

**Bethel Island Municipal Improvement District**

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**VIA EMAIL ONLY**

***Re: Delta Levee Investment Strategy Policy EIR***

July 1, 2015

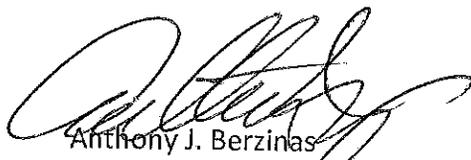
Dear Ms. Messer:

Please find enclosed a comment letter from counsel for the Bethel Island Municipal Improvement District, the governing body of one of the eight western islands that significantly and importantly prevent saltwater intrusion into the Central Delta and which has a population that far outstrips that of any other Delta Island.

The District, as outlined in the attached letter, is very concerned that the Delta Stewardship Council is moving forward with an EIR based on erroneous and/or fictitious (as acknowledged in the appendices to the DLIS document) information. An EIR based on erroneous and/or fictitious information cannot even be described as programmatic.

The District feels that the DSC's efforts to ascertain, at this early stage, the potential environmental impacts to the Delta, the Delta's legacy communities, and the Delta's project and non-project levees are premature. The District hopes, therefore, that the DSC will take a moment to consider whether this is the right time to begin the EIR process given that the project description is both vague and indeterminate.

Sincerely,



Anthony J. Berzinas  
President, Board of Directors, BIMID



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July 1, 2015

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**RE: Delta Levee Investment Strategy Policy EIR NOP - Project Description Lacks Sufficient Detail to Meet the Requirements of CEQA**

Dear Ms. Messer:

I write on behalf of the Bethel Island Municipal Improvement District ("the District" or "BIMID") to comment on the Notice of Preparation ("NOP") for the Delta Levees Investment Strategy ("DLIS") Policy EIR.

As you are aware, Bethel Island is one of the eight western islands that are crucial to preventing saltwater intrusion into the Delta, including the main stem of the Sacramento River, and the main stem of the San Joaquin River. The District respectfully offers these remarks as a local agency partner in the ongoing effort to maintain the health of the Delta as a unique place while protecting both its inhabitants and the natural habitat. We realize that the NOP is at an early stage; however, even at this stage the District is troubled with the lack of technical and factual accuracy of the various analyses presented in the DLIS documents to date. As an initial and overarching comment, the District notes that it is extremely difficult to provide comments on a "Proposed Project" when the Project is so poorly defined.

At this point, the District cannot support whatever the Proposed Project is intended to be and, until further factual information is gathered and disseminated and the DLIS documents, including the Technical Memoranda, are based on facts rather than guesses and fictitious scenarios, will be unable to support any Project or an EIR that relies on such tenuous information.

An EIR based on an NOP that lacks a viable Project description is inadequate from inception given that an "accurate, stable and finite Project description is the sine qua non of an informative and legally sufficient EIR. Inconsistent statements about the purpose, nature, and scope of the Proposed Project

may render a Project description fundamentally inaccurate and misleading.” 9 Cal. Real Est. § 25A:15 (3d ed.)

Here, the Project description is poorly defined, vague, and premature given that The Delta Stewardship Council (“Council or DSC”) just recently received comments on both the Delta Levees Investment Principles (“DLIS”) and the Technical Memoranda upon which the DLIS are based. The Council acknowledged in both instances that the premises, assumptions, values, and core terminology are subject to change and that the Council’s actions, including promulgation of an NOP in which the Project itself is so poorly defined, are taking place well ahead of the data that needs to be collected and analyzed.

Even though the NOP delineates the Proposed EIR as a programmatic rather than Project-level EIR, that in no way absolves the Council from its duty to describe “an accurate, stable, and finite Project description.” In fact, the NOP does exactly the opposite and explicitly notes that the “Council will identify a ‘preferred’ DLIS Policy that will be analyzed as the Proposed Project in the EIR.” (NOP, p. 6). In other words, although the NOP attempts to describe “the Project” it also acknowledges that at the current time there is no such Project but that as time goes on, the Council will develop a Proposed Project that will then be analyzed in the EIR. Given that the NOP does not describe a Proposed Project, it is difficult, if not impossible, for interested agencies, especially those agencies that have been designated as legacy communities via the State Water Code (such as Bethel Island), to make coherent comments about a Project that is yet to be described with particularity as is required by CEQA. Not only is it impossible to respond with any particularity to the NOP, it would be the height of folly to attempt a coherent response given the ever shifting sands on which the current NOP is constructed given the preliminary nature of the DLIS and the Technical Memoranda on which an EIR would be constructed.

In short, BIMID, as one of the local agencies with which the Council hopes to partner in various investment strategies to achieve the co-equal goals enshrined in Water Code section 85054, is disappointed in the Council’s rush to achieve arbitrary deadlines without taking the time to ensure that those documents are based on factual information, however long that may take, rather than disseminating documents that are not based on facts. All of the documents that the District has seen, at least to this point, seem to have been constructed with an eye toward meeting a certain DSC deadline rather than waiting until a factual, science-driven construct, can be arrived at. In the Council’s rush to meeting arbitrary deadlines rather than allowing the process to proceed at a pace that allows all stakeholders, as described in the NOP, to appropriately comment on and be an integral part of the future of the Delta the Council risks arriving at a predetermined outcome.

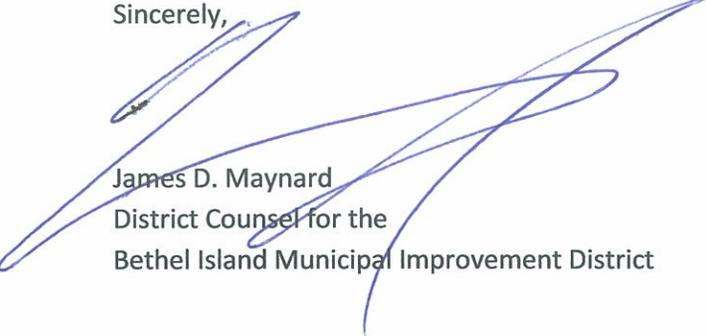
In endeavoring to arrive at an outcome that is truly an example of the whole being greater than the sum of its parts, the comments herein reflect our understanding as to how the DLIS, the Technical Memoranda, and the NOP do not stand alone, but are inextricably intertwined. In evaluating the potential impacts of the Council’s current direction and its determinations on the future priorities, funding prospects, economics, recreational and lifestyle values of Bethel Island, a legacy community,

and other Delta stakeholders we urge the Council and its staff to allow future comment on documents that are complete and which contain accurate, rather than flawed and fictitious information so that the various resources available to the State can be fully incorporated and appropriately valued. The process to date has been rushed, and Delta stakeholders have been forced, again and again, to proffer comments on incomplete, and in some cases incoherent, documents that may well determine the future of the inhabitants of the Delta and in fact, the whole of California but are not premised in reality.

This concludes the District's comments at this time. Given the comments in this letter, the lack of baseline conditions analysis, the lack of alternatives analyses and other obvious deficiencies in the NOP, the District fails to understand how the DSC will be able to make an informed decision to move forward with the EIR as described in the current NOP. At the very least, a specific Proposed Project description should be disseminated to interested parties for comment and the NOP should be re-circulated once "the Proposed Project" is better defined and described by those interested in the future of the Delta and of a reliable water supply for both Delta inhabitants and all of California.

Thank you for providing the District with an opportunity to comment on the NOP. The District reserves the right to provide further comment on "the Proposed Project" as it moves forward to ensure it provides for the best interests of the citizens of Bethel Island, the larger Delta region, and the State of California. We look forward to discussing "the Proposed Project" in further detail as the DSC refines this NOP to comply with the legal requirements that would allow stakeholders to actually analyze what "the Project" entails."

Sincerely,



James D. Maynard  
District Counsel for the  
Bethel Island Municipal Improvement District