 200 unique files and several thousand pages of text. The Executive Director submitted a comment letter on the certification to meet the deadline; that letter was not submitted for review by the Commission’s counsel prior to its transmission and it inaccurately stated that the letter was submitted on the Commission’s behalf, in conflict with Public Resources Code section 29755.

Following consultation with the Commission’s counsel, an amended letter was prepared and sent to the Council to make it clear the letter had not been approved by the Commission prior to its transmission and reflected only the views of the Executive Director and staff. Both the original letter and the amended letter are attached to this staff report, and staff requests that the Commission review them. The Commission may direct that staff provide an amended or updated letter with content the Commission deems suitable. Major points of the letters are covered below, reflecting the view of the Executive Director and staff.

- The consistency certification is mistaken in arguing that the geotechnical work has no effect on the achievement of the co-equal goals of the Delta Reform Act because it will occur in natural landscape blocks and wildlife movement corridors that are protected under the co-equal goals of the Delta Reform Act (Water Code Section 85020).

The consistency certification also potentially conflicts with the regulatory policies of the Council that implement the Delta Plan because the geotechnical work will disrupt agricultural operations and place permanent geodetic survey monuments in agricultural land.

### **Current Status**

Commission review of the draft letters is requested

### **Recommended Action**

***Review the letters and, if desired, direct staff to send an amended or updated letter containing content the Commission deems suitable. Relationship to Vision 2030 (Commission strategic plan)***

#### *Water (Strategic Theme)*

*W.1 Promote Delta water solutions that reduce reliance on Delta fresh water supplies, provide through-Delta fresh water conveyance to protect Delta water quality and water rights, and protect and enhance the Delta's natural resources, recreation, agriculture, adjacent urban areas and economies.*

*1.3 Analyze proposals for addressing water supply reliability for compatibility with Delta values.*

## DELTA PROTECTION COMMISSION

*Diane Burgis, Chair (Contra Costa County Board of Supervisors)*  
2101 Stone Blvd., Suite 200, West Sacramento, CA 95691  
(916) 375-4800 | [delta.ca.gov](http://delta.ca.gov)

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November 5, 2024

Katherine Marquez, Program Manager  
California Department of Water Resources  
1516 9th Street, 2nd Floor  
Sacramento, CA 95814

Dear Ms. Marquez:

We are providing comments on the proposed *Delta Conveyance Project, Final Certification of Consistency For 2024-2046 Proposed Geotechnical Activities*.

The Delta Protection Commission (Commission) is a state agency charged with ensuring orderly and balanced conservation and development of Delta land resources and improved flood protection in the Primary Zone. The Commission performs planning work to further the state's basic goals for the Delta consistent with the Delta Protection Act (California Public Resources Code Section 29700 et seq.). The Commission is thus commenting as a state agency concerned with the best environmental outcomes for the Delta, consistent with state policy as defined in the Delta Protection Act.

### **The Geotechnical Investigations are Part of the Covered Action Rather than Their Own Covered Action: As Such Consistency Certification is Premature and Improper**

The Delta Reform Act defines a covered action as “. . . a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code. . .” (Water Code Section 85057.5(a)). Public Resources Code Section 21065 defines “project” for the purposes of the California Environmental Quality Act (CEQA). The regulations implementing CEQA further define project as follows: “[a] Project” means the whole of an action. . .” (14 Cal.

Code of Regulations Section 15378(a)). Because the covered action is defined by incorporating the definition of a CEQA project, legally, the covered action must conform to the rules for CEQA projects. The regulations implementing CEQA state that a covered action must include the whole of the action, rather than a part of the action. The purpose of this rule is to avoid the possibility of obscuring the full scope of a project's environmental effects, by considering only parts of the action.

The Courts have provided the additional test that agencies must analyze the “reasonably foreseeable consequences” of a project (*Laurel Heights Improvement Ass’n v. Univ. of California*, 47 C3d. 376, 396 [1988]). Projects that fail this requirement engage in illegal piecemealing of the project by failing to consider the whole of the action. Typically piecemealing questions involve projects that have some degree of separation, but factually may be intertwined. Here the geotechnical work is necessary to advance design of the Delta Conveyance Project and thus is a foreseeable environmental consequence of the project, and as such should be considered part of that project under *Laurel Heights*. The Department of Water Resource (Department)’s own documents in fact, describe the geotechnical investigations as part of the project for purposes of CEQA review (see Section 3.15 of the Final Environmental Impact Report (FEIR) for the project) (DWR 2023).

The Certification of Consistency unambiguously states “*To be clear, this is not a certification of consistency for the Delta Conveyance Project, as described below. This certification of consistency is limited to certain preliminary geotechnical work, described herein, related to the Delta Conveyance Project’s planning and design.*” (DWR 2024:1-1).

The Department thus has previously stated that geotechnical work is part of the project for purposes of CEQA (in the FEIR) and then later states that the covered action submitted for review is not part of the consistency certification for the Delta Conveyance Project (DCP) itself. These statements cannot be reconciled with the definition of covered action in the Water Code or the definition of a “project” for purposes of CEQA. Because the separation of the geotechnical work from the CEQA project would be improper piecemealing, it is also an improper division of the covered action for purposes of consistency review under Water Code Section 85022, which requires consistency of covered actions with the Delta Plan.

Our analysis of the proper scope of covered actions for purposes of the Delta Reform Act is reinforced by the court order previously issued regarding geotechnical work and the consistency certification. The court order reads: “*The motions for preliminary injunction are granted. The geotechnical work at issue here is **part of** the covered action, which requires certification of consistency with the Delta Plan before it is implemented. The Department is, therefore, enjoined from undertaking the geotechnical work described in*

*Chapter 3 of the FEIR prior to completion of the certification procedure that the Delta Reform Act requires”* (Superior Court of California 2024:11-12, emphasis added). The court order makes the statement that geotechnical investigations are **part of** rather than separate from the covered action that must be certified for consistency prior to implementation (Superior Court of California 2024:4). The Department’s attempt to split off a portion of the covered action and proceed with it separately from consistency certification for the whole action contradicts both its own representation of the project in the FEIR, the definitions in the Delta Reform Act and Public Resources Code, and the court order enjoining geotechnical investigations. As such it contravenes the legal requirements of the Delta Reform Act.

### **The Analysis of the Geotechnical Investigations as a Separate Covered Action Incorrectly Concludes the Geotechnical Work Does Not Trigger the Need for Consistency Certification**

The Department provides an analysis to determine whether the geotechnical work, by itself, would qualify as a covered action and thus trigger the need for a consistency certification. This analysis is factually incorrect. Even if the geotechnical work could proceed as a covered action separate from the DCP (which it cannot), it would qualify as a covered action under the Delta Reform Act.

On pages 4-2 of the consistency documentation, the Department concludes that because the geotechnical work does not have a significant impact on the achievement of the co-equal goals it is not a covered action pursuant to Water Code Section 85057.5(a)(4) (DWR 2024:4-2). The Department relies on its assertion that the geotechnical work will not have any effect on the strategies developed by the Delta Stewardship Council and therefore will not have a significant impact on achievement either of the co-equal goals (DWR 2024:4-3). This interpretation of the Delta Reform Act is misguided. The necessary test is provided in part, by Water Code sections 85057.5(a)(4) and 85054, which supersede the Delta Stewardship Council policies. The strategies to achieve the co-equal goals are subordinate to the co-equal goals, and merely provide guidance regarding how they may be achieved. Water Code Section 85054 defines the co-equal goals in part as “. . .*protecting, restoring, and enhancing the Delta ecosystem.*” This language thus provides the proper test for the coequal goals rather than the policies adopted to further their goals.

The Department’s administrative record demonstrates the geotechnical work will have a substantial effect on the protection of the Delta ecosystem (Water Code Section 85054). Figure 1 from the proposed consistency certification document is enclosed (Attachment

1). It shows the locations of geotechnical work. The map depicts a vast array of investigations that spans the entire eastern and southern Delta, with clusters around the towns of Locke, Hood, and Walnut Grove. The Department’s FEIR for the DCP provides a detailed appendix for terrestrial wildlife movement (Appendix 13E). Figure 13-E2 (also enclosed) depicts “Natural Landscape Blocks” and “Essential Connectivity Areas” (enclosed as Attachment 2) clustered in the same portion of the Delta where the Department proposes a vast program of geotechnical work, that will introduce traffic, noise, light, and vibration for extended periods of time (Attachment 1).

The draft consistency certification contains a section entitled “*Attachment 4 2024–2026 Proposed Geotechnical Activities—Evaluation of Consistency with the Delta Conveyance Project’s Final EIR.*” This section asserts “*Geotechnical activities will not involve construction, or placement of powerlines, will avoid take of listed species and habitat loss, will not involve surface disturbance that would disrupt terrestrial wildlife connectivity and movement*” (DWR 2024, Attachment 4: 19). This statement is completely unsupported by any facts or analysis. It is also contradicted by the scope of the program depicted in Figure 1 from the consistency certification (Attachment 1) and the mapbooks for wildlife movement from the DCP FEIR (Attachment 2). The Department effectively is asserting that a vast program of work requiring heavy equipment, noise, light, and vibration, that will occur over a period of only two years and will also occur in mapped connectivity corridors and natural habitat blocks will have no impact on wildlife movement, and thus will not affect the goal of protecting the Delta ecosystem. The Department’s own administrative record shows that the geotechnical work will have such an effect, and thus meets the test for a covered action in Water Code Section 85057.5(a)(4). Thus, even if the geotechnical work could properly be considered its own covered action (which it cannot), the Department’s attempt to define it out of the scope of covered actions is not supported by its own analysis.

### **The Department Incorrectly Concludes the Geotechnical Work Is Consistent with The Delta Plan**

The Department relies heavily on its assertion that the geotechnical work does not need to be certified for consistency, but then states, “*Nevertheless, for the sake of thoroughness and to err on the side of facilitating the DSC’s informed decision-making process, the analysis that follows additionally considers Step 3 of the Checklist to determine whether the 2024–2026 Proposed Geotechnical Activities are covered by one or more regulatory Delta Plan policies contained in Article 3 of the DSC’s regulations codified at California Code of Regulations, Title 23, Sections 5003–5015*” (DWR 2024:4-4). This section of the

consistency certification thus provides analysis of consistency of the action in relation to the regulatory policies implementing the plan. This section’s conclusions are not supported by fact.

The Delta Stewardship Council regulations for the purposes of consistency review provide the following standard:

*Water management facilities, ecosystem restoration, and flood management infrastructure must be sited 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. Plans for ecosystem restoration must consider sites on existing public lands, when feasible and consistent with a project's purpose, before privately owned sites are purchased. Measures to mitigate conflicts with adjacent uses may include, but are not limited to, buffers to prevent adverse effects on adjacent farmland (23 Cal. Code of Regulations Section 5011(a)).*

The proposed geotechnical work fails this test for at least two reasons. First, the geotechnical work will result in the placement of a vast array of geotactic survey monuments in the Delta. These consist of metal markers, typically attached to a subterranean pipe or pole, that are permanently placed in the landscape. The consistency document references these in several locations including *Section 3.6.2, Overview of 2024–2026 Proposed Geotechnical Activities* (DWR 2024:3-15).

A cursory review of typical survey monuments shows a standard monument might consist of a 30-inch stainless steel length of pipe with a 3.25-inch bronze cap (Berntsen 2024). DWR relies heavily on the concept that geotechnical work is a transitory activity and will not create permanent facilities. However, the volume and location of monuments proposed would span the entire eastern and southern Delta (see Figure 1 from the consistency document, Attachment 1). Because the Delta is an agricultural landscape subject to tilling and other mechanical methods of farming, the geodetic monuments will leave a permanent impediment to farming across the Delta. Because the purpose of the geotechnical work is to support water management facilities and will leave permanent facilities consisting of survey markers, it is thus a “water management facility” that conflicts with the prevailing land use in the Delta, which is agriculture. For these reasons it does not satisfy the Delta Stewardship Council regulatory test that “*Water management facilities, ecosystem restoration, and flood management infrastructure must be sited to avoid or reduce conflicts*” (23 Cal. Code of Regulations Section 5011(a)).

Furthermore, the text of Section 5011(a) does not explicitly exclude temporary impacts created by water management facilities on local land use. These impacts logically include the potential for the concentration of equipment and vehicle traffic for extended periods of time that would generate conflicts. DWR states that “*Proposed Geotechnical Activities will generate minimal traffic and will be conducted in coordination with property owners*” (DWR 2024:4-3). This statement however provides little other than a bare assertion without any substantive analysis of how the cumulative effect of simultaneous geotechnical investigations at multiple sites compressed into a few years can be synchronized with critical periods of agricultural operations and trucking throughout the Delta.

The Department relies heavily on the assertion that traffic impacts were previously described in and will be consistent with the FEIR. The Department fails to note however that the FEIR only describes the location of geotechnical work in a very general narrative fashion in Section 3.15 of the FEIR. The associated mapbooks for the “Bethany Reservoir Alignment” show that geotechnical investigations may occur anywhere there are project features or alignments (DWR 2023). This very general acknowledgement of when and where geotechnical work would occur stands in stark contrast to Figure 1 in the consistency analysis (DWR 2024, also enclosed as Attachment 1). Note that in addition to a newly, substantially greater specificity regarding location shown in the current consistency documentation, the Department also states, “*This work would commence as soon as possible and conclude by the end of 2026*” (DWR 2024:3-13). Figure 1 thus depicts a specific, concentrated, and large program of work that will occur in only two years. Taken at face value, DWR thus asserts that the traffic impact analysis and mitigation approach of the FEIR for traffic impacts now will adequately address the effects of a huge program of investigation that will occur in only two years that was never previously analyzed in detail corresponding to the specificity shown in Figure 1 (Attachment 1).

The 2024 consistency analysis provides no substantiation of how coordination with local property owners will be performed or how the Department will adequately address impacts on agricultural operations for a large and very geographically concentrated program occurring in a compressed time frame. Absent more analysis and substantiation, we conclude that the geotechnical work will conflict with local agricultural practices and trucking, and will conflict with existing land uses in a manner inconsistent with the regulatory policy of the Delta Plan codified in 23 Cal. Code of Regulations Section 5011(a)). The disparity in specificity and detail between the FEIR and the 2024 consistency documentation also warrants discussion in relation to CEQA.



## The CEQA Analysis of the 2024 Consistency Documentation is Incorrect

DWR concludes that no additional CEQA analysis is required for the proposed geotechnical work because the geotechnical work was previously analyzed in the environmental impact report for DCP itself (DWR 2024:3-1). In support of this conclusion, DWR included in the 2024 consistency documentation “*Attachment 4, 2024–2026 Proposed Geotechnical Activities—Evaluation of Consistency with the Delta Conveyance Project’s Final EIR*” (DWR 2024). This memorandum states that DWR has analyzed “*whether the geotechnical activities have the potential to result in any new or substantially more severe environmental impacts than shown in the Delta Conveyance Project’s Final EIR*” (DWR 2024, Attachment 4:4). This is only part of the full standard for analyzing the need for subsequent CEQA documentation.

The CEQA Guidelines provide the following test for the need for subsequent environmental analysis. A subsequent or supplemental EIR is required when:

- Changes to the project will cause either new significant impacts or a substantial increase in the severity of identified impacts (14 Cal. Code of Regulations Section 15162(a)(1), or,
- Changes to the circumstances for the project will cause either new significant impacts or a substantial increase in the severity of identified impacts (14 Cal. Code of Regulations Section 15162(a)(2), or,
- New information of substantial importance, which was not known and could not have been known at the time of the past EIR shows:
  - The project will have one or more significant effects not discussed in the previous EIR or negative declaration, or,
  - Significant effects previously examined will be substantially more severe than shown in the previous EIR, or,
  - Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or,
  - Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative (14 Cal. Code of Regulations Section 15162(a)(3).

DWR thus has greatly simplified the language of the proper test and thus avoided significant parts of its meaning. Note that the process of screening for new environmental effects needs to consider the full scope of impacts subject to CEQA analysis. The CEQA Guidelines require that public agencies make a mandatory finding of significance when:

*The project has possible environmental effects that are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects (14 Cal. Code of Regulations Section 15065(a)(3)).*

This means that even if the project's increment of effect is not significant at a project level, it may combine with other reasonably foreseeable projects or conditions to create a significant impact (14 Cal. Code of Regulations Section 15355).

The CEQA analysis in Attachment 4 to the consistency documentation provides no analysis of the cumulative effect of the proposed geotechnical investigations on any resource or threshold. The only instances of the word "cumulative" occur as explanatory footnotes to air quality standards.

DWR thus proposes a geotechnical program with newly identified specific locations that span the Delta, in a compressed time frame, and concludes that this work will not result in any new impacts on individual resources or substantial increases in the severity of significant impacts. This conclusion fails to consider the cumulative effect of a concentrated and large program of work occurring in a short period of time. This conclusion is largely supported by reliance on the scope of the previous EIR, which lacked the specificity of the 2024 documentation. Note that Section 3.15 in the FEIR for DCP provided only a high-level narrative overview of geotechnical work. The conclusion that no impacts to agricultural operations or trucking, or wildlife movement, among myriad other resources, is unsupported by analysis. The available information suggests that these impacts will be more severe than previously disclosed, and thus warrant additional environmental review.

We urge the Department to comply with the policy mandate of both CEQA and the Delta Reform Act by providing a timely analysis of the full scope of the covered action, supported by adequate CEQA analysis for the newly identified geotechnical program, which is substantially different and of greater detail than that disclosed in the FEIR for DCP.

If you have any questions, please contact our Senior Environmental Planner, Mike Aviña, at Mike.Avina@delta.ca.gov, or at (530) 750-6727.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bruce Blodgett". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Bruce Blodgett, Executive Director  
Delta Protection Commission

CC: Jeff Henderson, Deputy Executive Officer for Planning & Performance, Delta Stewardship Council

### **References Cited**

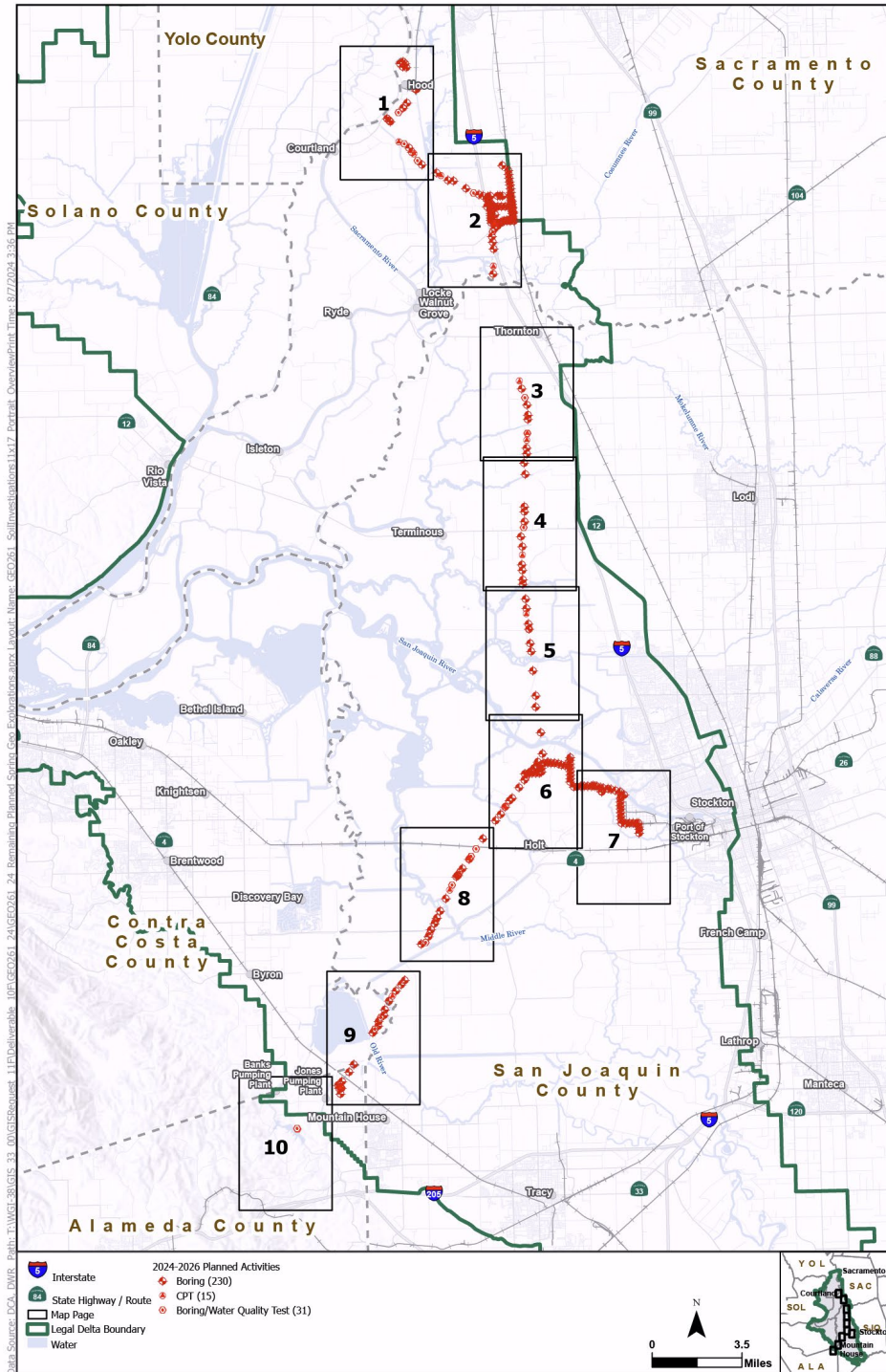
Berntsen. Flarable Pipe Monuments, SSB NB30. 2024. Madison, Wisconsin. Available: [Flarable Pipe Monuments](#)

California Department of Water Resources (DWR). DELTA CONVEYANCE PROJECT: FINAL CERTIFICATION OF CONSISTENCY FOR 2024–2026 PROPOSED GEOTECHNICAL ACTIVITIES. 2024. Sacramento, California.

DWR. Final Environmental Impact Report, Delta Conveyance Project. 2023. Sacramento, California.

Superior Court of California. Court Order for *Tulare Lake Basin Water Storage District v. California Department of Water Resources*. 2024. Sacramento, California.

# Attachment 1



Investigation Locations  
Figure 1. 2024-2026 Proposed Geotechnical Activities Mapbook



# Attachment 2

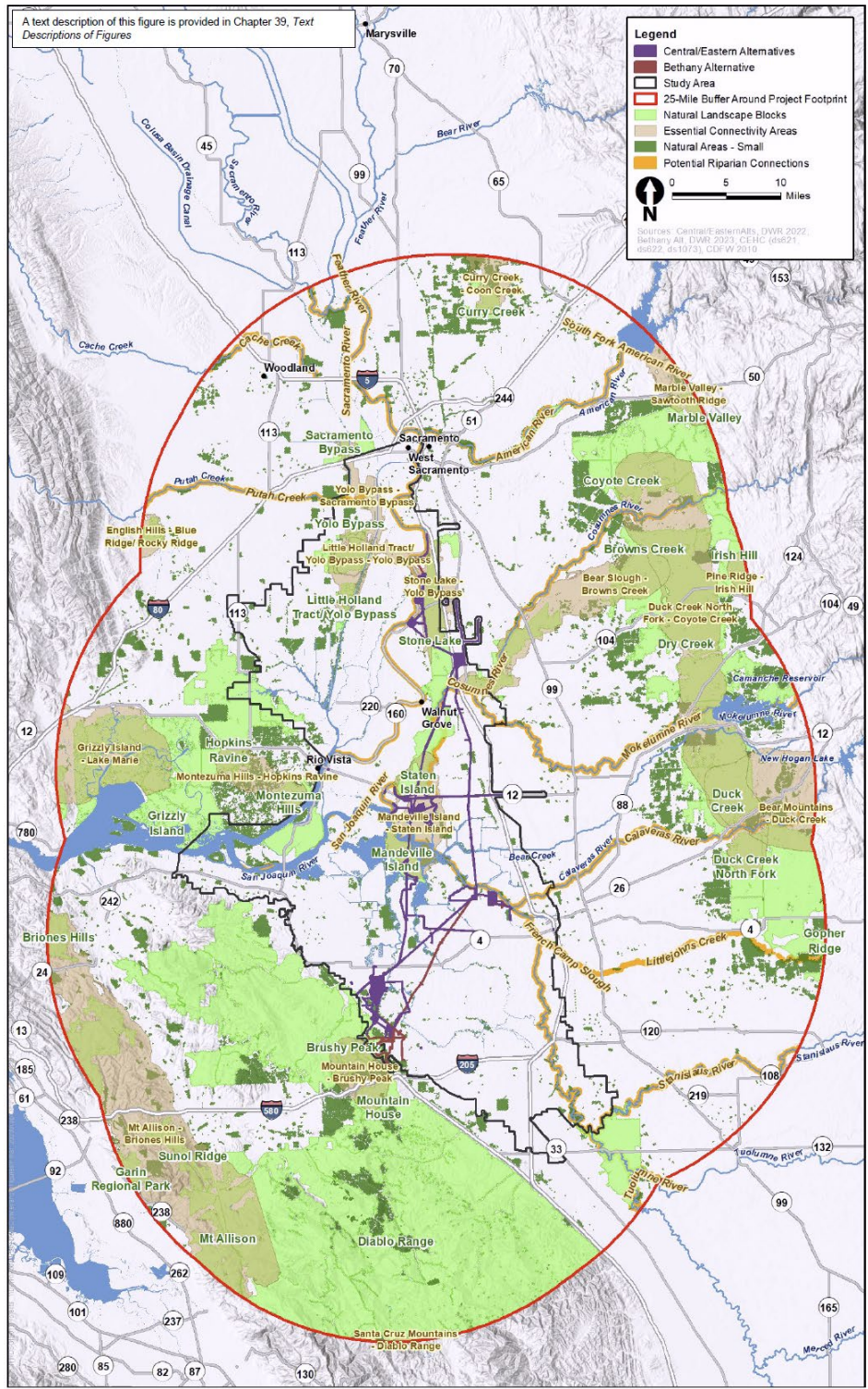


Figure 13E-2. California Essential Habitat Connectivity

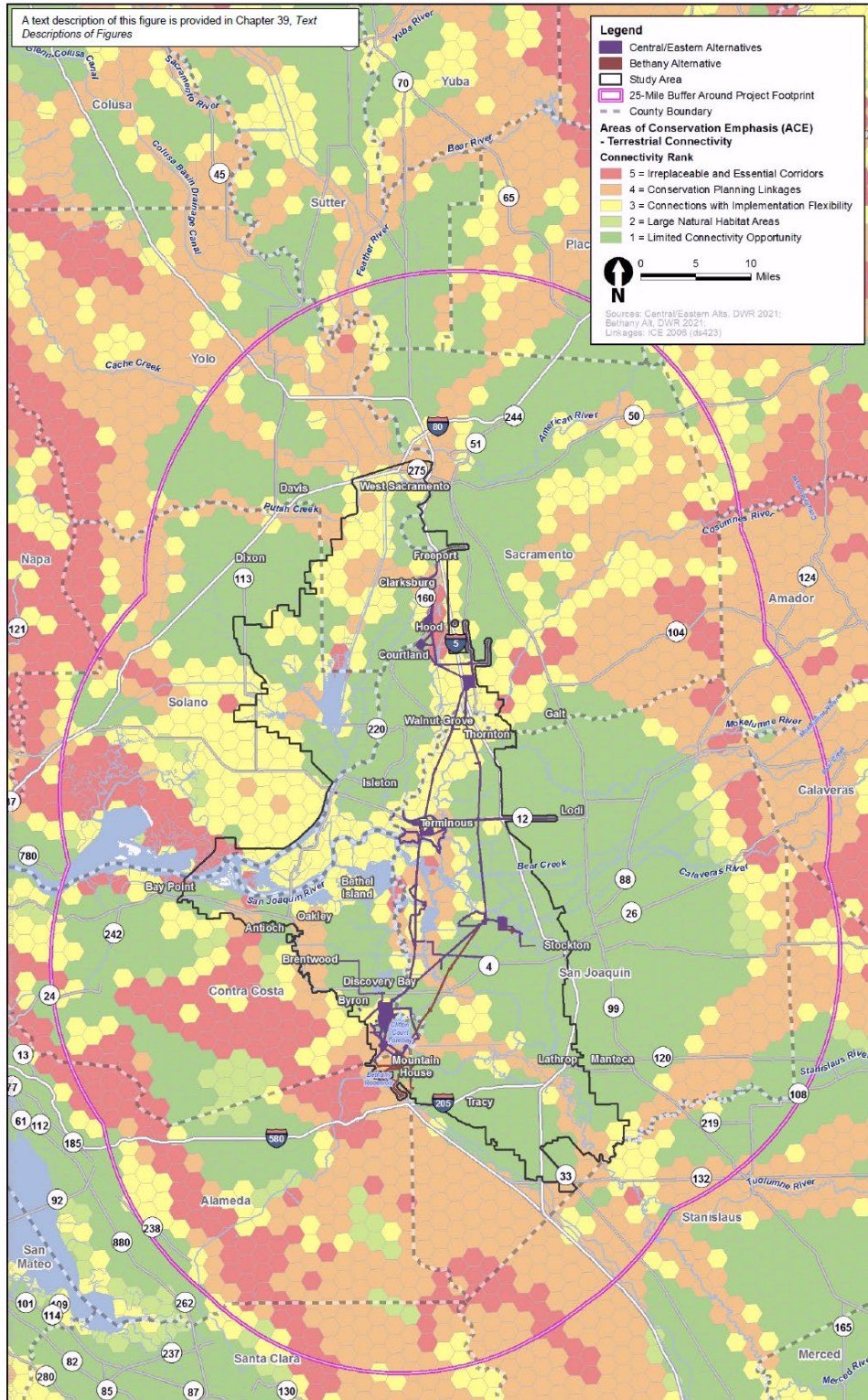


Figure 13E-3. Areas of Conservation Emphasis (ACE)—Terrestrial Connectivity

## DELTA PROTECTION COMMISSION

*Diane Burgis, Chair (Contra Costa County Board of Supervisors)*  
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November 27, 2024

Katherine Marquez, Program Manager  
California Department of Water Resources  
1516 9th Street, 2nd Floor  
Sacramento, CA 95814

Dear Ms. Marquez:

We are providing comments on the proposed *Delta Conveyance Project, Final Certification of Consistency For 2024-2046 Proposed Geotechnical Activities*.

This letter revises our previous letter regarding the certification of consistency, sent on November 5, 2024. That letter, and the following revised comments, reflect my views as the Executive Director of the Delta Projection Commission and the view of my staff. These letters do not represent the views of the Commission as a government body, nor have they been presented to the Commission for endorsement.

Due to the compressed nature of the hearing process and the typical bi-monthly schedule for Commission meetings, it was not possible to present the previous letter or this letter to the Commission. Both letters will be submitted to the Commission at a meeting on December 12, 2024. The Commission may respond with additional comments or clarifications after that meeting. With those caveats in mind, we submit our previous comments, with minor revisions.

Citations to the administrative record of documents submitted by DWR use the administrative record file number first, followed by a citation that follows standard conventions, for purposes of clarity to lay readers.



## **The Geotechnical Investigations are Part of the Covered Action Rather than Their Own Covered Action: As Such Consistency Certification is Premature and Improper**

The Delta Reform Act defines a covered action as “. . . a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code. . .” (Water Code Section 85057.5(a)). Public Resources Code Section 21065 defines “project” for the purposes of the California Environmental Quality Act (CEQA). The regulations implementing CEQA further define project as follows: “[a] Project” means the whole of an action. . .” (14 Cal. Code of Regulations Section 15378(a)). Because the covered action is defined by incorporating the definition of a CEQA project, the covered action must conform to the rules for CEQA projects. The regulations implementing CEQA state that a covered action must include the whole of the action, rather than a part of the action. The purpose of this rule is to avoid the possibility of obscuring the full scope of a project’s environmental effects, by considering only parts of the action.

The Courts have provided the additional test that agencies must analyze the “reasonably foreseeable consequences” of a project (*Laurel Heights Improvement Ass’n v. Univ. of California*, 47 C3d. 376, 396 [1988]). Projects that fail this requirement engage in illegal piecemealing of the project by failing to consider the whole of the action. Typically piecemealing questions involve projects that have some degree of separation, but factually may be intertwined. Here the geotechnical work is necessary to advance design of the Delta Conveyance Project and thus is a foreseeable environmental consequence of the project, and as such should be considered part of that project under *Laurel Heights*. The Department of Water Resource (Department)’s own documents in fact, describe the geotechnical investigations as part of the project for purposes of CEQA review (see Section 3.15 of the Final Environmental Impact Report (FEIR) for the project) (DCP.D1.1.00010:134, DWR 2023).

The Certification of Consistency unambiguously states “*To be clear, this is not a certification of consistency for the Delta Conveyance Project, as described below. This certification of consistency is limited to certain preliminary geotechnical work, described herein, related to the Delta Conveyance Project’s planning and design.*” (DCP.X2.00001: 5, DWR 2024:1-1).

The Department thus has previously stated that geotechnical work is part of the project for purposes of CEQA (in the FEIR) and then later states that the covered action submitted for review is not part of the consistency certification for the Delta Conveyance Project (DCP) itself. These statements cannot be reconciled with the definition of covered action in the

Water Code or the definition of a “project” for purposes of CEQA. Because the separation of the geotechnical work from the CEQA project would be improper piecemealing, it is also an improper division of the covered action for purposes of consistency review under Water Code Section 85022, which requires consistency of covered actions with the Delta Plan.

Our analysis of the proper scope of covered actions for purposes of the Delta Reform Act is reinforced by the court order previously issued regarding geotechnical work and the consistency certification, which was also included in the certification submitted by DWR (DCP.X2.00001: 111, Superior Court of California 2024). The court order reads: “*The motions for preliminary injunction are granted. The geotechnical work at issue here is **part of** the covered action, which requires certification of consistency with the Delta Plan before it is implemented. The Department is, therefore, enjoined from undertaking the geotechnical work described in Chapter 3 of the FEIR prior to completion of the certification procedure that the Delta Reform Act requires*” (DCP.X2.00001: 121, Superior Court of California 2024:11-12, emphasis added). The court order makes the statement that geotechnical investigations are **part of** rather than separate from the covered action that must be certified for consistency prior to implementation (DCP.X2.00001: 114, Superior Court of California 2024:4). The Department’s attempt to split off a portion of the covered action and proceed with it separately from consistency certification for the whole action contradicts both its own representation of the project in the FEIR, the definitions in the Delta Reform Act and Public Resources Code, and the court order enjoining geotechnical investigations.

### **The Analysis of the Geotechnical Investigations as a Separate Covered Action Incorrectly Concludes the Geotechnical Work Does Not Trigger the Need for Consistency Certification**

The Department provides an analysis to determine whether the geotechnical work, by itself, would qualify as a covered action and thus trigger the need for a consistency certification. This analysis is factually incorrect. Even if the geotechnical work could proceed as a covered action separate from the DCP (which it cannot), it would qualify as a covered action under the Delta Reform Act.

On pages 4-2 of the consistency documentation, the Department concludes that because the geotechnical work does not have a significant impact on the achievement of the co-equal goals it is not a covered action pursuant to Water Code Section 85057.5(a)(4) (DCP.X2.00001: 27, DWR 2024:4-2). The Department relies on its assertion that the geotechnical work will not have any effect on the strategies developed by the Delta

Stewardship Council and therefore will not have a significant impact on achievement either of the co-equal goals (DCP.X2.00001: 28, DWR 2024:4-3). This interpretation of the Delta Reform Act is misguided. The necessary test is provided in part, by Water Code sections 85057.5(a)(4) and 85054, which supersede the Delta Stewardship Council policies. The strategies to achieve the co-equal goals are subordinate to the co-equal goals, and merely provide guidance regarding how they may be achieved. Water Code Section 85054 defines the co-equal goals in part as “. . .*protecting, restoring, and enhancing the Delta ecosystem.*” This language thus provides the proper test for the coequal goals rather than the policies adopted to further their goals.

The Department’s administrative record demonstrates the geotechnical work will have a substantial effect on the protection of the Delta ecosystem (Water Code Section 85054). Figure 1 from the proposed consistency certification document is enclosed (Attachment 1). It shows the locations of geotechnical work. The map depicts a vast array of investigations that spans the entire eastern and southern Delta, with clusters around the towns of Locke, Hood, and Walnut Grove. The Department’s FEIR for the DCP provides a detailed appendix for terrestrial wildlife movement (DCP.D1.1.00117, Appendix 13E). Figure 13-E2 from this document (DCP.D1.1.00117, Appendix 13E) depicts “Natural Landscape Blocks” and “Essential Connectivity Areas” (enclosed as Attachment 2) clustered in the same portion of the Delta where the Department proposes a vast program of geotechnical work, that will introduce traffic, noise, light, and vibration for extended periods of time (Attachment 1).

The draft consistency certification contains a section entitled “*Attachment 4 2024–2026 Proposed Geotechnical Activities—Evaluation of Consistency with the Delta Conveyance Project’s Final EIR.*” This section asserts “*Geotechnical activities will not involve construction, or placement of powerlines, will avoid take of listed species and habitat loss, will not involve surface disturbance that would disrupt terrestrial wildlife connectivity and movement*” (DCP.X2.1.00001: 166, DWR 2024, Attachment 4: 19). This statement is completely unsupported by any facts or analysis. It is also contradicted by the scope of the program depicted in Figure 1 from the consistency certification (Attachment 1) and the mapbooks for wildlife movement from the DCP FEIR (Attachment 2). The Department effectively is asserting that a vast program of work requiring heavy equipment, noise, light, and vibration, that will occur over a period of only two years and will also occur in mapped connectivity corridors and natural habitat blocks will have no impact on wildlife movement, and thus will not affect the goal of protecting the Delta ecosystem. The Department’s own administrative record shows that the geotechnical work will have such an effect, and thus meets the test for a covered action in Water Code Section 85057.5(a)(4). Thus, even if the geotechnical work could properly be considered its own

covered action (which it cannot), the Department’s attempt to define it out of the scope of covered actions is not supported by its own analysis.

### **The Department Incorrectly Concludes the Geotechnical Work Is Consistent with The Delta Plan**

The Department relies heavily on its assertion that the geotechnical work does not need to be certified for consistency, but then states, “*Nevertheless, for the sake of thoroughness and to err on the side of facilitating the DSC’s informed decision-making process, the analysis that follows additionally considers Step 3 of the Checklist to determine whether the 2024–2026 Proposed Geotechnical Activities are covered by one or more regulatory Delta Plan policies contained in Article 3 of the DSC’s regulations codified at California Code of Regulations, Title 23, Sections 5003–5015*” (DCP.X2.1.00001:29, DWR 2024:4-4). This section of the consistency certification thus provides analysis of consistency of the action in relation to the regulatory policies implementing the plan. This section’s conclusions are not supported by fact.

The Delta Stewardship Council regulations for the purposes of consistency review provide the following standard:

*Water management facilities, ecosystem restoration, and flood management infrastructure must be sited 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. Plans for ecosystem restoration must consider sites on existing public lands, when feasible and consistent with a project's purpose, before privately owned sites are purchased. Measures to mitigate conflicts with adjacent uses may include, but are not limited to, buffers to prevent adverse effects on adjacent farmland (23 Cal. Code of Regulations Section 5011(a)).*

The proposed geotechnical work fails this test for at least two reasons. First, the geotechnical work will result in the placement of a vast array of geodetic survey monuments in the Delta. These consist of metal markers, typically attached to a subterranean pipe or pole, that are permanently placed in the landscape. The consistency document references these in several locations including *Section 3.6.2, Overview of 2024–2026 Proposed Geotechnical Activities* (DCP.X2.1.00001:20, DWR 2024:3-15).

A cursory review of typical survey monuments shows a standard monument might consist of a 30-inch stainless steel length of pipe with a 3.25-inch bronze cap (Berntsen 2024).

DWR relies heavily on the concept that geotechnical work is a transitory activity and will not create permanent facilities. However, the volume and location of monuments proposed would span the entire eastern and southern Delta (see Figure 1 from the consistency document, Attachment 1). Because the Delta is an agricultural landscape subject to tilling and other mechanical methods of farming, the geodetic monuments will leave a permanent impediment to farming across the Delta. Because the purpose of the geotechnical work is to support water management facilities and will leave permanent facilities consisting of survey markers, it is thus a “water management facility” that conflicts with the prevailing land use in the Delta, which is agriculture. For these reasons it does not satisfy the Delta Stewardship Council regulatory test that “*Water management facilities, ecosystem restoration, and flood management infrastructure must be sited to avoid or reduce conflicts*” (23 Cal. Code of Regulations Section 5011(a)).

Furthermore, the text of Section 5011(a) does not explicitly exclude temporary impacts created by water management facilities on local land use. These impacts logically include the potential for the concentration of equipment and vehicle traffic for extended periods of time that would generate conflicts. DWR states that “*Proposed Geotechnical Activities will generate minimal traffic and will be conducted in coordination with property owners*” (DWR DCP.X2.1.00001:29, 2024:4-3). This statement however provides little other than a bare assertion without any substantive analysis of how the cumulative effect of simultaneous geotechnical investigations at multiple sites compressed into a few years can be synchronized with critical periods of agricultural operations and trucking throughout the Delta.

The Department relies heavily on the assertion that traffic impacts were previously described in and will be consistent with the FEIR. The Department fails to note however that the FEIR only describes the location of geotechnical work in a very general narrative fashion in Section 3.15 of the FEIR. The associated mapbooks for the “Bethany Reservoir Alignment” show that geotechnical investigations may occur anywhere there are project features or alignments (DCP.D1.1.0000.1, DWR 2023). This very general acknowledgement of when and where geotechnical work would occur stands in stark contrast to Figure 1 in the consistency analysis (DCP.X2.00001:10, DWR 2024, also enclosed as Attachment 1). Note that in addition to a newly, substantially greater specificity regarding location shown in the current consistency documentation, the Department also states, “*This work would commence as soon as possible and conclude by the end of 2026*” (DCP.X2.00001:18, DWR 2024:3-13). Figure 1 thus depicts a specific, concentrated, and large program of work that will occur in only two years. Taken at face value, DWR thus asserts that the traffic impact analysis and mitigation approach of the FEIR for traffic impacts now will adequately address the effects of a huge program of investigation that will occur in only two years that

was never previously analyzed in detail corresponding to the specificity shown in Figure 1 (Attachment 1).

The 2024 consistency analysis provides no substantiation of how coordination with local property owners will be performed or how the Department will adequately address impacts on agricultural operations for a large and very geographically concentrated program occurring in a compressed time frame. Absent more analysis and substantiation, we conclude that the geotechnical work will conflict with local agricultural practices and trucking, and will conflict with existing land uses in a manner inconsistent with the regulatory policy of the Delta Plan codified in 23 Cal. Code of Regulations Section 5011(a). The disparity in specificity and detail between the FEIR and the 2024 consistency documentation also warrants discussion in relation to CEQA.

### **The CEQA Analysis of the 2024 Consistency Documentation is Incorrect**

DWR concludes that no additional CEQA analysis is required for the proposed geotechnical work because the geotechnical work was previously analyzed in the environmental impact report for DCP itself (DCP.X2.1.00001:9, DWR 2024:3-1). In support of this conclusion, DWR included in the 2024 consistency documentation “*Attachment 4, 2024–2026 Proposed Geotechnical Activities—Evaluation of Consistency with the Delta Conveyance Project’s Final EIR*” (DCP.X2.1.00001:147, DWR 2024). This memorandum states that DWR has analyzed “*whether the geotechnical activities have the potential to result in any new or substantially more severe environmental impacts than shown in the Delta Conveyance Project’s Final EIR*” (DCP.X2.1.00001:151, DWR 2024, Attachment 4:4). This is only part of the full standard for analyzing the need for subsequent CEQA documentation.

The CEQA Guidelines provide the following test for the need for subsequent environmental analysis. A subsequent or supplemental EIR is required when:

- Changes to the project will cause either new significant impacts or a substantial increase in the severity of identified impacts (14 Cal. Code of Regulations Section 15162(a)(1), or,
- Changes to the circumstances for the project will cause either new significant impacts or a substantial increase in the severity of identified impacts (14 Cal. Code of Regulations Section 15162(a)(2), or,
- New information of substantial importance, which was not known and could not have been known at the time of the past EIR shows:

- The project will have one or more significant effects not discussed in the previous EIR or negative declaration, or,
- Significant effects previously examined will be substantially more severe than shown in the previous EIR, or,
- Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or,
- Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative (14 Cal. Code of Regulations Section 15162(a)(3)).

DWR thus has greatly simplified the language of the proper test and thus avoided significant parts of its meaning. Note that the process of screening for new environmental effects needs to consider the full scope of impacts subject to CEQA analysis. The CEQA Guidelines require that public agencies make a mandatory finding of significance when:

*The project has possible environmental effects that are individually limited but cumulatively considerable. “Cumulatively considerable” means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects (14 Cal. Code of Regulations Section 15065(a)(3)).*

This means that even if the project’s increment of effect is not significant at a project level, it may combine with other reasonably foreseeable projects or conditions to create a significant impact (14 Cal. Code of Regulations Section 15355).

The CEQA analysis in Attachment 4 to the consistency documentation provides no analysis of the cumulative effect of the proposed geotechnical investigations on any resource or threshold. The only instances of the word “cumulative” occur as explanatory footnotes to air quality standards.

DWR thus proposes a geotechnical program with newly identified specific locations that span the Delta, in a compressed time frame, and concludes that this work will not result in any new impacts on individual resources or substantial increases in the severity of significant impacts. This conclusion fails to consider the cumulative effect of a concentrated and large program of work occurring in a short period of time. This conclusion is largely supported by reliance on the scope of the previous EIR, which lacked

the specificity of the 2024 documentation. Note that Section 3.15 in the FEIR for DCP provided only a high-level narrative overview of geotechnical work (DCP.D1.1.00010:134, DWR 2023:134). The conclusion that no impacts to agricultural operations or trucking, or wildlife movement, among myriad other resources, is unsupported by analysis. The available information suggests that these impacts will be more severe than previously disclosed, and thus warrant additional environmental review.

We urge the Department to comply with the policy mandate of both CEQA and the Delta Reform Act by providing a timely analysis of the full scope of the covered action, supported by adequate CEQA analysis for the newly identified geotechnical program, which is substantially different and of greater detail than that disclosed in the FEIR for DCP.

If you have any questions, please contact our Senior Environmental Planner, Mike Aviña, at Mike.Avina@delta.ca.gov, or at (530) 750-6727.

Sincerely,



Bruce Blodgett, Executive Director  
Delta Protection Commission

CC: Jeff Henderson, Deputy Executive Officer for Planning & Performance, Delta Stewardship Council



### **References Cited**

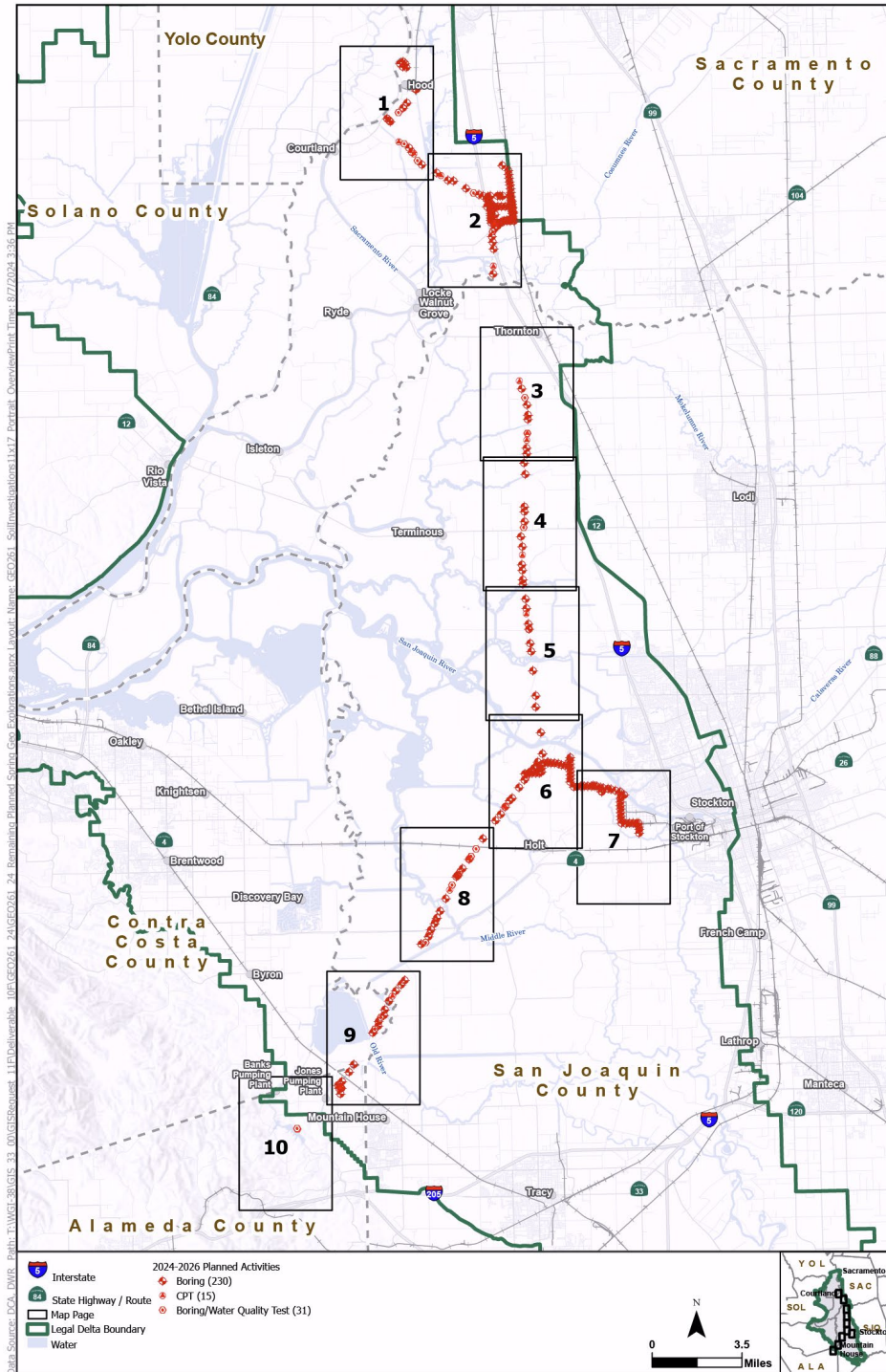
Berntsen. Flarable Pipe Monuments, SSB NB30. 2024. Madison, Wisconsin. Available: [Flarable Pipe Monuments](#)

California Department of Water Resources (DWR). DELTA CONVEYANCE PROJECT: FINAL CERTIFICATION OF CONSISTENCY FOR 2024–2026 PROPOSED GEOTECHNICAL ACTIVITIES. 2024. Sacramento, California.

DWR. Final Environmental Impact Report, Delta Conveyance Project. 2023. Sacramento, California.

Superior Court of California. Court Order for *Tulare Lake Basin Water Storage District v. California Department of Water Resources*. 2024. Sacramento, California.

# Attachment 1



Investigation Locations  
Figure 1. 2024-2026 Proposed Geotechnical Activities Mapbook



# Attachment 2

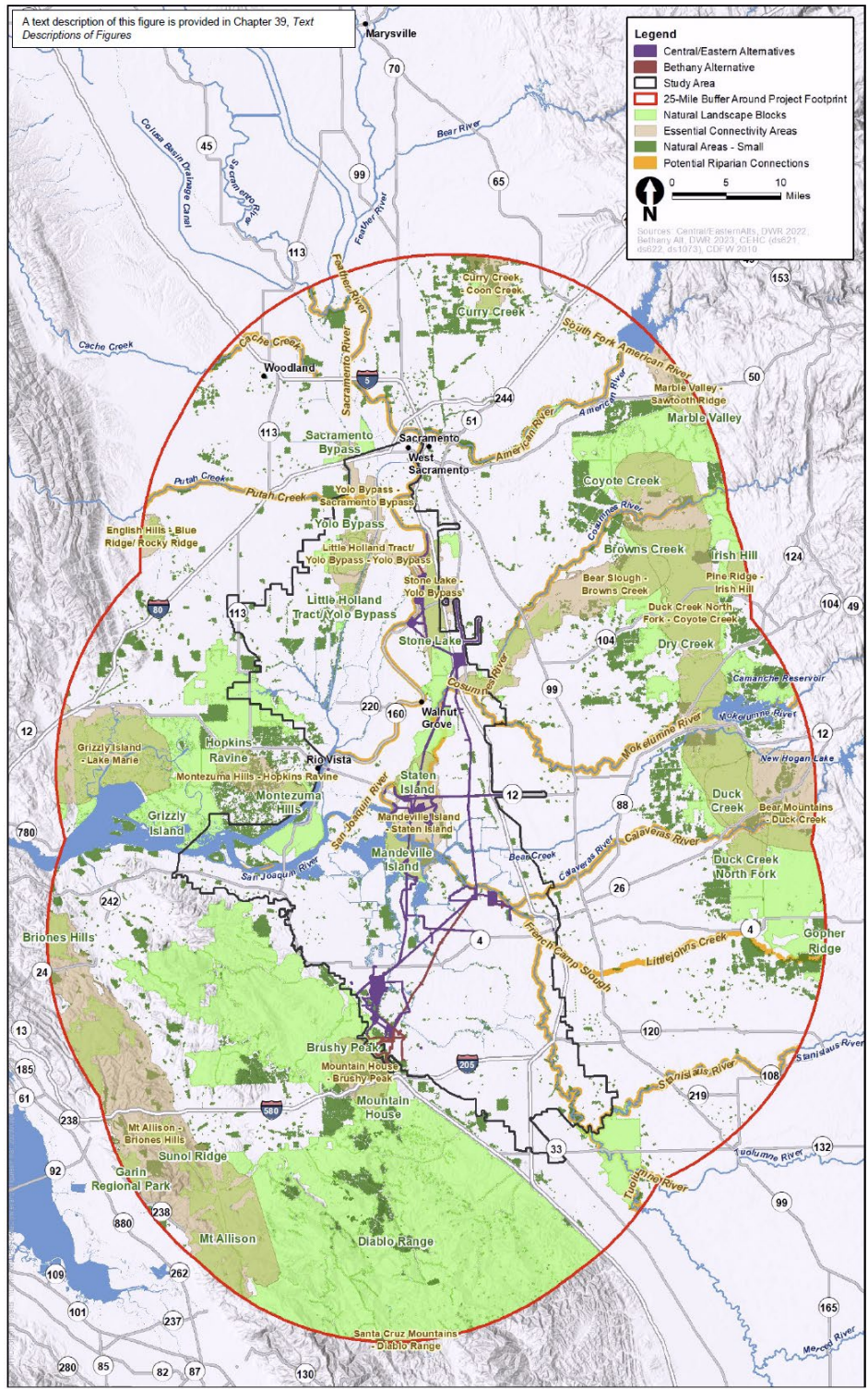


Figure 13E-2. California Essential Habitat Connectivity

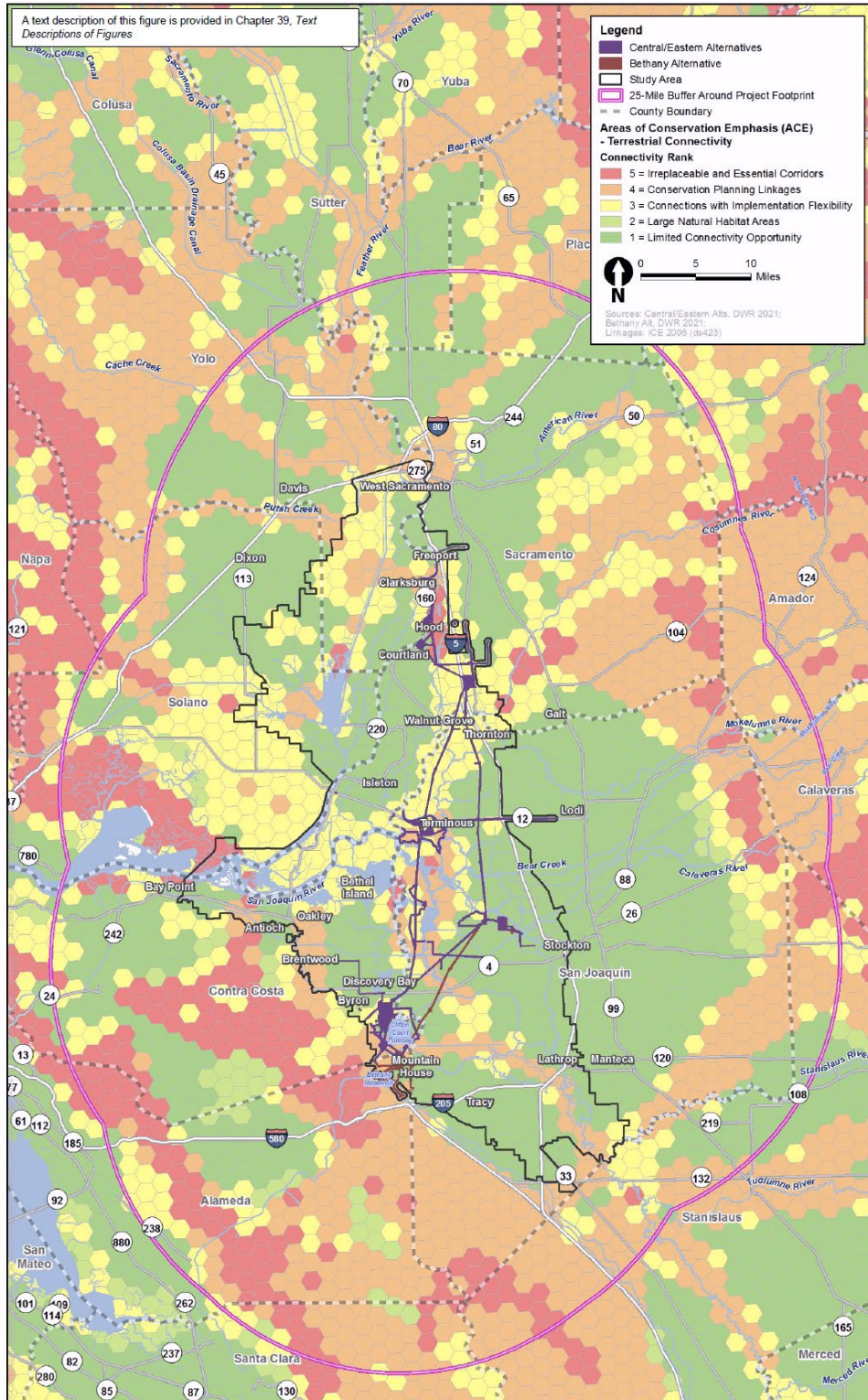


Figure 13E-3. Areas of Conservation Emphasis (ACE)—Terrestrial Connectivity

**NOTICE OF HEARING  
AND SCHEDULE OF WRITTEN SUBMISSIONS**

Appeal Numbers	Proposed Covered Action
<a href="#">C20242-A1</a> , <a href="#">C20242-A2</a> , <a href="#">C20242-A3</a> , <a href="#">C20242-A4</a>	2024-2026 Proposed Geotechnical Activities ( <a href="#">C20242</a> )

**Appellants:**            **San Francisco Baykeeper, Winnemem Wintu, Shingle Springs Band of Miwok Indians, California Indian Environmental Alliance, Friends of the River, Center for Biological Diversity, Save California Salmon, California Sportfishing Protection Alliance, Golden State Salmon Association, and Restore the Delta (C20242-A1)**

**South Delta Water Agency (C20242-A2)**

**County of Sacramento, Sacramento County Water Agency, Sacramento Area Sewer District, and City of Stockton (C20242-A3)**

**County of San Joaquin, Central Delta Water Agency, and Local Agencies of the North Delta (C20242-A4)**

**Respondent(s):**    **Department of Water Resources**

**PLEASE TAKE NOTICE THAT the Delta Stewardship Council (Council) will hold a hearing on the above-referenced appeals as follows:**

**Date:**                    **December 19, 2024**

**Time:**                    **9:30 am**

**Location:**            **California Natural Resources Building  
Room 221, Second Floor  
715 P Street, Sacramento, CA 95814.**

**Presiding Officer: Julie Lee, Council Chair**

The hearing will be conducted pursuant to Water Code sections 85225, 85225.10, 85225.15, 85225.20, and 85225.25 and California Code of Regulations, title 23, section 5020 et seq. The appellants and certifying agency (respondent) will each be provided an opportunity to make an oral presentation at the hearing. The Delta Protection Commission (Commission) may also make an oral presentation. The presentations will be limited to the issues and facts raised in the appeals. (Cal. Code Regs., tit. 23, §§ 5027 subds. (e)(1), (2), 5028.) Time limits and an order of presentations will be established at least 10 days in advance of the hearing. The Council will make written findings no later than 60 days following the hearing. (Wat. Code, § 85225.25.)

**Parties are expected to appear at the hearing in person.** If a party requires accommodation, please contact: [2024GeoTechProject@deltacouncil.ca.gov](mailto:2024GeoTechProject@deltacouncil.ca.gov)

**SCHEDULE OF WRITTEN SUBMISSIONS**

Appellants, respondent, and the Commission may provide a written submission to the Council in advance of the hearing, as set forth below. (Cal. Code Regs., tit. 23, §§ 5027 and 5029.) **Late submissions will not be considered.**

<b>Written Submission</b>	<b>Due Date</b>
Appellants	November 27, 2024
Delta Protection Commission	November 27, 2024
Respondent	December 13, 2024

Transmit written submissions to: [2024GeoTechProject@deltacouncil.ca.gov](mailto:2024GeoTechProject@deltacouncil.ca.gov) by **no later than 5:00 pm on the date specified in this notice** and **copy all parties on the Service List.** (Cal. Code Reg., tit. 23, § 5021.)

For each appeal, a single written submission on behalf of all appellants named in the respective appeal may be submitted totaling no more than 15 pages. Respondent may submit a single written submission responding to all appeals totaling no more than 60 pages. The Commission may submit a single written submission totaling no more than 15 pages. Pages of any written submission in excess of the page limits shall not be considered. All written submissions shall be in 12-point black font. (Cal. Code Regs., tit. 23, § 5021, subd. (a)(1).) The written

submissions of the parties shall be subject to and comply with California Code of Regulations, title 23, sections 5027 and 5029. Written submissions by appellants and the Commission must reference the specific Delta Plan regulatory policy or policies at issue, include citations to the certified record (*see* Cal. Code Regs., tit. 23, section 5022, subd. (e)(1)), and address how the Certification of Consistency is or is not supported by substantial evidence based on the certified record. (Cal. Code Regs., tit. 23, § 5029, subd. (c)(1).) The respondent's written submission will respond to the allegations raised in the appeals. (Cal. Code Regs., tit. 23, § 5029, subd. (d).)

Each written submission may include a request to supplement the certified record with additional documentation written or information pursuant to California Code of Regulations, title 23, sections 5026 and 5032. To be considered for admission to the record, **any documentation** that is not part of the certified record submitted by Respondent must be included with the written submission pursuant to this notice and comply with these regulations. (Cal. Code Regs., tit. 23, §§ 5026 and 5032.)

The Council shall determine whether the certification of consistency is supported by substantial evidence in the certified record. (Wat. Code, § 85225.25.) It is the appellants' burden to establish that the certification of consistency is not supported by substantial evidence in the certified record. (Cal. Code Regs., tit. 23, § 5029, subd. (d).) **The Council will not consider issues that were not raised in the appeals.**

## **Delta Protection Commission Meeting**

December 12, 2024

### **AGENDA ITEM 13: Consider Participation in the Delta Stewardship Council’s Appeal of the Department of Water Resources’ Certification of Consistency for its Geotechnical Activities for the Delta Conveyance Project**

**Prepared by:** Mike Aviña, Senior Environmental Planner

**Presented by:** Bruce Blodgett, Executive Director

**Recommended Action:** Provide Direction

#### **Background**

The California Department of Water Resources (DWR) filed a consistency certification with the Council on October 8, 2024. A hearing on the certification and appeals will be held the following time and location:

- December 19, 2024, 9:30 am, California Natural Resources Building Room 221, Second Floor, 715 P Street, Sacramento, CA 95814.

We recommend that the Commission designate a member to offer verbal comments at the Council’s hearing on the consistency certification for geotechnical activities indicated above, and any future hearings on the matter.

#### **Response Plan for Consistency Certification for the Delta Conveyance Project Itself**

DWR must also submit a consistency certification for the Delta Conveyance Project (DCP) to the Delta Stewardship Council (Council), as required under the Delta Reform Act (California Water Code Section 85225). Based on available information it is anticipated that DWR will submit a consistency certification for the DCP itself (rather than geotechnical work) in the spring or summer of 2025.

Staff will make every effort to prepare a timely comment letter to the Council for the Commission’s consideration. Staff further recommends that the Commission take the following action:

1. Delegate to the Executive Director the authority to prepare an interim comment letter, relying upon his best judgment consistent with the Commission’s policies and prior direction, if and only if the Council designates a comment deadline that is prior to the Commission’s next scheduled meeting. In that event, the letter shall



clearly state that it reflects only the views of the Executive Director and staff and that the Executive Director will present it to the Commission at its next meeting.

2. Direct the Executive Director to bring any such comment letter to the Commission for its consideration at its next regularly scheduled meeting, so that the Commission may review it and provide further direction.

**Current Status**

To be determined

**Recommended Action**

Designate a representative to offer public comments at the December 19, 2024, hearing and direct the Executive Director to take the actions set forth above.

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

*Water (Strategic Theme)*

*W.1 Promote Delta water solutions that reduce reliance on Delta fresh water supplies, provide through-Delta fresh water conveyance to protect Delta water quality and water rights, and protect and enhance the Delta’s natural resources, recreation, agriculture, adjacent urban areas and economies.*

*1.3 Analyze proposals for addressing water supply reliability for compatibility with Delta values.*