



Delta Protection Commission
2101 Stone Blvd. Suite 200
West Sacramento CA 95691

November 17, 2025

Chair Julie Lee and Members
Delta Stewardship Council
715 P Street, 15-300
Sacramento, CA 95814

RE: Delta Protection Commission Public Resources Code 29773 Response to and Appeal of the Delta Conveyance Project Certification of Consistency (C20257)

Dear Chair Lee and Councilmembers,

The Delta Protection Commission (Commission), in its role representing Delta communities and advising the Delta Stewardship Council (Council) on protecting and enhancing unique Delta values, provides the following comments on the Delta Conveyance Project (DCP, or proposed project) certification of Delta Plan consistency. This letter also serves as the Commission's appeal of the DCP certification of consistency filing pursuant to Water Code Section 85225.10. On November 17, 2025, the Commission voted 9-0-1 to direct staff to appeal DWR's consistency certification and to submit a comment letter(s) pursuant to Public Resources Code (PRC) 29773 and the Council's appeals procedures.

As the State agency charged with representing the Delta region, the Commission works to protect, maintain, enhance and enrich the overall quality of the Delta environment and economy. We do this with a focus on agriculture, recreation, heritage and natural resources, while remaining mindful of the importance of the Delta to all Californians. While the 15-member Commission is comprised largely of local agency representatives throughout the region, it also includes representatives of four State agencies. Please note

that the State agency Commission members did not endorse the Commission's comments and position relative to the DCP.

The Delta Reform Act of 2009 articulates the State's basic goals for the Delta:

- (a) Achieve the two coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. It also states that the coequal goals "*shall* be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place."
- (b) Protect, maintain, and where possible enhance and restore the overall quality of the Delta environment, including but not limited to agriculture, wildlife habitat, and recreational activities.
- (c) Ensure orderly, balanced conservation and development of Delta land resources.
- (d) Improve flood protection by structural and nonstructural means to ensure an increased level of public health and safety.

(PRC section 29702; Water Code section 85054.)

The Delta Reform Act of 2009 also charges the Commission with a critical role, as set forth in PRC section 29773:

- (a) The commission may review and provide comments and recommendations to the Delta Stewardship Council on any significant project or proposed project within the scope of the Delta Plan, including, but not limited to, actions by state and federal agencies, that may affect the unique cultural, recreational, and agricultural values within the primary and secondary zones. Review and comment authority granted to the commission shall include, but is not limited to, all of the following:
 - (1) Identification of impacts to the cultural, recreational, and agricultural values of the Delta.
 - (2) Recommendations for actions that may avoid, reduce, or mitigate impacts to the cultural, recreational, and agricultural values of the Delta.
 - (3) Review of consistency of the project or proposed project with the resources management plan and the Delta Plan.
 - (4) Identification and recommendation of methods to address Delta community concerns regarding large-scale habitat plan development and implementation.
- (b) The council shall take into consideration the recommendations of the commission, including the recommendations included in the economic sustainability plan. If the

council, in its discretion, determines that a recommendation of the commission is feasible and consistent with the objectives of the Delta Plan and the purposes of this division, the council shall adopt the recommendation.

The Commission has commented extensively on the different iterations of the DCP (BDCP, California WaterFix), and the 2024-2026 Proposed Geotechnical Activities for the DCP), presenting our concerns to the project proponents on their adverse impact to “Delta as Place” values. We present here our (I) identification of impacts to the cultural, recreational, and agricultural values of the Delta pursuant to PRC section 29773(a)(1); (II) our recommendation to the Council pursuant to PRC section 29773(a)(2); and (III) our identification of key inconsistencies with the Delta Plan pursuant to PRC section 29773(a)(3)., all based on extensive review and consideration of the DCP and the certification of consistency with the Delta Plan filed on 10/17/2025.

As discussed below, the proposed DCP is inconsistent with the Delta Plan policies and recommendations regarding “Delta as Place.” If carried out as proposed, the DCP will irrevocably alter the rural character of the Delta, its economic pillars (agriculture and recreation), and its cultural heritage. This represents a significant adverse impact on the achievement of one or both of the coequal goals, since the coequal goals must be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place. The DCP purports to achieve water supply reliability, but at the expense of the Delta, as we demonstrate below. By failing to adhere to the mandates of the Delta Plan and the Delta Reform Act, including PRC section 29702(a) and Water Code section 85054 to “protect and enhance” Delta values, the DCP undermines, and is inherently inconsistent with, the Delta Plan and the Delta Reform Act.

While we have largely limited our comments to “Delta as Place” policies, this should not be taken to imply that we consider the DCP to be consistent with other Delta Plan policies focused on water quality or supply, or natural resource restoration, or that we have made any judgment on the adequacy of the record that DWR consulted before making detailed findings. The Commission also reserves its rights, consistent with the Council’s regulations, to submit written comments on any appeals filed by others, which may raise such issues.

We are mindful that in a covered action appeal, the question before the Council is whether an appellant has shown that the certification of consistency is not supported by substantial evidence in the record (Water Code, Section 85225.25.) Substantial evidence means evidence that is “reasonable in nature, credible, and of solid value.” (*Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335.) It includes “facts, reasonable

assumptions predicated upon facts, and expert opinion supported by facts.” (Cal. Code Regs. tit. 14, § 15384.) “Substantial evidence . . . is not synonymous with ‘any’ evidence. The focus is on the quality, rather than the quantity, of the evidence.” (*California Assn. of Medical Products Suppliers v. Maxwell-Jolly* (2011) 199 Cal.App.4th 286, 308.) “Inferences may constitute substantial evidence, but they must be the product of logic and reason. Speculation or conjecture alone is not substantial evidence. (Ibid.) Under the substantial evidence standard of review, the Council must consider the whole record, including the evidence that fairly detracts from the evidence that supports a challenged agency decision. (*California Youth Authority v. State Personnel Bd.* (2002) 104 Cal.App.4th 575, 586.) We do not believe substantial evidence exists to support the certification of consistency. In addition to the information provided now, we plan to provide supplemental information regarding the lack of substantial evidence during the appeal proceedings, as provided for in the Council’s regulations.

The Commission includes with its submission certain additional documents that support our findings of the adverse effects from the DCP on Delta as Place values or how the process to prepare the Certification of Consistency shows a lack of consistency with Delta Plan policies. (See Attachment A, Maps.)

Given the Commission’s authority to both appeal a certification of consistency, participate in the Council’s appeals procedures, and comment per PRC section 29773, this letter serves as our section 29773 comment and incorporates our appeals arguments.

I. Identification of Impacts to the Cultural, Recreational, and Agricultural Values of the Delta (PRC 29773(a)(1))

A. The DCP conflicts with “Delta as Place” values by imposing sweeping adverse impacts that will fundamentally change the Delta in negative ways.

The project as proposed has adverse effects on the Delta’s unique cultural, recreational and agricultural values, and is inconsistent with the coequal goals. It is the Commission’s view that the impacts of the DCP are not sufficiently mitigated since most mitigation is largely in response to CEQA requirements. “Delta as Place” is a Delta Plan consideration that sets statutory requirements that go beyond what is required for CEQA mitigation, which—in effect—provides a lower threshold for compliance and therefore allows the DCP to negatively affect “Delta as Place” values. Despite this, and because of the tremendous impact on “Delta as Place,” DWR should have held itself to a higher standard and placed as much emphasis on

meeting the requirements of the Delta Plan as it did mitigating impacts for purposes of CEQA.

DWR repeatedly argues that it has designed the project to reduce impacts as much as possible, and perhaps it has in select instances. But it ignores the fact that there are many other alternatives that simply wouldn't have anywhere close to the same impacts. To put it colloquially, no matter how careful Godzilla is when walking across a city, he's probably going to kill a lot of people by accident. This is an example of where DWR has restricted the parameters of the project so tightly that it overlooks and ignores other options, and thus has become comfortable with impacts that are fairly severe for Delta people, not to mention impacts to the newly designated Delta National Heritage Area.

B. The DCP would create significant impacts for a generation of Delta residents and their communities due to construction.

Despite modifying aspects of the project to reduce impacts to Hood, DWR did not adopt mitigation measures that would meaningfully support the economic health and well-being of Delta communities to ensure that they will survive through more than a decade of DCP construction. This is especially a concern for the town of Hood. DWR should do more to minimize the DCP's construction impacts on the town of Hood and other communities.

Included among these impacts are permanent damage to community character by the DCP project's construction activities, including noise, dust, and fumes from the construction sites, consequent declining property values, blight and abandonment. The DCP project presents an existential crisis for small Delta communities, especially the town of Hood, which would be most affected by the protracted, intensive construction period immediately adjacent to the town, the permanent re-routing of State Route 160 (a Scenic Highway), and the effects on the Delta economic drivers of agriculture, recreation, and emerging heritage tourism.

C. The DCP took a top-down approach from the beginning and does not respect local land use authorities.

As described above, impacts to the town of Hood will be devastating, and point directly to a fundamental flaw of the design decision making from the beginning: the determination to use the proposed diversion location through a process entirely decided by engineers and fish biologists without consulting local land use authorities, reinforced by the insistence on calling it a "change" in the point of

diversion from the existing location, rather than a new water right. In many ways, this top-down approach set the stage for DWR's persistent unwillingness to consider real alternatives to the tunnel project.

D. DWR failed to adequately consider other possible options that could ensure water supply reliability and ecosystem health while also respecting the Delta as an evolving place, and the alternatives it did consider were conceptually similar.

The Commission has repeatedly advocated through-Delta conveyance, promoting water reliability by strengthening Delta levees and dredging key Delta channels, while also reducing other regions' reliance on water from the Delta by investing in water use efficiency, water recycling, and other advanced technologies as alternatives to the DCP and its predecessors. Such a "portfolio" approach using a multi-pronged strategy to address the concerns of water supply reliability, sea level rise and seismic risk has been proposed in varying combinations and levels of detail, but never considered by DWR in alternatives analysis.

The lack of genuinely different alternatives considered and analyzed is the first element of DWR's failure to respect local land use within the meaning of the Delta Plan. The DCP Final EIR alternatives all had essentially the same impact on the Delta. The Delta Independent Science Board (Delta ISB), in its review of the DCP Draft EIR, recognizes this:

4.7. Diversity of project alternatives is narrow

The alternative conveyance structures considered in the draft EIR are conceptually similar and do not fully reveal the rationale behind each selected alternative. While the alternatives cover a reasonable range of Delta tunnel capacities, they only consider three tunnel alignments (central, east, and east + Bethany PP) and omit several western Delta alignments and through-Delta canal alternatives that have been discussed in past planning. Although it is not feasible or desirable to compare all possible alternatives, ***a comparison of a broad range of project options is consistent with an objective approach to finding the most environmentally and socially beneficial solution.*** [emphasis added]

For example, two of the major purposes for the conveyance structure are to reduce risk to water supply from seismic events and sea level rise. Both hazards could cause levee failures that would threaten State Water Project deliveries. ***An alternative approach to address these threats, such as extensive***

remediation to improve levee stability in the Delta, was not evaluated. At a minimum, the rationale for omitting earlier versions of project alternatives would help stakeholders and decision makers understand the full range of options available and constraints to meeting the objectives.¹ [emphasis added]

The Delta Plan, at its essence, is a portfolio approach to furthering the coequal goals. The DCP—in failing to adequately provide alternatives—neither respects local land use nor the spirit of the Delta Plan.

E. The DCP does not address the seismic risk to the Delta levee system

The issue of seismic risk to the existing Delta levee system as being a fundamental rationale for this project, and addressing that risk, a project objective, does not promote the coequal goals. If there is a significant risk to the Delta levee network, the tunnel would not address it. According to DWR's own statements, 80% of exported water would still be conveyed by through-Delta channels after tunnel construction is complete.² Furthermore, there are serious challenges to the level of risk as a justification for all the damage the tunnel would cause, as highlighted by the Delta ISB's assertion that "seismic risk may be overstated."³ The Delta ISB expresses concern that the evidence supplied in the Final EIR misrepresents where the probability of a major earthquake applies (i.e., to the greater Bay Area and not to the Delta) and furthermore is confusing and not well documented.⁴

II. The DCP is inconsistent with Delta Plan Policies DP P2 G P1(b)(2), and G P1(b)(3). (PRC 29773(a)(3))

The Delta Reform Act provides that the coequal goals shall be achieved "in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place." DWR has not adequately demonstrated through data in the record that DCP supports the Delta Reform Act's policy of protecting and enhancing the Delta as an evolving Place (WC Section 85020(b).) It puts the long-term sustainability of small Delta communities in serious jeopardy, and it fails to offer

¹ DISB, Review of Draft EIR 26-27.

² Maven's Notebook. *Notebook Feature: Metropolitan committee Discusses Delta Conveyance Project Ahead of December Vote on Funding Planning Costs*, October 17, 2024, <https://mavensnotebook.com/2024/10/17/notebook-feature-metropolitan-committee-discusses-delta-conveyance-project-ahead-of-december-vote-on-funding-planning-costs>.

³ DISB, Comments on Final EIR 6.

⁴ DISB, Comments on Final EIR 6.

sufficiently detailed mitigation for such impacts. The Commission's position is that DCP is not consistent with DP P2 and G P1(b)(2), and G P1(b)(3). The detailed reasoning is included in Attachments B-F.

III. Recommendation to the Delta Stewardship Council on the DCP per PRC 29773(a)(2), (b)

As stated above, PRC 29773 provides the Commission with review and comment authority on any significant project within the scope of the Delta Plan. It also, per the last clause, states that the Council "shall take into consideration the recommendations...and...if the council...determines that a recommendation of the commission is feasible and consistent with the objectives of the Delta Plan...the council shall adopt the recommendation."

To this end, the Commission recommends that the Council remand the DCP, requiring DWR to better consider alternatives that respect "Delta as Place" values and to do so in partnership with the stewards of these values: county commissioners, city council members, community-based organizations, and the Delta Protection Commission.

The Commission recognizes the decades of work that the State of California has invested to figure this out and that something must be done to ensure water supply reliability for the people and farms outside of the Delta who rely on Delta water. The Commission would welcome the opportunity to be part of conversations to identify a path forward that respects all aspects of the coequal goals.

Considering the Commission's unique role pursuant to the Delta Reform Act, the Commission reserves its right to contribute additional recommendations for actions that may avoid, reduce, or mitigate impacts to the cultural, recreational, and agricultural values of the Delta. (PRC section 29773(a)(2).)

The mission of the Commission is to "protect, maintain, enhance, and enrich the overall quality of the Delta environment and economy." The Commission would be neglecting its charge if it did not respond to the DCP certification of consistency filing. The Commission appreciates the role that the Council plays and that of the project proponent, DWR. To that end, the Commission is ready to engage in dialogue to find a path forward that respects all aspects of the coequal goals.

Sincerely,

A handwritten signature in cursive script that reads "Amanda Bohl".

Amanda Bohl
Executive Director

Attachment A: Maps

Attachment B: DCP Inconsistency with DP P2

Attachment C: DCP Inconsistency with G P1(b)(2)/cultural landscape

Attachment D: DCP Inconsistency with G P1(b)(2)/agricultural lands

Attachment E: DCP Inconsistency with G P1(b)(2)/recreation

Attachment F: DCP Inconsistency with G P1(b)(3)/best available science

cc: Members, Delta Protection Commission

Delta Protection Commission

Amanda Bohl, Executive Director

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Delta Conveyance Project

Council Certification ID: C20257

Submitted by California Department of Water Resources

ATTACHMENT A**Maps**

MAP 1 Delta Conveyance Project – A Look at Four Major Impact Areas

MAP 2 Delta Conveyance Project – Intakes

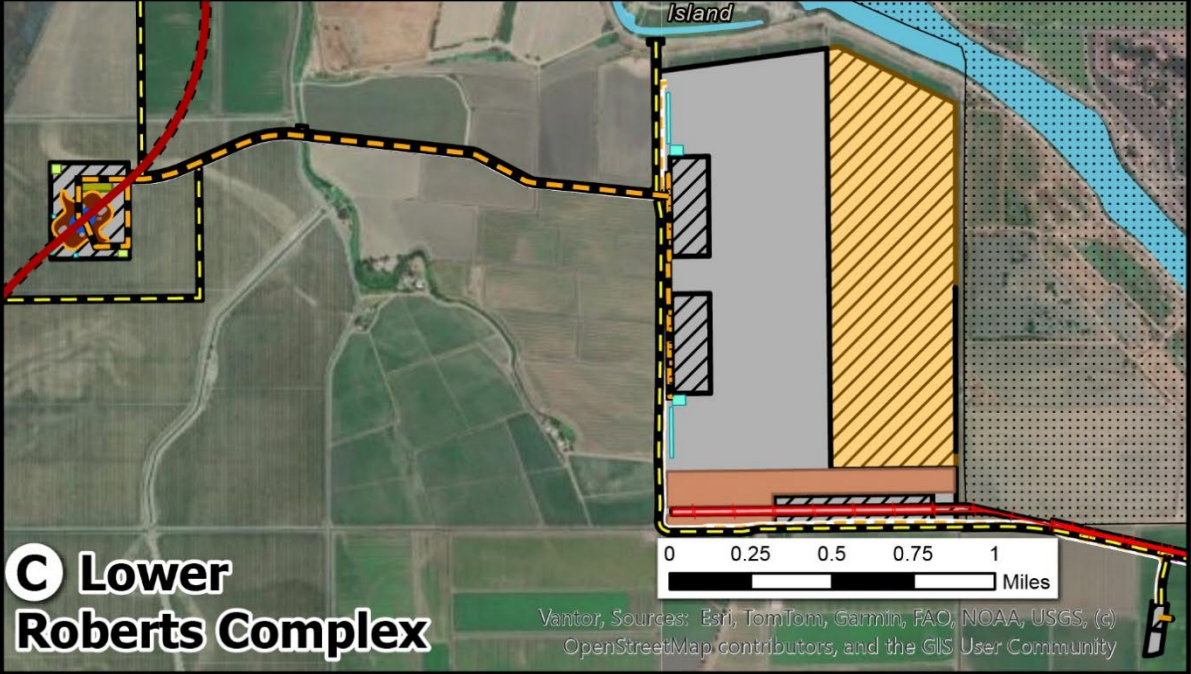
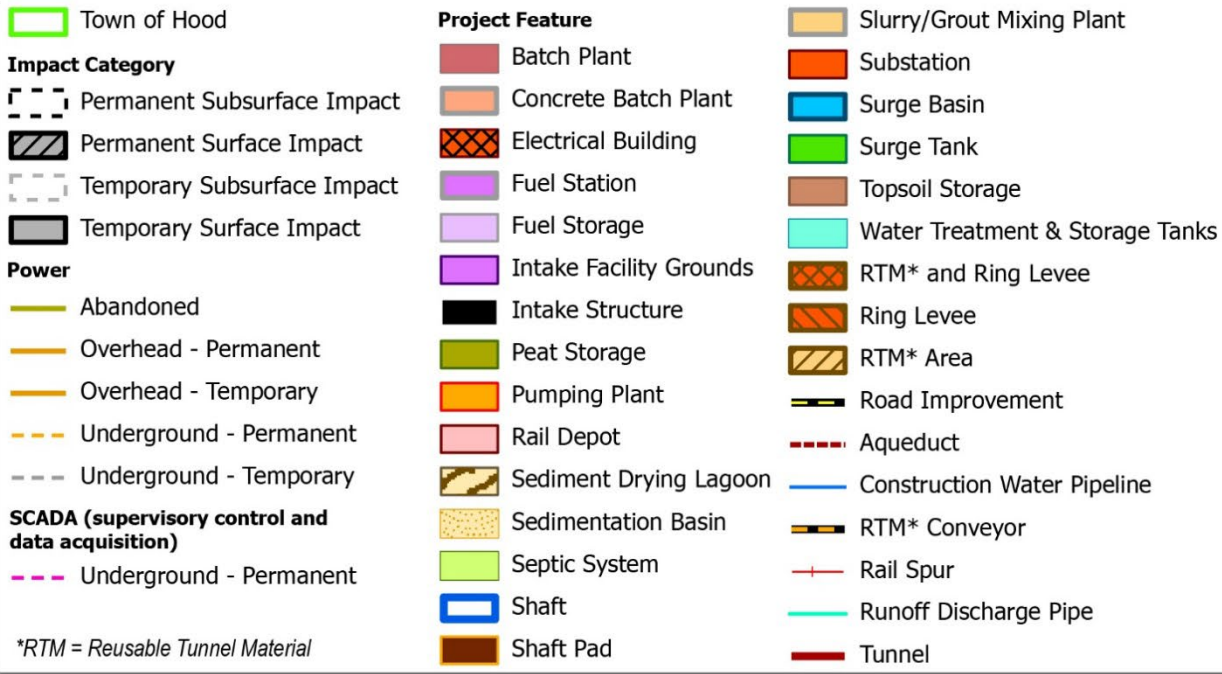
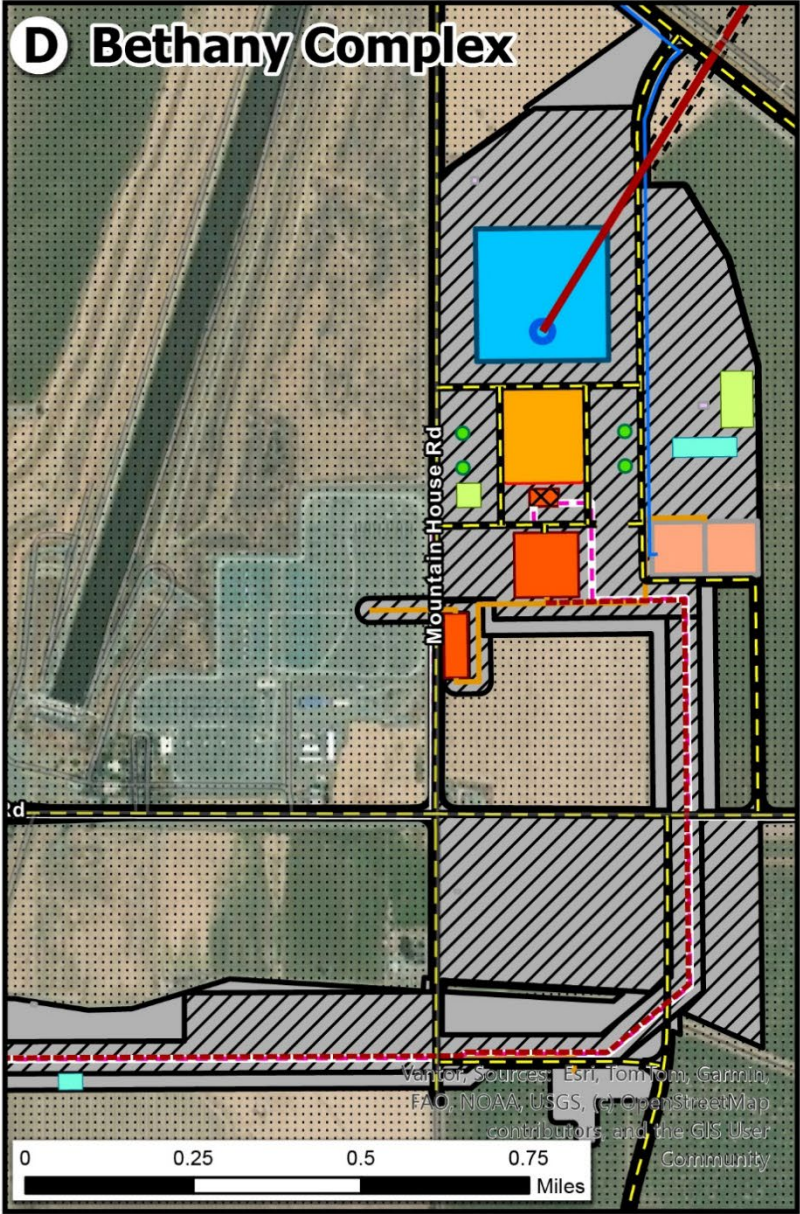
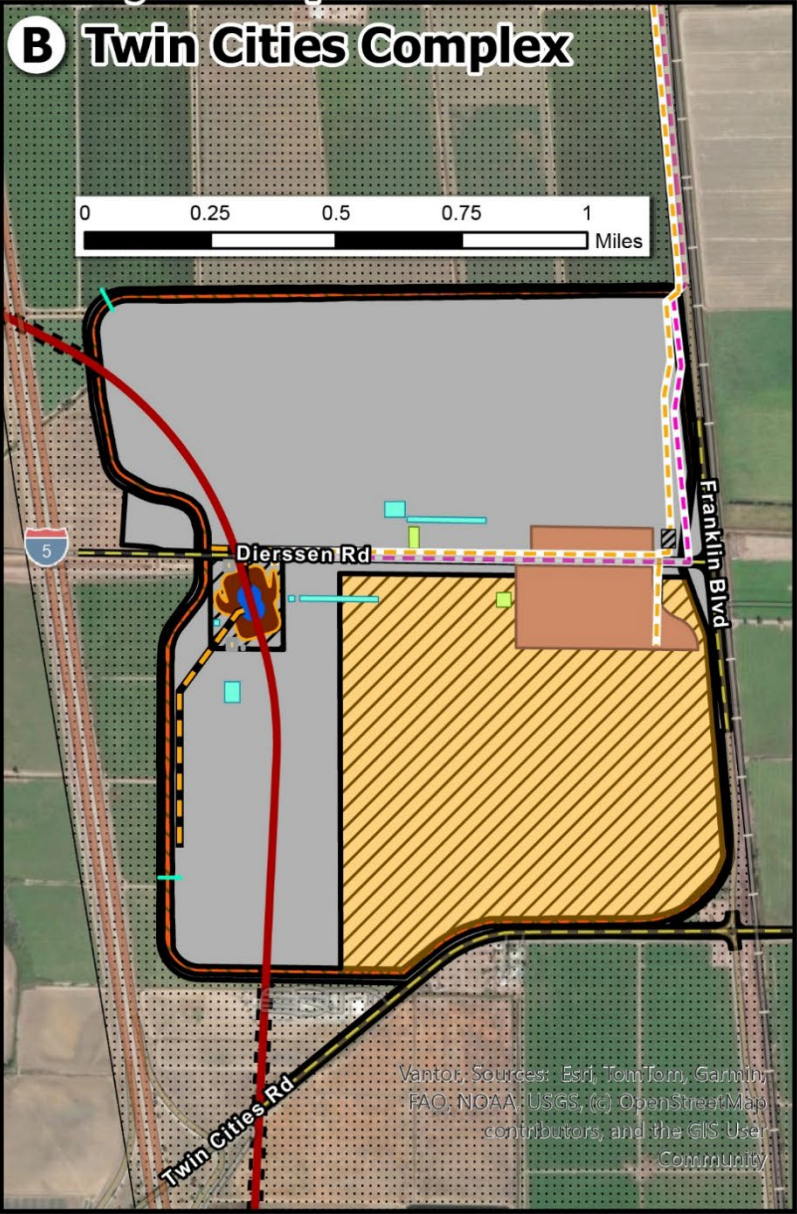
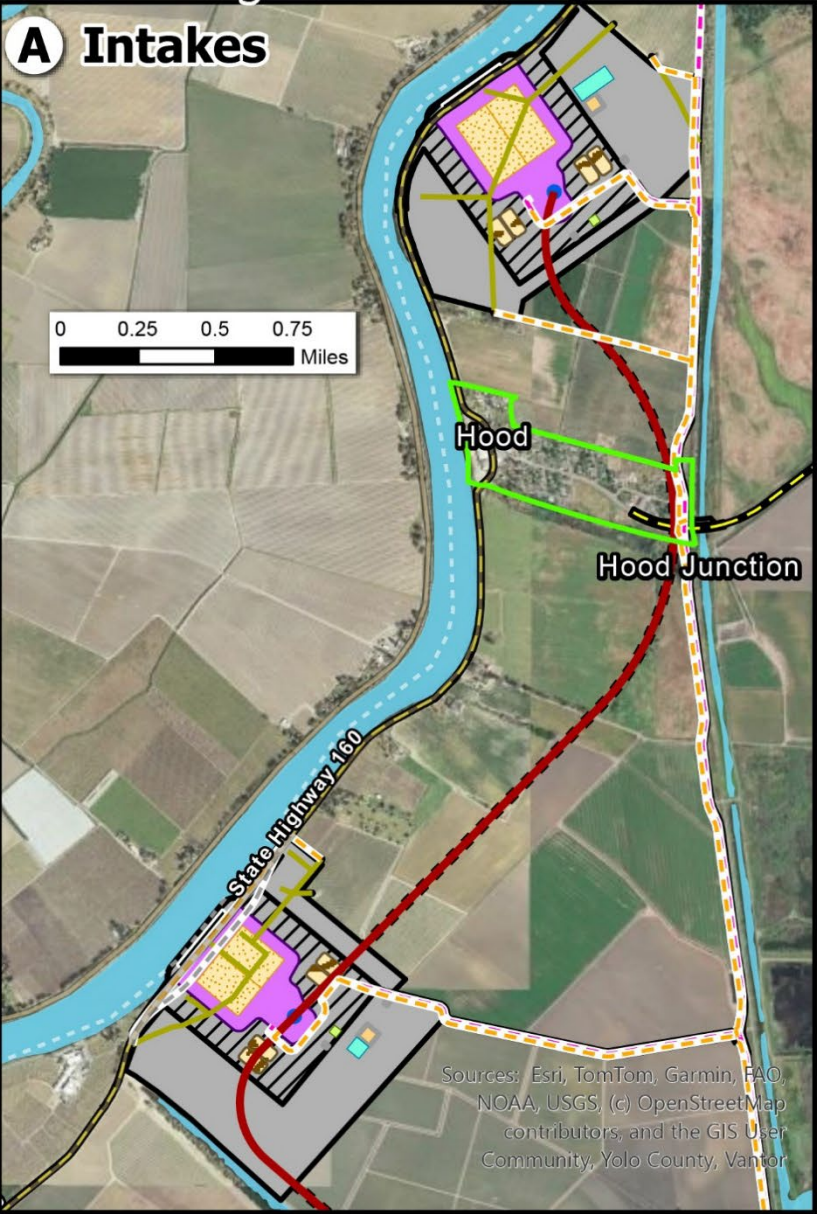
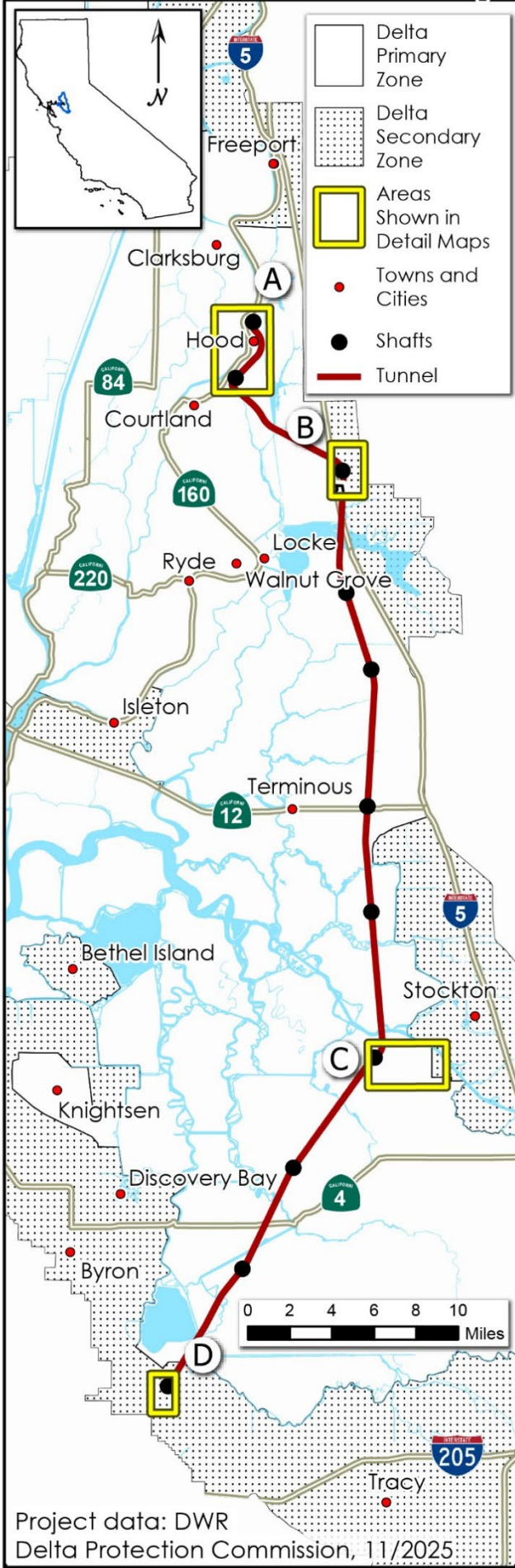
MAP 3 Delta Conveyance Project – Twin Cities-Lambert Road

MAP 4 Delta Conveyance Project – Lower Roberts

MAP 5 Delta Conveyance Project – Bethany Complex

MAP 1 Delta Conveyance Project: A Look at Four Major Impact Areas

Some features may not be visible at this scale.



MAP 2 Delta Conveyance Project Intakes:

Impacts, Context & Schedule

IMPACTS

Scenic, productive farmland would be replaced with 232 acres of "visually discordant" "industrial-looking structures," "large sediment basins," "security fencing," electrical substation, and more. Sediment basins and security lighting would cause glare. Part of scenic Hwy 160 would be relocated and elevated, and trees along it removed. (Quotes: project FEIR, Appendix 18D-3.)

★ Recreational & Historic Places

□ Town of Hood

Impact Category

Permanent Subsurface Impact

Permanent Surface Impact

Temporary Subsurface Impact

Temporary Surface Impact

SCADA Lines

(supervisory control and data acquisition)

Underground - Permanent

Power Lines

Abandoned

Underground - Permanent

Project Feature

Fuel Station

Intake Facility Grounds

Intake Structure

Sediment Drying Lagoon

Sedimentation Basin

Septic System

Shaft

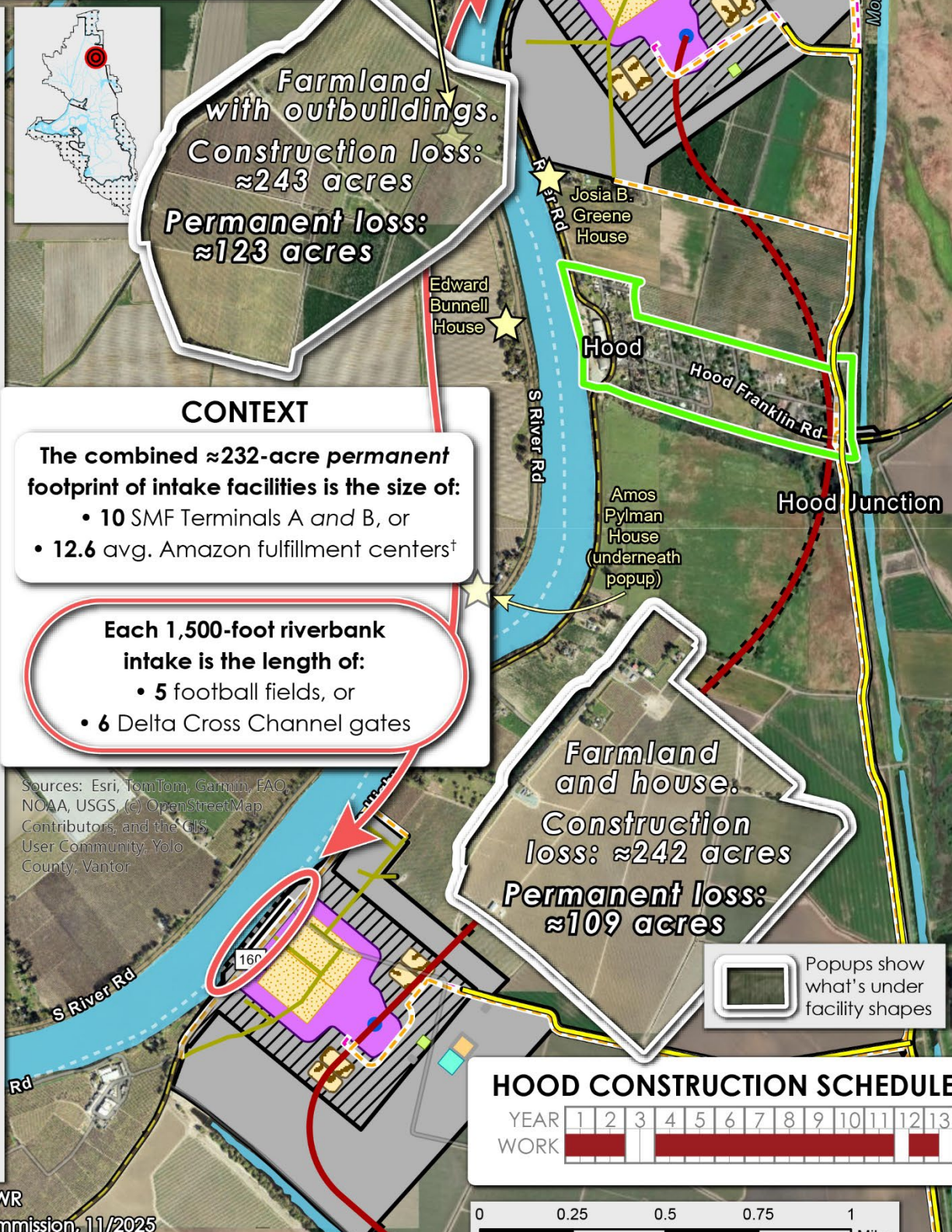
Slurry/Grout Mixing Plant

Water Treatment and Storage Tanks

New Road

Road Improvement

Tunnel



Farmland with outbuildings.
Construction loss: ≈ 243 acres
Permanent loss: ≈ 123 acres

CONTEXT
The combined ≈ 232 -acre permanent footprint of intake facilities is the size of:
• 10 SMF Terminals A and B, or
• 12.6 avg. Amazon fulfillment centers†

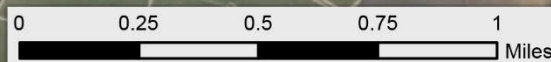
Each 1,500-foot riverbank intake is the length of:
• 5 football fields, or
• 6 Delta Cross Channel gates

Farmland and house.
Construction loss: ≈ 242 acres
Permanent loss: ≈ 109 acres

Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, (c) OpenStreetMap Contributors, and the GIS User Community, Yolo County, Vantor

HOOD CONSTRUCTION SCHEDULE

YEAR	1	2	3	4	5	6	7	8	9	10	11	12	13
WORK													



Project data from DWR

Delta Protection Commission, 11/2025

Features in legend are on map; some may not be visible at this scale

1800,000 square feet/18.4 acres

MAP 3 Delta Conveyance Project – Twin Cities/Lambert Road:

Impacts, Context & Schedule

IMPACTS

Productive farm and pasturelands would be replaced with reusable tunnel material area, access roads, railways, shafts, shaft pads, and industrial-looking equipment, which “would introduce large-scale industrial-looking features and prominent elevated landforms to a landscape that is currently predominantly flat. These features would be visually discordant with the area’s existing characteristics.” (Quote: project FEIR, Appendix 18D-3.)

The “reusable tunnel material area” is a stockpile with an indefinite lifespan, because there is no plan for dispersing it.

- Delta - Primary Zone
- Delta - Secondary
- Outside of Delta

Impact Category

- Permanent Subsurface Impact
- Permanent Surface Impact
- Temporary Surface Impact

SCADA Lines (supervisory control and data acquisition)

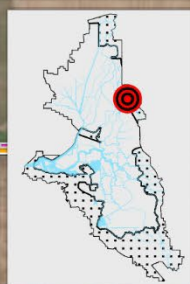
- Underground - Permanent

Power Lines

- Overhead - permanent
- Underground - Permanent

Project Feature

- Concrete Batch
- Fuel Storage
- Septic System
- Shaft
- Shaft Pad
- Slurry/Grout Mixing
- Topsoil Storage
- Water Treatment and Storage Tanks
- Reusable Tunnel Material and Ring
- Ring Levee
- Reusable Tunnel Material Area
- Road
- Improvement
- Reusable Tunnel Material Conveyor
- Runoff Discharge
- Tunnel



CONTEXT

The combined ≈241-acre permanent footprint of Twin Cities Complex/Lambert Road Concrete Batch Plants is the size of:

- 10.3 SMF Terminals A and B, or
- 13.1 avg. Amazon fulfillment centers†

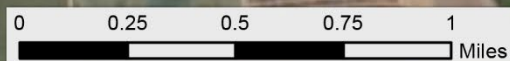
Dierssen Rd

Vantor, Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, (c) OpenStreetMap contributors, and the GIS User Community

TWIN CITIES/LAMBERT ROAD CONSTRUCTION SCHEDULE*



*Concrete batch plants will run all 13 years



Point Pleasant

Laurence Rd

Farmland.
Construction loss: ≈15.3 acres
Permanent loss: ≈14 acres

Farmland and two houses.
Construction loss: ≈591 acres
Permanent loss: ≈227 acres

Lambert Rd

Dierssen Rd

Dierssen Rd

Franklin Blvd

Project data from DWR
Delta Protection Commission, November 2025

Features in the legend are on the map; some may not be visible at this scale

1800,000 square feet/18.4 acres

MAP 4 Delta Conveyance Project – Lower Roberts: Impacts, Context & Schedule

IMPACTS

Expansive views of flat, large agricultural areas – including mature ornamental tree groupings, row crops, and orchards - would be interrupted with “elevated landforms and industrial-looking structures,” reusable tunnel material areas, shaft site and rail bridge. (Quotes: project EIR, Appendix 18D-3.) Recreation impacts on three marinas during construction.

The “reusable tunnel material area” is a stockpile with an indefinite lifespan, because there is no plan for dispersing it.

CONTEXT

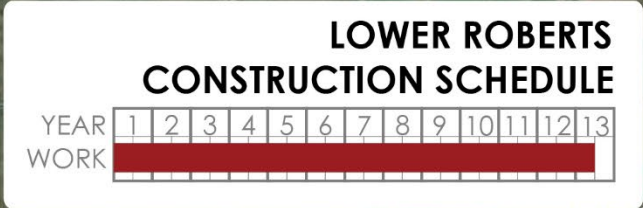
The combined **≈277-acre permanent footprint of Lower Roberts facilities is the size of:**

- 11.9 SMF Terminals A and B, or
- 15.1 avg. Amazon fulfillment centers†

Farmland and two houses.

Construction loss: ≈552 acres




























Permanent loss: ≈277 acres





Popups show what's under facility shapes

Project data from DWR
Delta Protection Commission, November 2025
Features in the legend are on the map; some may not be visible at this scale.

<div> Delta - Primary Zone</div> <div> Delta - Secondary Zone</div> <div> Recreational Places</div>	Impact Category <div> Permanent Subsurface Impact</div> <div> Permanent Surface Impact</div> <div> Temporary Surface Impact</div>	SCADA Lines (supervisory control & data acquisition) <div> Underground - Permanent</div>	Power Lines <div> Overhead - Permanent</div> <div> Underground - Permanent</div>	Project Feature <div> Batch Plant</div> <div> Fuel Storage</div> <div> Peat Storage</div> <div> Rail Depot</div>	<div> Septic System</div> <div> Shaft</div> <div> Shaft Pad</div> <div> Slurry/Grout Mixing Plant</div> <div> Topsoil Storage</div>	<div> Water Treatment and Storage Tanks</div> <div> Reusable Tunnel Material Area</div> <div> Levee Improvement Area</div> <div> New Road</div>	<div> Road Improvement</div> <div> Reusable Tunnel Material Conveyor</div> <div> Rail Spur</div> <div> Runoff Discharge Pipe</div> <div> Tunnel</div>
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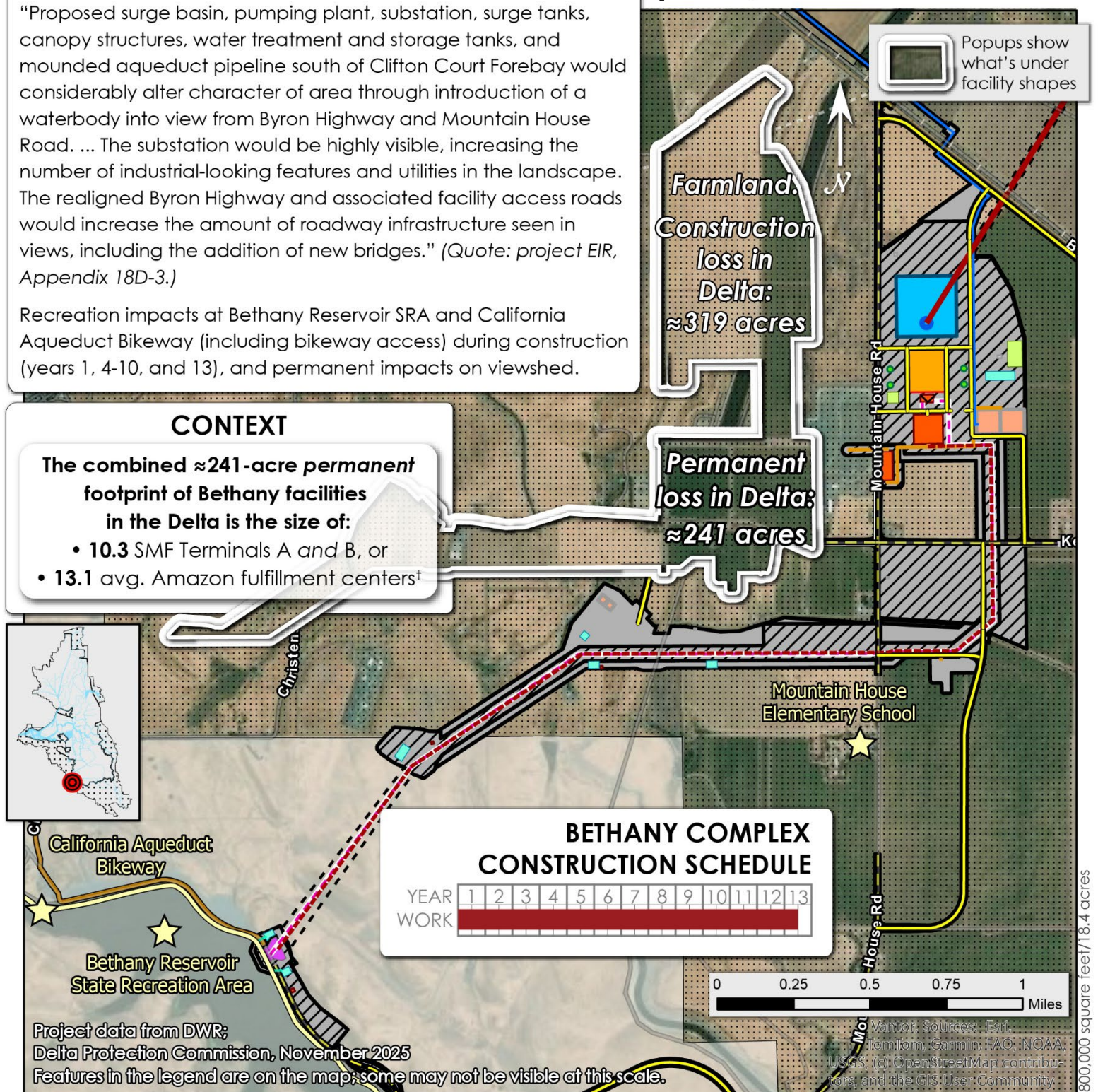
MAP 5 Delta Conveyance Project – Bethany Complex:

IMPACTS

"Proposed surge basin, pumping plant, substation, surge tanks, canopy structures, water treatment and storage tanks, and mounded aqueduct pipeline south of Clifton Court Forebay would considerably alter character of area through introduction of a waterbody into view from Byron Highway and Mountain House Road. ... The substation would be highly visible, increasing the number of industrial-looking features and utilities in the landscape. The realigned Byron Highway and associated facility access roads would increase the amount of roadway infrastructure seen in views, including the addition of new bridges." (Quote: project EIR, Appendix 18D-3.)

Recreation impacts at Bethany Reservoir SRA and California Aqueduct Bikeway (including bikeway access) during construction (years 1, 4-10, and 13), and permanent impacts on viewshed.

Impacts, Context & Schedule



<ul style="list-style-type: none"> Delta - Primary Zone Delta - Secondary Zone Outside of Delta Recreational and Community Places California Aqueduct Bikeway 	ImpactCategory <ul style="list-style-type: none"> Permanent Subsurface Impact Permanent Surface Impact Temporary Surface Impact SCADA Lines (supervisory control & data acquisition) <ul style="list-style-type: none"> Underground - Permanent 	Power Lines <ul style="list-style-type: none"> Overhead - Permanent Overhead - Temporary Project Feature <ul style="list-style-type: none"> Concrete Batch Plant Discharge Structure Electrical Building 	<ul style="list-style-type: none"> Fuel Storage Pumping Plant Septic System Shaft Substation Surge Basin Surge Tank 	<ul style="list-style-type: none"> Water Treatment and Storage Tanks New Road Road Improvement Aqueduct Construction Water Pipeline Runoff Discharge Pipe Tunnel
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Delta Protection Commission

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Delta Conveyance Project

Council Certification ID: C20257

Submitted by California Department of Water Resources

ATTACHMENT B

Inconsistency: Respecting Local Land Use

The project is inconsistent with the requirement to respect local land use when siting water facilities.

**Delta Plan Policy: DP P2 (23 California Code of Regulations (CCR), section 5011),
regarding respecting local land use when siting water facilities**

A. The Delta Conveyance Project Inconsistent with DP P2 and Does Not Protect the Delta as an Evolving Place

The Delta Reform Act provides that the coequal goals shall be achieved “in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.” (Pub. Resources Code, section 29702(a); Water Code, section 85054.) DWR’s Certification of Consistency has not adequately demonstrated through data in the record that the Delta Conveyance Project (DCP) fulfills the Delta Reform Act’s policy of protecting and enhancing the Delta as an evolving place (*Delta as Place*) (Water Code, Section 85020(b)). This is in part articulated in DP P2.

The DCP is an existential threat to small Delta communities. DCP will put the long-term sustainability of small Delta communities in serious jeopardy in countless ways:

- Over a decade of widely dispersed, effectively simultaneous construction.
- Associated traffic impacting already-congested roads.
- Disruption of businesses made inaccessible to tourists and residents alike.
- Conversion of highly productive agricultural land that forms a crucial economic base.
- Disruption of the secondary economic driver, land and water-based recreation.

- Deterioration of already fragile residential enclaves due to noise, dust, nighttime glare and emissions.

It also fails to offer sufficiently detailed and adequate mitigation for such impacts. The Commission's position is that the DCP is not consistent with DP P2 for this among many reasons.

1. CEQA AND DP P2: The Delta as Place policy and DP P2 not connected to CEQA concepts of mitigation adequacy.

Importantly, Delta Plan consistency is a requirement of the Delta Plan, independent of any analytical or mitigation requirements of CEQA. Consistency with the Delta Plan must therefore be judged through the language of the Delta Reform Act, its implementing regulations, and the Delta Plan itself, not simply through CEQA.

Rather, it is a standalone, separately enforceable Delta Plan policy focused on protecting *Delta as Place*. Even if DWR attempted to mitigate some of these impacts, sweeping impacts to Delta communities remain and these impacts are inconsistent with DP P2.

DWR contends that DCP is consistent with DP P2, stating, "While it is infeasible to site the project to fully avoid conflicts with existing Delta land uses, DWR adopted design changes, environmental commitments, and mitigation measures to reduce direct and indirect conflicts with these uses, including conflicts from project operations."¹

The Commission sees no substantial evidence in the record to support DWR's contention that with this approach DCP is consistent with DP P2. In fact, a hallmark of DWR's DP P2 consistency analysis is to understate substantially the overall effect of both the construction and operation of the project on the Delta by relying heavily on meeting narrow CEQA requirements only.

2. DCP Jeopardizes Longterm Sustainability of Small Delta Communities

The Commission's review of the record finds that DCP *cannot* "avoid or reduce conflicts . . . when feasible" to the degree required to meet the full obligation of DP P2. That is because the project adopted design changes, Environmental Commitments and mitigation measures *have not* produced a project that can be achieved "in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

¹ DWR, *Final Draft Delta Conveyance Project Certification of Consistency with the Delta Plan*, DWR, October 2025, 164.

DWR's supporting findings identify numerous impacts to Delta communities associated with the DCP construction, including all of those listed above, leading to declining property values, blight, and abandonment. This presents an existential crisis for the small Delta communities that would be most affected by the protracted, intensive construction period, the permanent infrastructure, and the transformative effects on the Delta economic drivers of agriculture, recreation, and emerging heritage tourism. This project represents a massive, widespread shock – both during construction and in the aftermath. It will leave thousands of acres of permanent changes and often industrial-looking structures that will suddenly dominate landscapes in a region defined by incremental change and pastoral landscapes.

3. Failure to provide a complete picture of the overall impact of the project

Certification of consistency with DP P2 is not possible without a clear articulation of project impacts across the spectrum of Delta landscapes. The Commission recommended, in our comments on the NOP, that the EIR tabulate the acreage and map the areas affected by every adverse or incompatible feature of the project, including:

- Direct and indirect land use conversions,
- Areas of noise in excess of standards for existing or proposed land use,
- Properties where road congestion to level D or worse, impairs access, and
- Harm to landscapes surrounding visitor destinations, or other project-related damage.

The Final EIR provides much of the above information, though in a set of tables and appendices that are difficult to absorb as an integrated whole. For this reason, to make a more comprehensible picture of the entirety of the project impacts, Commission staff has taken data from the Final EIR and DWR's GIS files and developed a series of maps illustrating these impacts.

4. No demonstration of meaningful avoidance or reduction of conflicts for the Town of Hood

Despite modifying aspects of the project to reduce impacts to Hood, DWR did not adopt mitigation measures that would meaningfully support the economic health and well-being of Delta communities, especially the town of Hood, to ensure that it will survive the construction, and it could do more to minimize the DCP's impacts on the town of Hood.

Included among these impacts are permanent damage to community character by the DCP project's construction activities, including declining property values, blight and abandonment. The DCP project presents an existential crisis for small Delta communities, especially the town of Hood, which would be most affected by the protracted, intensive construction period, the permanent re-routing of State Route 160 (a Scenic Highway), the large new permanent infrastructure, and the effects on the Delta economic drivers of agriculture, recreation, and emerging heritage tourism.

Construction of the two intakes, each with a sedimentation basin, drying lagoons (four at each intake) and the intake drop inlet itself will have the most disastrous effects on the community of Hood. The worst effects are enumerated by Final EIR Table 3D-1² and demonstrated by Attachment A, which visualizes the impacts.

The two intake facilities, each occupying 1,500 feet of the Sacramento River banks, will bookend the town with construction. The intakes will require the installation of cutoff walls, with associated dewatering. Cofferdams for dewatering will require impact pile driving for up to 15 hours for each intake.³ Vibratory pile driving will create additional, localized issues.

According to the Final EIR, during dewatering of the river at the intake sites intakes, groundwater levels would be lowered to about -20 feet mean sea level via pumping and maintained at those levels during construction of facilities in the deeper excavations, such as the Sedimentation Basin; this dewatering could result in short-term lowered groundwater levels locally at neighboring supply wells.⁴ Construction of the facilities is projected to take place over a period of approximately 13 years according to the Final EIR's Project Description.⁵ The proposed mitigation for the groundwater impacts of dewatering, a "series" of groundwater recharge and extraction wells installed around the external perimeter of each intake cutoff wall system to allow discharge of captured dewatering water back into the subsurface, would only compound the construction disruption and noise.⁶

Yet, despite all the impacts described above, DWR's analysis of land use conflicts resulting from the North Delta Intakes, claims that substantial evidence in the record demonstrates that the intakes "will have minimal conflicts with housing when factoring in the measures to reduce conflicts described here. The Intake B and C sites are

² DWR, Delta Conveyance Final EIR 3D-2-3D-5.

³ DWR, Delta Conveyance Final EIR 3D-2, 3D-4.

⁴ DWR, Delta Conveyance Final EIR 15B-4.

⁵ DWR, Delta Conveyance Final EIR 3-132-3-133, 3D-2-3D-5, 3D-13-3D-16, 3D-19.

⁶ DWR, Delta Conveyance Final EIR 8-43.

considered to have the least potential landside impacts because the fewest residential structures would be affected.”

Anyone who has ever lived next to or near a major construction site would likely dispute the notion of “minimal conflicts.”

DWR states, “Measures to Reduce Conflicts: The construction of the intakes is estimated to conflict with a total of five residential structures. Where applicable, DWR would provide compensation to property owners for losses due to the covered action to offset economic effects (Final EIR Volume 1, Chapter 14, Land Use, p. 14-23).” This doesn’t address displacement of renters, or loss of a sense of place, or lost recreational values.

Indeed, this fundamental point was noted in the Delta Independent Science Board (DISB) review of the Draft EIR:

“Impacts to communities or populations that are deemed to be of no impact or less than significant using CEQA criteria could still constitute substantial concerns to particular communities within the Delta. An example is that the land use effect “Impact LU-1: Displacement of Existing Structures and Residences and Effects on Population and Housing” has a no impact rating, despite that “Between 61 and 93 permanent structures would be removed within the water conveyance facility footprint” (Chapter 14, page 14-22). Similarly, by assuming that recreation areas are largely substitutable, the CEQA recreation impact criterion fails to address the harms from lost use or inability to make low-cost or nearby substitutes specific to a lost recreation type.”⁷

5. No demonstration of avoidance or reduction of conflicts related to the Twin Cities Complex and Lower Roberts Island and Bethany Complex

After the intakes, the largest landscape conversions will take place at the three major complexes of Twin Cities, Lower Roberts Island, and the Bethany pumping plant and surge basin. These complexes are also areas where the 13-year “temporary” acreage impact is more likely to be effectively permanent. The effectiveness of restoring agricultural lands once they have been excavated for the 200 or 300 foot-deep, 115-foot diameter double launch shafts is questionable, and since the “reclamation” of these sites is estimated to take approximately one year following tunneling work,⁸ it is not

⁷ Delta Independent Science Board (DISB). *Review of the Draft Environmental Impact Report for the Delta Conveyance Project*. Comments submitted to the California Department of Water Resources, DISB, December 16, 2022, 17.

⁸ DWR, Delta Conveyance Final EIR 3-132-3-133.

understood how the productivity of the land would be deemed equivalent to what it was prior to project construction. As acknowledged in the Final EIR, the effectiveness of reclamation techniques is uncertain, so farmland areas targeted for such techniques are still considered to be permanently affected.⁹

The proposed DCP Twin Cities Complex will be located on Prime Farmland in the Secondary Zone immediately adjacent to Interstate 5, occupying 586 acres during construction and 222 acres permanently.¹⁰ The Twin Cities Complex includes areas for additional drying of tunnel muck as well as long-term storage, as do both the Lower Roberts and Bethany locations. The Final EIR evaluation of impacts to agriculture includes numerous instances at locations such as these in which it is deemed “not practicable” to avoid Important Farmland (i.e., lands ranging from Prime to Farmland of Statewide Importance, to Farmland of Local Importance) in siting tunnel muck storage.¹¹ The DCP is expected to utilize approximately 403 acres of Important Farmland for tunnel muck drying and stockpiling.¹²

To accommodate a double launch shaft, farmland conversion at the Lower Roberts Island Complex is even larger, with approximately 610 acres during construction and permanent impacts to 300 acres.¹³

The Bethany Complex adds a massive amount of excavation in the Secondary Zone near Mountain House for the Bethany Complex, including a pumping plant, surge basin with reception shaft, a buried pipeline aqueduct system, and a discharge structure to convey water to Bethany Reservoir. Excavation of the 815 feet wide x 815 feet long by 35 feet deep surge basin will produce 1,171,060 cubic yards of soil, much of which will be stockpiled onsite and will require engineering described by the Delta Conveyance Design and Construction Authority independent review experts as on *the outer edge of industry practice*.¹⁴

Even under the EIR’s own conclusions, these are permanent impacts to existing uses that are, therefore, inconsistent with DP P2.

⁹ DWR, Delta Conveyance Final EIR 15-36.

¹⁰ DWR, Delta Conveyance Final EIR 3D-19.

¹¹ DWR, Delta Conveyance Final EIR 15-35.

¹² DWR, Delta Conveyance Final EIR 15-35.

¹³ DWR, Delta Conveyance Final EIR, 3D-19.

¹⁴ DWR, Delta Conveyance Final EIR 3-18; Delta Conveyance Design and Construction Authority (DCDCA), *Delta Conveyance Final Draft Engineering Project Report Update: Bethany Reservoir Alternative*, DCDCA, November 2023, 11.

B. The DCP's Inconsistency with *Delta as Place* and DP P2 Will Have a Significant Adverse Effect on the Coequal Goals and Undermine the Delta Plan.

The proposed DCP is inconsistent with *Delta as Place* and DP P2. If carried out as proposed, the DCP will irrevocably alter the rural character of the Delta, its economic pillars (agriculture and recreation), and its cultural heritage. This represents a significant adverse impact on the achievement of one or both of the coequal goals, since the coequal goals must be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place. The DCP's goal is water supply reliability, but at the expense of the Delta, as we demonstrate below. By failing to adhere to the mandates in PRC section 29702(a) and Water Code section 85054 to "protect and enhance" Delta values, the DCP undermines and is inherently inconsistent with the Delta Plan.

In its consistency determination, DWR's baseline premise is that "it is infeasible to site the project to fully avoid conflicts with existing Delta land uses," and that it "adopted design changes, environmental commitments, and mitigation measures to reduce direct and indirect conflicts with these uses, including conflicts from project operations." What it did not do, but could feasibly have done, is consider an alternative to the project that respects the Delta as an evolving place.

1. Other Options Not Adequately Considered

DWR failed to adequately consider other possible options that could ensure water supply reliability and ecosystem health while also respecting the Delta as an evolving place. The alternatives it did consider were conceptually similar.

While the Final EIR provides some of that information, it did not take the further step of seriously assessing the full extent of land use conflicts to each component that comprises the Delta as Place values enshrined in the Delta Plan, the Commission's Land Use and Resource Management Plan, and numerous other local government land use plans. Rather, the extensive comparisons of alternatives are meaningfully no different than the proposed project, as suggested by the DISB in comments on the Draft EIR when it offered a table of alternative comparisons. While the CEQA process provided DWR an opportunity to complete these kinds of analyses, elements of DP P2 go beyond the legal requirements of CEQA. Whether or not the Final EIR included such analyses, substantial evidence in the record does not clearly show elements such as these to demonstrate consistency with DP P2.

In short, over the many years DWR has worked to develop a successful Delta Conveyance Project, DWR has failed to grapple with the reality, demonstrated through

evidence in the record, that the DCP puts the long-term sustainability of small Delta communities in serious jeopardy. This is not a new issue but is the fundamental inconsistency that has dogged the DCP and its predecessors, due in part to DWR's insistence on the proposed point of diversion, but more importantly, to its refusal to consider legitimate alternatives such as the portfolio approach.

2. *Alternatives to the Proposed DCP*

Alternative choices were flawed from the start. As described above, impacts to the town of Hood will be devastating. They point directly to a fundamental flaw of design decision making from the beginning: choosing the proposed diversion location through a process entirely decided by engineers and fish biologists without consulting local land use authorities, reinforced by the insistence on calling it a “change” in the point of diversion from the existing location, rather than a new water right. In many ways, this top-down approach sets the stage for DWR's persistent unwillingness to consider real alternatives to the tunnel project.

Improve through-Delta conveyance and reduce reliance on exports. The Delta Protection Commission has repeatedly advocated through-Delta conveyance as alternatives to the DCP and its predecessors. It advocates promoting water reliability by strengthening Delta levees and dredging key Delta channels, while also reducing other regions' reliance on water from the Delta by investing in water use efficiency, water recycling, and other advanced technologies. Such a “portfolio” approach to addressing the concerns of water supply reliability, sea level rise and perceptions – whether well-founded or not – of seismic risk has been proposed in varying combinations and levels of detail, but never considered by DWR in alternatives analysis.

The lack of meaningful alternatives is the first element of DWR's failure to respect local land use within the meaning of the Delta Plan. The Final EIR wasted significant resources with meaningless “alternatives” that all had essentially the same destructive impact on the Delta. The Delta Independent Science Board (Delta ISB), in its review of the DCP Draft EIR, noted this fundamental flaw:

4.7. Diversity of project alternatives is narrow

The alternative conveyance structures considered in the draft EIR are conceptually similar and do not fully reveal the rationale behind each selected alternative. While the alternatives cover a reasonable range of Delta tunnel capacities, they only consider three tunnel alignments (central, east, and east + Bethany PP) and omit several western Delta alignments and through-Delta canal alternatives that have been discussed in past planning. Although it is not

feasible or desirable to compare all possible alternatives, ***a comparison of a broad range of project options is consistent with an objective approach to finding the most environmentally and socially beneficial solution.*** [emphasis added]

For example, two of the major purposes for the conveyance structure are to reduce risk to water supply from seismic events and sea level rise. Both hazards could cause levee failures that would threaten State Water Project deliveries. ***An alternative approach to address these threats, such as extensive remediation to improve levee stability in the Delta, was not evaluated. At a minimum, the rationale for omitting earlier versions of project alternatives would help stakeholders and decision makers understand the full range of options available and constraints to meeting the objectives.***¹⁵ [emphasis added]

The issue of seismic risk as an objective of the project remains particularly galling to Delta people. If there is a significant risk to the Delta levee network, the tunnel would not address it, because according to DWR's own statements 80% of exported water would still be conveyed by through-Delta channels after tunnel construction is complete.¹⁶ Furthermore, there are serious challenges to the level of risk as a justification for all the damage the tunnel would cause, as highlighted by the DISB's assertion that "seismic risk may be overstated."¹⁷ The DISB expresses concern that the evidence supplied in the Final EIR misrepresents where the probability of a major earthquake applies (i.e., to the greater Bay Area and not to the Delta) and furthermore is confusing and not well documented.¹⁸

The project's Final EIR rejected alternatives suggested by local government representatives such as the Delta Counties Coalition, which promotes strengthening critically located levees, upgrading existing infrastructure, expanding water recycling, and building resilient storage above and below ground.¹⁹ The Commission recommends

¹⁵ DISB, Review of Draft EIR 26-27.

¹⁶ Maven's Notebook. *Notebook Feature: Metropolitan committee Discusses Delta Conveyance Project Ahead of December Vote on Funding Planning Costs*, October 17, 2024, <https://mavensnotebook.com/2024/10/17/notebook-feature-metropolitan-committee-discusses-delta-conveyance-project-ahead-of-december-vote-on-funding-planning-costs>.

¹⁷ DISB, Comments on Final EIR 6.

¹⁸ DISB, Comments on Final EIR 6.

¹⁹ Delta Counties Coalition. *Delta Counties Coalition Response to Governor Newsom's Delta Tunnel Proposal and "Accountability Action Plan"* : *The Delta is Not for Sale*. August 6, 2025.

considering a portfolio alternative, that would include a combination of measures such as these.

The 2023 Delta Residents Survey found the following:

- 87% - the Delta is an important agricultural region
- 80% - the Delta is important as California's water hub
- 73% - the Delta is a good region for outdoor recreation
- 68% - the Delta holds cultural and historical importance

In addition, residents value the Delta for quiet and solitude (67%), scenic beauty (51%) and access to waterways (34%).²⁰ Clearly Delta people understand the importance of the Delta's critical role in California's water system, but also understand and value the many attributes that define the Delta as a place. DWR has not established why an alternative that respects these Delta values and provides contributions to California's water supply was not considered.

Conclusion

DP P2 provides that: "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."

The DCP does not conform with this policy because it has not been sited to avoid conflicts with existing uses, it has not demonstrated that it is not feasible to achieve the DCP goals with an alternate siting that would avoid these conflicts, and it has not adequately engaged with or considered the comments of the Commission to date.

Based on the foregoing discussion, DWR's Certification of Consistency fails to establish, with substantial evidence, that the DCP is consistent with DP P2 and *Delta as Place*.

²⁰ DSC, Delta Science Program. *Rural Delta Residents' Voices on the 2023 Delta Residents Survey*, DSC, October 23.

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Delta Conveyance Project

Council Certification ID: C20257

Submitted by California Department of Water Resources

ATTACHMENT C**Inconsistency: Mitigation Measures Required by the Delta Plan**

The project is inconsistent with the requirement to include mitigation measures equal or more effective as those required by the Delta Plan.

Delta Plan Policy: G P1(b)(2): Mitigation Measures Equally or More Effective Than Delta Plan EIR.

The Delta's cultural resources represent far more than a simple list of historic buildings and archaeological sites, but rather inhabit hundreds of thousands of acres of river channels, sloughs, remnant marshes and riverside woodlands, islands and tracts, flood control and drainage works, orchards, vineyards, other farms, historic villages of California Native American tribes and immigrants from around the world, waterside landings, scenic drives, developed and undeveloped recreation areas, and other significant features. The modern Delta is a human-created landscape, a new landscape, a transformation of the land. It has evolved through its use by many peoples –California Native American tribes, Mexican-era pioneers, 19th century immigrants from Europe and Asia, as well as migrants from other parts of the country, family farmers, agricultural entrepreneurs, farm workers from the Pacific and Latin America, inventive engineers, and more recent residents and visitors drawn by its landscape, quiet, relaxation, and free spiritedness. These generations' pursuit of homes, sustenance, and reward for their labor and innovation transformed the Delta from a vast and complex wetland to today's region of agriculture, recreation, and historic communities.

As defined by the National Park Service (NPS), a cultural landscape is a geographic area, including both cultural and natural resources and the wildlife or domestic animals therein, associated with a historic event, activity, or person, or that exhibits other cultural or aesthetic values. The Delta is a landscape that has evolved through use by the people

whose activities or occupancy shaped that landscape, which the NPS calls a “historic vernacular landscape.” Example descriptions provided by the NPS match those of the Delta areas affected by the Delta Conveyance Project (DCP) including rural villages, agricultural landscapes such as farms and ranches, landscapes with a total absence of buildings, and landscapes with linear resources such as transportation systems like the Sacramento River or River Road. A district of historic farms along a river may be an example of a significant cultural landscape. Scenic highways are also potential examples.

In many ways, the Delta is a collection of historic districts of vast scale, linked by its waterways and scenic highways, replete with significant features related to exploration, maritime history, engineering, commerce, conservation, invention, government, and transportation. For California Native Americans, the Delta is a sacred landscape – their home and the heart of their cultures. Its significance also extends to both a national historic context, as an example of national land and water management from the 1850s through the 1950s, and a state historic context as an example of California’s exploration, settlement, agricultural development, and ethnic diversity during that period.

A. The Delta Conveyance Project Does Not Include Adequate Mitigation Regarding Cultural Landscape Investigation, Avoidance and Protection, and is Therefore Inconsistent with G P1(b)(2).

The DCP is inconsistent with G P1(b)(2) mitigation requirements in regards to cultural resources because DWR’s record does not demonstrate sufficient mitigation measures to address investigation of, impacts to, and loss of cultural landscapes, a key component of *Delta as Place* values. Cultural resources and legacy communities, together with agriculture and recreation, embody the region’s cultural history, economic foundation, long-time human interaction with the natural environment, and visual character. The importance of the Delta to the United States’ cultural and historical context has been recognized by Congress, which in 2019 designated the Delta as a National Heritage Area (NHA).¹

The Delta Plan EIR contains the following mitigation measures involving cultural landscapes:

10-1(c). Before any ground-disturbing activities begin, conduct intensive archaeological surveys, and subsurface investigations if warranted, to identify the locations, extent, and integrity of presently undocumented archaeological, tribal cultural, and landscape resources that may be located in areas of potential disturbance. Conduct tribal consultation to identify and evaluate the presence and

¹ Public Law 116-9.

significance of tribal cultural resources and landscapes. Surveys and subsurface investigations where tribes have identified tribal cultural resources shall include tribal monitors in addition to archaeologists. In addition, if ground-disturbing activities are planned for an area where a previously documented prehistoric archaeological site has been recorded but no longer may be visible on the ground surface, conduct test excavations to determine whether intact archaeological subsurface deposits are present. Also conduct surveys at the project site for the possible presence of cultural landscapes and traditional cultural properties.

10-1(d). If potentially CRHR-eligible prehistoric or historic-era archeological, tribal cultural, or landscape resources are discovered during the survey phase, additional investigations may be necessary. These investigations should include, but not necessarily be limited to, measures providing resource avoidance, archival research, archaeological testing and CRHR eligibility evaluations, and contiguous excavation unit data recovery. In addition, upon discovery of potentially CRHR-eligible prehistoric resources, coordinate with the NAHC and the Native American community to provide for an opportunity for suitable individuals and tribal organizations to comment on the proposed research.

10-1(e). If CRHR-eligible archaeological resources, tribal cultural resources, or cultural landscapes/properties are present and would be physically impacted, specific strategies to avoid or protect these resources should be implemented if feasible. These measures may include:

- i. Planning construction to avoid the sensitive sites
- ii. Deeding the sensitive sites into permanent conservation easements
- iii. Capping or covering archaeological sites
- iv. Planning parks, green space, or other open space to incorporate the sensitive sites

10-3(a). Inventory and evaluate historic-era buildings, structures, linear features, and cultural landscapes. Conduct cultural resources studies to determine whether historic-era buildings, structures, linear features, and cultural landscapes in the project area are eligible for listing in the CRHR.

10-3(f). Comply with the Secretary of the Interior’s Guidance for the Treatment of Cultural Landscapes to preserve landscapes’ historic form, features, and details that have evolved over time.²

The DCP Final EIR’s analysis focuses on a limited set of properties, sites, and districts, but fails to adequately assess the cultural values of the Delta in a larger context. In effect, the Final EIR cannot see the forest (the cultural landscape) for the trees (individual properties). The cultural landscape approach, as discussed in the *Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes*,³ is used in the Commission’s *Draft Survey of Cultural Resources of the Sacramento-San Joaquin Delta in the Delta Conveyance Project Area*.⁴

The proposed project will compromise all or portions of resources in the affected area and potentially disqualify them for consideration by the California Register of Historical Resources (CRHR) and the National Register of Historic Places (NRHP). The mitigation measures should take a cultural landscape contextual approach, given the significance and richness of the Delta’s historic properties and their surroundings.

However, as noted in DWR’s Certification of Consistency documents, the mitigation measures in the Final EIR, which DWR certified on December 21, 2023,⁵ only discuss future documentation of cultural landscapes that will be harmed by the DCP and fail to consider and adopt mitigation measures to avoid or protect these resources as required in Delta Plan Mitigation Measures 10-1(e) and 10-3(f):

Mitigation Measure CUL-1b requires documentation and recordation be prepared for built resources that will be directly and adversely affected by project construction (Chapter 19, Impact CUL-1). Specifically, Historic American Building Survey (HABS) documentation will be prepared for CRHR- and NRHP-eligible buildings and structures that will be demolished or altered. Such documentation will be led or supervised by architectural historians that meet the Secretary of the Interior’s Professional Qualification Standards. Historic American Landscape Survey (HALS) records and Historic American Engineering Record (HAER)

² Delta Stewardship Council (DSC). *Delta Plan Amendments Mitigation Monitoring and Reporting Program*, DSC, April 2018.

³ Birnbaum, Charles A. and Christine Capella Peters, eds. *The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes*, U.S. Department of the Interior, National Park Service, 1996.

⁴ Delta Protection Commission (DPC). *Draft Survey of Cultural Resources of the Sacramento-San Joaquin Delta in the Delta Conveyance Project Area*, DPC, 2023.

⁵ DWR, *Decisions Regarding the Delta Conveyance Project Final Environmental Impact Report SCH # 2020010227*, DWR, December 21, 2023.

documents will also be prepared for affected historic landscapes or water-associated resources. All reports will include written and photographic documentation of the significant and character-defining features of these properties. The BETP will indicate whether the reports will be formally submitted to the National Park Service for review and approval, based on a consideration of the rarity or caliber of the resource being mitigated, or instead distributed to local repositories or used for interpretive or educational programs. Finally, as applicable for cultural landscape historic districts, Mitigation Measure CUL-1b requires preparation of a Landscape Treatment Plan to document the history and significance of the NRHP-eligible landscape identified in the HRSER and provide treatment recommendations (Chapter 19, Impact CUL-1). The HABS documents, HALS, and Landscape Treatment Plan are the same as, equal to, or more effective than the DP MM 10-3 recommendation to provide photographic and written documentation where avoidance of significant historic resources is not possible. [DP MM 10-3(d)]⁶

The DCP Final EIR discussed mitigation for buildings and sites that are directly impacted by construction of the proposed project. The Final EIR identified 17 built-environment historical resources and 13 archaeological resources that would be affected by the construction of water conveyance features, including single family properties, a bridge, and water infrastructure projects.⁷ The Final EIR mitigations outline future development of undescribed built environment treatment plans and a vague assurance that project proponents will consult with relevant parties prior to demolition or ground-disturbing activities.⁸

DWR is not proposing defined funding sources for mitigating direct or indirect impacts to cultural resources, leaving final disposition of properties and landscapes potentially eligible for the California and National Registers to the National Historic Preservation Act (NHPA) Section 106 process. The recently concluded NHPA Section 106 Programmatic Agreement (PA) between the Corps, DWR and the State Historic Preservation Officer (SHPO) does not identify any clear standards for future mitigation development. Instead, protections rely on a Historic Property Treatment Plan process and the parties to it. The process is necessarily phased over years and will need to be carefully tracked by those who are concerned about preserving the integrity of Delta landscapes.⁹ The process, without a

⁶ DWR. *Final Draft G P1 (B)(2) Attachment 1 Delta Plan and Delta Conveyance Project Mitigation Crosswalk Table*, DWR, October 2025, 39-40.

⁷ DWR. *Delta Conveyance Project Final Environmental Impact Report*, -DWR, December 2023, ES-88, 19-3.

⁸ DWR, *Delta Conveyance Final EIR* 19-45-19-48.

⁹ U.S. Army Corps of Engineers, Sacramento District and the California State Historic Preservation Officer. *Pre-Final Programmatic Agreement, Delta Conveyance Project*, June 2025.

clear commitment to defined mitigation with identified funding, is simply insufficient to mitigate for the DCP's extensive and adverse impacts on the Delta cultural landscape, as G P1(b)(2) requires.

DWR did not initiate meaningful dialogue early on with the Commission and local community organizations (such as local historical societies or governance organizations like the Locke Management Association) about potential mitigation for cultural resources impacts. Instead, this is left to the Section 106 process, which does not address issues that may be outside the Area of Potential Effect. Thus, without a cultural landscape approach, numerous sites of tribal, cultural, and historic value will be damaged or compromised. They also have not made an effort to assess the cultural landscape along potential DCP alignments. This required step is postponed until DWR has already made major decisions about the DCP. Since this was not done, avoidance and minimization through project design and construction planning was ignored. The lack of coordination with cultural organization representatives coupled with a future undefined process (the Section 106 process) and funding to mitigate impacts to cultural resources will have a significant adverse impact on the Delta.

The deficient DCP mitigation for the Delta's cultural landscape and the complete lack of any clear, reliable funding source or commitment to timing of mitigation, all demonstrate substantially inferior mitigation to the intent of Delta Plan policy G P1(b)(2). The mitigation scheme is not equally or more effective than DP MM-10-1(c), (d), and (e) and 10-3(a) and (f) will have an adverse impact on achievement of one or both of the coequal goals. Substantial evidence in the record does not support the claimed consistency of DCP with this policy.

B. The DCP's Inconsistency with G P1(b)(2) for Cultural Landscape Mitigation Will Have a Significant Adverse Effect on the Coequal Goals and Undermine the Delta Plan.

The proposed DCP is inconsistent with G P1(b)(2) for the Delta's cultural landscape. If carried out as proposed, without the legally required level of mitigation the Delta Plan dictates, the DCP will irrevocably alter the rural character of the Delta, its economic pillars (agriculture and recreation), and its cultural heritage. This represents a significant adverse impact on the achievement of one or both of the coequal goals, since the coequal goals must be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place. The DCP would purport to achieve water supply reliability, but at the expense of the Delta's cultural heritage, as we have demonstrated. By failing to adhere to the mandates in PRC section 29702(a) and Water Code section 85054 to "protect and enhance" Delta values,

including the Delta's cultural heritage, the DCP undermines and is inherently inconsistent with, the Delta Plan.

Conclusion

Based on the foregoing discussion, DWR's Certification of Consistency fails to establish that the DCP is consistent with G P1(b)(2).

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Delta Conveyance Project

Council Certification ID: C20257

Submitted by California Department of Water Resources

ATTACHMENT D

Inconsistency: Insufficient Mitigation of Agricultural Land Loss

The project is inconsistent with the requirement to incorporate mitigation measures in the Delta Plan, or substitute mitigation measures that are equally or more effective.

Delta Plan Policy: G P1(b)(2): Mitigation measures

A. The Delta Conveyance Project's Vague and Inadequate Mitigation of Agricultural Land Loss is Inconsistent with G P1(b)(2).

The State and Federal governments clearly articulated the need to preserve the irreplaceable Delta, including its agriculture. The Delta Protection Act of 1992 as amended by the Delta Reform Act requires the coequal goals to be achieved in a manner that "protects and enhances" the Delta's "agricultural values" and "agriculture."¹ "The Delta is an agricultural region of great value to the state and nation and the retention and continued cultivation and production of fertile peatlands and prime soils are of significant value" and "[a]gricultural lands located within the primary zone should be protected from the intrusion of nonagricultural uses."² The Delta Protection Act ensures that the Delta's agricultural resources do not face the threat of conversion to urban uses.³ More recently (2019), the Delta's unique resources were recognized by Congress when it created the Sacramento-San Joaquin Delta National Heritage Area. The Delta Protection Commission (Commission) has previously expressed its view that the Delta Conveyance Project (DCP) Draft EIR greatly underestimated the impact to agricultural resources.⁴

¹ California Public Resources Code § 29702(a) and (b).

² California Public Resources Code § 29703(a) and (c).

³ California Public Resources Code § 29703(c) and 29760(b)(12).

⁴ Delta Protection Commission (DPC). Letter on Delta Conveyance Project Draft EIR, DPC, December 14, 2022, 6-7.

Agriculture is the dominant land use and economic driver in the rural Delta region. According to the Commission's 2020 report, *The State of Delta Agriculture*, Delta agriculture supported 15,717 jobs, \$1.3 billion in value-added, and \$2.7 billion in output in the five Delta counties in 2016. Across the State of California, Delta agriculture supported 23,064 jobs, over \$2.17 billion in value-added, and over \$4.59 billion in output.⁵

Agricultural land conversion as a result of the DCP will be permanent, inadequately mitigated, or insufficiently compensated: DCP mitigation does not provide for the level of mitigation required in the Delta Plan. The Delta Plan EIR Mitigation Measure (MM) 7-1 states that a project that will result in permanent conversion of farmland should preserve lands in perpetuity with a "minimum target ratio of 1:1, depending on the nature of the conversion and the characteristics of the Farmland to be converted."⁶

Chapter 15 of the DCP Final EIR adopts essentially the same mitigation measures found in the California WaterFix Final EIR/EIS and in the Bay-Delta Conservation Plan (BDGP) EIR/EIS⁷. These have been consolidated into two mitigation measures, Mitigation Measure AG-1 (Preserve Agricultural Land), and Mitigation Measure AG-3 (Replacement or Relocation of Affected Infrastructure Supporting Agricultural Properties) as well as an Agricultural Land Stewardship (ALS) Plan from previous tunnel iterations, now repackaged as a set of strategies. This is described in the FEIR Appendix 15B (Agricultural and Land Stewardship Considerations) as a "voluntary, collaborative process utilizing a selection of strategies for agriculture and land stewardship in the Sacramento–San Joaquin River Delta (Delta)." This appendix describes the ALS Strategies implemented during early project planning to minimize the extent of farmland that project buildout would convert and identifies ALS Strategies which could be considered for future implementation.⁸

During the DCP planning process, agriculture land was actually ranked to be preferable to other land uses for launch site locations. Appendix 15B describes DWR's "Early Implementation of Early Project Planning" which includes steps to minimize farmland impacts. Yet close reading of Appendix 15B and the Shaft Siting Study Technical Memo⁹

⁵ University of the Pacific Center for Business and Policy Research and California State University, Chico Geographic Information Center. *The State of Delta Agriculture: Economic Impact, Conservation and Trends*, Prepared for DPC, February 3, 2020, 27.

⁶ Delta Stewardship Council. *Delta Plan Ecosystem Amendment Mitigation Monitoring and Reporting Program*, DSC, June 2022, 14-15.

⁷ California Department of Water Resources (DWR). *Bay Delta Conservation Plan /California WaterFix Final Environmental Impact Report/Environmental Impact Statement*, DWR, December 2016.

⁸ DWR, *Delta Conveyance Project Final Environmental Impact Report*, DWR, December 2023, 15B-1-15B-16.

⁹ DWR, Delta Conveyance Final EIR Appendix 15B; Delta Conveyance Design and Construction Authority (DCDCA). *Delta Conveyance Project Concept Engineering Report (Final Draft)*, DCDCA, September 30, 2024, Appendix C5. Attachments 1 and 3.

shows that farmlands were prioritized to be preferable to other lands: tunnel launch shaft location criteria first excluded lands for wildlife refuges or preserves and lands managed for flood management and associated habitat – in other words, areas where there would be cost and permitting implications. Only secondarily, as sub-criteria, were farmlands given lower values that would rank them as less optimal for the launch shaft siting.¹⁰

Appendix 15B itself contains no reference to mitigation ratios or how they would be achieved, but does include analyses of various impact areas that address broader Delta agricultural issues. Appendix 15B.2.5 (Socioeconomics) includes a statement that is repeated throughout the appendix that “The long-term effects would be reduced if many areas of the construction footprint that would not be needed for permanent infrastructure were successfully returned to agricultural production.”

Finally, Appendix 15B states that “While impacts on agricultural land could not be avoided, Strategy E1.3.1: *Reduce impacts on land*, E1.1: *Early project planning*, and E1.2.1: *Involve farmers and landowners in project planning*, were implemented to help reduce the magnitude of conversion of agricultural land. Avoidance of Important Farmland and Land under Williamson Act contract took precedence during the planning process over other types of farmland.”¹¹

This underscores a fundamental flaw throughout the DCP project that undermines a finding of consistency with Delta as Place values and the Delta Plan: the DCP pits Delta values against each other. High value farmland is pitted against lower value farmland and farmland is pitted against other community land uses. For example, an elementary school is pitted against farmland. In the South Delta, according to the FEIR, “Construction of Alternative 5 could result in additional traffic on roads used to access Mountain House Elementary School; however, construction traffic would be routed away from this school during the construction period to avoid impacts on the school.”¹² The FEIR fails to mention that the method of avoidance is to route construction traffic to a new haul road through an orchard.¹³

Agricultural land conversion along the tunnel alignment will not be temporary, considering the estimated 13-year construction window and the definition of temporary as 2 years (Final EIR Chapter 15 defines “temporary” as no longer than 2 years). Even construction sites that are not permanently part of operations will be fallow so many years and will be

¹⁰ DWR, Delta Conveyance Final EIR 15B-10.

¹¹ DWR Delta Conveyance Final EIR 15B-7.

¹² DWR, Delta Conveyance Final EIR, 21-29.

¹³ DCDCA. *Delta Conveyance Project Map Book*, DCDCA, 2024, <https://www.dcdca.org/wp-content/uploads/2024/08/2024-06-Delta-Conveyance-Project-Map-Book.pdf>

affected by soil modifiers and other effects from the use of the property as to be of questionable agricultural value and unlikely to be successfully reclaimed for agricultural use. Other agricultural lands, bisected by project features such as roads and facilities, will be rendered useless for farming due to their small size, or impractical or inaccessible location. The concrete batch plant complex located on Williamson Act land near the intersection of Lambert Road and Franklin Road in Sacramento County provides one example of this acknowledged in the FEIR, where it is projected to result in permanent conversion of approximately 15 acres. In addition, most if not all facilities such as roads and off-ramps left in place will increase pressure for non-farm use at sites that cannot be returned to agriculture.

The project as proposed would retain Significant and Unavoidable (SU) impacts on agriculture, including permanent and temporary conversion of some 3,800 acres of Prime Farmland and other Important Farmland categories, and 1,200 acres of land under Williamson Act contracts. In addition, the Compensatory Mitigation Program (CMP) would come at a price of 1,175 acres of Important Farmland on Bouldin Island converted to habitat.¹⁴ Attachment A, Maps 2-5, depict the spatial distribution of these permanent and temporary agricultural land losses in specified areas within the DCP.

Through design modifications, DWR has reduced some agricultural land impacts but fundamentally the severity of the impacts on Delta farmland remain unmitigated and uncompensated for and those reductions have come at the cost of creating other impacts, as noted above with respect to the Mountain House School. DWR has not demonstrated with substantial evidence that they have identified specific quantifiable and achievable measures to avoid or mitigate for known and unknown farmland losses resulting from the DCP that are equal to or more effective than all of DP MM 6-2.

The DCP is inconsistent with G P1(b)(2) mitigation requirements applicable to agricultural land because DWR's record, as reflected in the *G P1(b)(2) Attachment 1: Delta Plan and Delta Conveyance Project Mitigation Crosswalk Table*¹⁵ (Crosswalk), does not demonstrate sufficient mitigation measures to address impacts to and loss of agricultural land, resulting in significant adverse impacts on the coequal goals and *Delta as Place* values in these ways:

¹⁴ DWR Conveyance Final EIR 15-39-15-41.

¹⁵ DWR. *Final Draft G P1 (B)(2) Attachment 1 Delta Plan and Delta Conveyance Project Mitigation Crosswalk Table*, DWR, October 2025.

1. *Inadequate Mitigation for Farmland Loss Permanently Erodes Delta Agricultural Values*

- a. Mitigation presented in the Final EIR largely restates existing regulatory requirements rather than providing specific, enforceable, project-level actions. Mitigation Measure AG-1 is repeatedly referenced, but the description remains generic – for example, a 1:1 ratio of easement dedication or in-lieu fee payments – and does not include the necessary implementation detail. The Final EIR does not specify:
 - i. Where easements would be acquired within the Delta counties.
 - ii. Whether sufficient comparable farmland is available or achievable.
 - iii. Whether funds/land trusts are secured.
 - iv. How mitigation lands will be selected or prioritized spatially in relation to the lands impacted.
 - v. How "permanent" protection will be monitored, enforced, or evaluated over time. The Final EIR itself acknowledges that, even with AG-1, the project would still result in a net loss of Important Farmland, underscoring the inadequacy of the mitigation framework.

Taken together, these omissions reflect a mitigation framework that is vague and lacks the concrete, practicable steps necessary to demonstrate that agricultural land losses can or will be effectively offset. Additionally, because AG-1 only requires acquisition of mitigation land “to the extent feasible,” there is no assurance that replacement farmland will be of equal or better quality *or* located within the parts of the Delta actually affected by the Project, resulting in mitigation that may occur far from where the impacts occur.¹⁶

In addition, Appendix 15B confirms that no funding has been encumbered to implement agricultural conservation easements or other land-based mitigation, and suggests that the \$200 million Community Benefit Program could be used “if there is community-driven support.”¹⁷ This amount is insufficient to cover the scale of permanent and long-term agricultural land losses identified in the FEIR. Accordingly, substantial evidence in the record does not support DWR’s assertion that the mitigation scheme is equal to or more effective than DP MM-7-1 and DP MM-6-2.

¹⁶ DWR, Delta Conveyance Final EIR 15-39.

¹⁷ DWR, Delta Conveyance Final EIR 15B-14.

2. *Fragmentation Effects Are Ignored, Causing Long-Term Degradation of Delta's Agricultural Landscape*

- a. DP MM 7-1 requires avoiding or minimizing fragmentation of farmland. The Crosswalk claims this is achieved, but does not explain:
 - i. How fragmentation was measured.
 - ii. What thresholds or metrics were applied. Whether any design modifications were made to reduce fragmentation.
 - iii. What the residual fragmentation impacts are on long-term agricultural viability.
- b. Instead, the Crosswalk simply restates that project components were “sited to avoid agricultural land to the extent possible,” without providing data or examples of avoided impacts.
- c. Commission GIS staff review of the project footprint using GIS datasets provided by DWR further demonstrates that fragmentation impacts are both substantial and undisclosed. Drawing on more than ten years of professional GIS analysis experience, Commission staff examined construction areas, permanent facilities, and haul routes and identified that the project would create numerous isolated agricultural remnants, including narrow slivers, irregularly shaped fields, and parcels effectively severed from infrastructure access. See Attachment A, Maps, which depicts locations where construction and permanent facilities would break up formerly contiguous farmland into smaller or irregular pieces. These fragmented units are unlikely to remain viable for commercial production. The Crosswalk document does not acknowledge these fragmentation patterns in detail, does not assess their implications for long-term agricultural use potential, and does not reconcile them with the Delta Reform Act mandate to preserve the agricultural landscape of the Delta as a coherent and functional whole.¹⁸

3. *Heavy Reliance on Future Plans Defers Mitigation—and Leaves Agricultural Values of Delta as Place at Risk of Further Degradation*

- a. The FEIR relies heavily on assertions without providing substantive supporting evidence. Throughout the agricultural mitigation sections—particularly those related to DP MM 7-1 (farmland conversion) and Mitigation Measure AG-1—DWR repeatedly asserts that the project’s measures are “the same as, equal to, or

¹⁸ DWR. G P1 (B)(2) Mitigation Crosswalk Table 25.

more effective than” Delta Plan requirements.¹⁹ However, the FEIR does not demonstrate:

- i. What criteria or comparative frameworks were used to judge equivalence.
 - ii. Any measurable performance standards to evaluate agricultural mitigation effectiveness.
 - iii. Any analysis of feasibility, success likelihood, or implementation constraints of the proposed mitigation actions.
- b. Furthermore, several mitigation components—including stewardship measures described in Appendix 15B—are contingent on future plans, funding decisions, or program development, making them speculative rather than enforceable commitments.²⁰

4. *The Project Undermines the Coequal Goals Framework by Failing to Protect “Delta as Place” While Pursuing Water Supply Reliability*

- a. The coequal goals require that water supply reliability and ecosystem restoration be advanced in a manner that protects and enhances the unique agricultural, cultural, and landscape values of the Delta as Place. However, the Crosswalk and FEIR reveal a consistent imbalance:
- i. The Project provides extensive detail, design development, and performance standards for water-supply infrastructure, while relegating protection of Delta agricultural landscapes to generalized descriptions, unquantified easements, deferred planning, and non-binding stewardship concepts.²¹

This imbalance undermines the statutory requirement that the coequal goals be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place. Substantial evidence in the record does not support the claimed consistency of DCP with G P1(b)(2).

B. The DCP’s Inconsistency with G P1(b)(2) For Agricultural Land Mitigation Will Have a Significant Adverse Effect on the Coequal Goals and Undermine the Delta Plan.

The proposed DCP is inconsistent with G P1(b)(2) for the Delta’s agricultural lands. If carried out as proposed, without the legally required level of mitigation the Delta Plan

¹⁹ DWR, G-P1(B)(2) Mitigation Crosswalk Table 24-26.

²⁰ DWR, Delta Conveyance Final EIR 15B-1-15B-15.

²¹ DWR, Delta Conveyance Final EIR 15B-1-15B-15.

dictates, the DCP will irrevocably alter the rural character of the Delta, its economic pillars (agriculture and recreation), and its cultural heritage. This represents a significant adverse impact on the achievement of one or both of the coequal goals, since the coequal goals must be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource *and agricultural* values of the Delta as an evolving place. The DCP would purport to achieve water supply reliability, but at the expense of the Delta's agricultural foundation, as we have demonstrated. By failing to adhere to the mandates in PRC section 29702(a) and Water Code section 85054 to "protect and enhance" Delta values, including the Delta's agricultural lands, the DCP undermines and is inherently inconsistent with, the Delta Plan.

Conclusion

Based on the foregoing discussion, DWR's Certification of Consistency fails to establish that the DCP is consistent with G P1(b)(2) for agricultural lands.

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ATTACHMENT E**Inconsistency: Insufficient Mitigation for Recreation Impacts**

The project is inconsistent with the requirement in G P1(b)(2) to incorporate mitigation measures in the Delta Plan, or substitute mitigation measures that are equally or more effective.

Delta Plan Policy: G P1(b)(2): Mitigation Measures Equally or More Effective Than the Delta Plan EIR.

G P1(b)(2) states:

(2) Covered actions not exempt from CEQA must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 26, 2018 (unless the measure(s) are within the exclusive jurisdiction of an agency other than the agency that files the certification of consistency), or substitute mitigation measures that the agency that files the certification of consistency finds are equally or more effective;¹

A. The DCP is Inconsistent with G P1(b)(2) Because it Fails to Incorporate Mitigation Measures for Significant and Adverse Construction Impacts on Delta Recreation.

Recreation is second only to agriculture in contributing to the Delta region's economy. According to the Economic Sustainability Plan (ESP) 2020 update, visitors to the Delta region generated a total of 12 million visitor-days of use annually in 2020 with a direct economic impact of more than \$250 million in spending. This included approximately 8 million resource-related (e.g., boating and fishing) visitor days of use per year, 2 million

¹ Delta Plan, chapter 2, p. 53.

urban parks-related (e.g., golf, picnic, and turf sports), and 2 million right-of-way-related (e.g., bicycling and driving for pleasure) recreation visitors per year. Most of this visitation occurs in interior areas of the Delta that will be largely impacted by the DCP. The ESP Recreation Update noted that most spending occurs in Legacy communities and marinas, some of the areas hardest hit by DCP construction.

Some issues the Economic Sustainability Plan (ESP) Recreation update identified as relevant to the impact of the DCP include an alarming decrease in the number of marinas in the Delta since 2008, from 112 to 97 in 2020, as well as a decline in recreation-related establishments located in the Primary Zone, from 96 in 2008 to 70 in 2020. Furthermore, the number of boat builders in the Delta has dropped by 20%, along with declines in most other boating-related services.

As described in the Commission's appeal on inconsistency with Policy G P1(b)(3) on best available science, the Final EIR inadequately considered Delta recreation and failed to base its assessment of impacts on Delta recreation on best available science and data. Also, the Final EIR conclusion that recreation impacts were determined to be Less Than Significant under CEQA does not address the adequacy of mitigation for Delta Plan consistency purposes.

For example, at Lower Roberts Island, long-term levee construction activities associated with the Lower Roberts complex will directly affect the Turner Cut and Tiki Lagoon Resorts.² Windmill Cove Marina will also likely see major disruptions due to construction noise and activities associated with the construction and use of a rail spur and road from the Port of Stockton over the 13-plus year duration of the launch shaft facility and tunnel boring.

No mitigation has been proposed for the substantial "temporary" impacts to recreation in the Delta by the project proponents, other than creation of site-specific construction traffic management plans, which are deferred to the future and as proposed will place an uncompensated burden on local public works and emergency responders, the latter which are often volunteer staffed.³ While this could conceivably address roadway access to recreation areas, it does nothing to address the damage to or loss of recreation facilities themselves.

The Delta Plan EIR Mitigation Measure (MM) 18-2 states that "If substantial temporary or permanent impairment, degradation, or elimination of recreational facilities causes users to be directed towards other existing facilities, lead agencies shall coordinate with impacted public and private recreation providers to direct displaced users to under-utilized

² DWR, Delta Conveyance Final EIR 16-27.

³ DWR, Delta Conveyance Final EIR 20-40-20-44.

recreational facilities.”⁴ There is no analysis in the record of temporary or permanent impacts, because there is virtually no relevant data on both formal and informal recreational uses in the project area. It should be noted that Final EIR Chapter 15 defines “temporary” as no longer than 2 years,⁵ and construction will last over a decade and a half depending on location and facility. The lack of analysis and associated mitigation or project modifications do not meet the standard set forth in the Delta Plan MM 18-2.

Scenic highways have been designated at State Routes 160 and 12. In the Commission’s 2019 Visitor Preference Survey⁶, 73% reported engaging in land-based recreation (hiking, picnicking, camping, walking, or bicycling) and 58% reported engaging in water-based activities (boating, kayaking, canoeing, swimming). Of the respondents to the 2023 Delta Residents Survey Summary Report,⁷ 66% reported engaging in land recreation, and 39% in water recreation. The most frequently mentioned recreational activities preferred by visitors and residents included driving for pleasure, viewing scenery and wildlife, historical sightseeing, wine tasting, and attending festivals or events, all of which involve driving through the Delta (citation). The adverse impacts on all these recreational activities that rely on the roads and highways for part of the experience are not addressed in the mitigations.

Likewise, the waterways are noted for a range of recreational experiences, including water sports and exploring by kayak, sail, or motorboats. These too will be disrupted by the construction of intakes, bridges and levees, and DWR has not shown substantial evidence in the record for the mitigation of these impacts.

DWR does not consider the DCP’s impacts to recreation to be significant and as such does not mitigate these impacts, this despite the evidence that impacts will be longer than the 2-year temporary definition. This is inconsistent with Delta Plan mitigation requirements.

Furthermore, and related, substantial evidence in the record does not support the claimed consistency of DCP with G P1(b)2) for agricultural land.

⁴ DSC, Delta Plan Amendments MMRP 48.

⁵ DWR, Delta Conveyance Final EIR 15-26.

⁶ Delta Protection Commission (DPC). *Recreation & Tourism in the Delta - A Study of Preferences for Activities and Facilities, Information Sources, and Economic Contributions of Delta Events*, California State University, Sacramento Department of Recreation, Parks, & Tourism Administration, May 2019, 8.

⁷ DSC, Delta Science Program. *California Delta Residents Survey Data Explorer*, DSC, October 16, 2025, <https://deltascience.shinyapps.io/DeltaResidentsSurveyDataViewer>.

B. The DCP's Inconsistency with G P1(b)(2) For Recreation Will Have a Significant Adverse Effect on the Coequal Goals and Undermine the Delta Plan.

The proposed DCP is inconsistent with G P1(b)(2) for Delta recreation. If carried out as proposed, without the level of mitigation required by the Delta Plan, the DCP will irrevocably alter the rural character of the Delta, its economic pillars (agriculture and recreation), and its cultural heritage. This represents a significant adverse impact on the achievement of one or both of the coequal goals, since the coequal goals must be achieved in a manner that protects and enhances the unique cultural, *recreational*, natural resource and agricultural values of the Delta as an evolving place. The DCP purports to achieve water supply reliability, but at the expense of Delta recreation and the economic foundation it brings to Delta communities and residents, as we have demonstrated. By failing to adhere to the mandates in PRC section 29702(a) and Water Code section 85054 to “protect and enhance” Delta values, including Delta’s recreation, the DCP undermines and is inherently inconsistent with, the Delta Plan.

Conclusion

Based on the foregoing discussion, DWR’s Certification of Consistency fails to establish that the DCP is consistent with G P1(b)(2) for recreation.

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ATTACHMENT F

Inconsistency: Failure to Use Best Available Science for Recreation Impacts

The project is inconsistent with the requirement in G P1(b)(3) to use best available science.

Delta Plan Policy: G P1(b)(3): Use of Best Available Science.

G P1(b)(3) states that “all covered actions must document use of best available science.”

Appendix 1A of the Delta Plan identifies the following criteria: relevance, inclusiveness, objectivity, transparency and openness, timeliness, and peer review.¹

A. The DCP’s Delta recreation data collection does not meet the best available science standard.

There is no substantial evidence in the DCP record of recreational use data to support the conclusion the project either does not impact recreation significantly or that it is consistent with G P1 (b)(3). The data provided in the FEIR and technical appendices fail to provide data on recreation comparable to that collected to support such issues as traffic and transportation.

If there is not a clear understanding of recreational use, there cannot be an accurate understanding of the DCP’s impacts or an appropriate response via mitigation measures.

Recreation is second only to agriculture in contributing to the Delta region’s economy. According to the Economic Sustainability Plan (ESP) 2020 update, visitors to the Delta region generated a total of 12 million visitor-days of use annually in 2020 with a direct economic impact of more than \$250 million in spending. This included approximately 8 million resource-related (e.g., boating and fishing) visitor days of use per year, 2 million

¹ Delta Plan [Appendix 1A Best Available Science](https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf): <https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>.

urban parks-related (e.g., golf, picnic, and turf sports), and 2 million right-of-way-related (e.g., bicycling and driving for pleasure) recreation visitors per year. Most of this visitation occurs in interior areas of the Delta that will be largely impacted by the DCP. The ESP Recreation Update noted that most spending occurs in Legacy communities and marinas, some of the areas hardest hit by DCP construction.

Some issues the Economic Sustainability Plan (ESP) Recreation update identified relevant to the impact of the DCP include an alarming decrease in the number of marinas in the Delta since 2008, from 112 to 97 in 2020, as well as a decline in recreation-related establishments located in the primary zone, from 96 in 2008 to 70 in 2020. Furthermore, the number of boat builders in the Delta has dropped by 20%, along with declines in most other boating-related services.

In the Commission's comments on the NOP, we recommended that DWR assess and mitigate recreation impacts using up-to-date information at key locations.² However, minimal data was collected on recreational use in preparation of the EIR. Unlike, for example, traffic data for the Final EIR Transportation Chapter 20, the Recreation Chapter 16 is a literature search and scant documentation of actual use, which is wide-ranging and both formal and informal. Substantial evidence in the record shows that in resource areas such as traffic and transportation routes that are of concern to DWR for the purposes of construction and operation of the tunnel, the FEIR contains extensive data collection to identify impacted areas. In Table 20A-1 of the FEIR, 120 roadway segments were identified for analysis and Appendix 20C, Delta Conveyance 2040 Traffic Analysis.

It is unacceptable that data collection for recreation, a major driver of the Delta economy, was not nearly as comprehensive as traffic data. Interviews were conducted with only eight recreation providers, none in Contra Costa or Alameda counties. Only one marina operator was interviewed, despite there being dozens of marinas along the tunnel alignment whose visitation could be impacted by construction. No bait shops, boat builders, or other recreation service providers were included, despite the fact that these businesses can provide their visitation numbers and will undoubtedly be affected by construction and road closures at the very least. The numerous marinas throughout the Delta provide RV spaces and visitor travel crisscrossing from one part of the Delta to another is common. The FEIR itself identified the field reconnaissance as "limited" and undertaken on two days in February.

² Delta Protection Commission (DPC). "Delta Conveyance Notice of Preparation (NOP) Scoping Comments Attachment," DPC, April 15, 2020, https://delta.ca.gov/wp-content/uploads/2020/06/DPC_NOP-Comments-Attachment-041520-FINAL-508.pdf, 16-17.

Data such as the number of marina berths, camping and RV spaces, and miles of known bank fishing areas along the waterways could have documented recreational use that occurs far more widely across areas of the Delta than characterized in the Final EIR. As a result, proposed project impacts are underestimated in the Final EIR, and recreation impacts were determined to be Less Than Significant.

DWR's adherence to CEQA's analytical requirements, rather than the independent substantive requirements of the Delta Plan, resulted in a profound under-documentation of recreational uses and associated impacts, much as it did in the Lookout Slough project.³ Merely identifying changes in the physical environment failed to reveal informal recreational activities such as bank fishing, or undocumented uses of closed areas such as Bethany Reservoir where vehicular access was closed but many fishers simply drive, park, and ride a bicycle to their favorite fishing spot.

Project features that would result in above-ground physical changes to the environment that potentially would be near existing recreation facilities and use areas, include:

- Intake structures (all alternatives);
- Geotechnical and field investigations;
- Bethany Complex, including pumping plant and surge basin, and discharge structure (Alternative 5);
- Reusable tunnel material (RTM) areas (all alternatives);
- Shaft sites (all alternatives);
- Lower Roberts Island levee improvements;
- Temporary and permanent access roads (all alternatives);
- Aboveground transmission lines (all alternatives);
- Temporary concrete batch plants and fuel stations (all alternatives); and
- Compensatory mitigation (all alternatives).

At Lower Roberts Island, long-term levee construction activities associated with the Lower Roberts complex will directly affect the Turner Cut and Tiki Lagoon Resorts.⁴ Windmill Cove Marina will also likely see major disruptions due to construction noise and activities associated with the construction and use of a rail spur and road from the Port of Stockton over the 13-plus year duration of the launch shaft facility and tunnel boring.

³ DSC. *Determination Regarding Appeals of the Revised Certification of Consistency Number C202110 of the California Department of Water Resources for the Lookout Slough Tidal Habitat Restoration and Flood Improvement Project*, DSC, April 28, 2022, 11.

⁴ DWR, Delta Conveyance Final EIR 16-27.

B. The DCP's inconsistency with G P1(b)(3) requiring best available science will have a significant adverse effect on the coequal goals and undermine the Delta Plan.

The proposed DCP is inconsistent with G P1(b)(3) for Delta recreation because DWR has not considered best available science for identifying and analyzing impacts on Delta Recreation. If carried out as proposed, without use of best available science, the DCP will irrevocably alter the rural character of the Delta, its economic pillars (agriculture and recreation), and its cultural heritage. This represents a significant adverse impact on the achievement of one or both of the coequal goals, since the coequal goals must be achieved in a manner that protects and enhances the unique cultural, *recreational*, natural resource and agricultural values of the Delta as an evolving place. The DCP would purport to achieve water supply reliability, but at the expense of Delta recreation and the economic foundation it brings to Delta communities and residents. By failing to adhere to the mandates in PRC section 29702(a) and Water Code section 85054 to “protect and enhance” Delta values, including Delta’s recreation, the DCP undermines and is inherently inconsistent with, the Delta Plan.

Conclusion

Based on the foregoing discussion, DWR’s Certification of Consistency fails to establish that the DCP is consistent with G P1(b)(3) for recreation.