City of Lathrop

Office of the City Engineer

390 Towne Centre Dr. – Lathrop, CA 95330
Phone (209) 941-7220 – fax (209) 941-7248
www.ci.lathrop.ca.us

August 27, 2015

Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Re: The August 27, 2015 meeting of Delta Stewardship Council, Agenda Item 13 – Appropriate Land Use to Reduce Flood Related Rick in San Joaquin County.

To the honorable Delta Stewardship Council,

The City of Lathrop (Lathrop) appreciates the opportunity to review and comment on agenda item 13 of the August 27, 2015 meeting of the Delta Stewardship Council (Council). Lathrop is concerned over the staff report's discussion of recent Council staff efforts regarding both the Lower San Joaquin River Feasibility Report/DEIR/DEIS and regarding the Urban Flood Risk Reduction Program Funding.

In general, Lathrop requests that the Council recognize that there are areas within Reclamation District 17 that, although not currently developed, are within the General Plan and Sphere of Influence boundaries of Lathrop. These development limits were approved, and a Notice of Determination filed, prior to adoption of the Delta Plan. As such, it is our understanding that the build-out of development consistent with and entitled by the City's General Plan, Specific Plans, Development Agreements and vesting tentative maps within the City's corporate limits and Sphere of Influence, although located within the Secondary Zone of the Delta, are exempt from the "consistency determination" provisions of the Delta Plan.

This distinction is important to Lathrop. Lathrop recognizes the importance of the Council's mission. Lathrop also appreciates that development limits within the Secondary Zone that were previously included in a General Plan/Sphere of Influence were exempted from the purview of the Delta Plan. Lathrop is therefore pursuing Urban Level of Protection (ULOP) 200-year flood protection of the City's General Plan limits of development.

Lathrop is working with the State Department of Water Resources to negotiate the limits of a flood control project that would protect existing and entitlement development within Lathrop, which we believe is consistent with the Delta Plan.

Lower San Joaquin River Feasibility Report

Lathrop wishes to express to the Council that we have formally objected to the USACE dropping RD17 from the Lower San Joaquin River Feasibility Report. This action was based upon the USACE interpretation of Executive Order 11988. The RD 17 levees provide FEMA approved 100-year flood protection. It is our interpretation the EO 11988 guidance regarding removing areas out of the 100-year flood plain does not apply to RD 17.

Currently behind RD 17 levees, there are over 46,000 residents within Lathrop, Manteca and Stockton and unincorporated areas of San Joaquin County. Protected improvements include Interstate 5 and State Route 120, several railroads, the County Jail and Hospital, Sharpe Army Depot and many schools and emergency response facilities. Both the State Department of Water Resources (DWR) and the US Army Corps of Engineers have suggested these levees should be improved. And yet, the action by the USACE to remove RD 17 from the Feasibility Report has eliminated the availability of Federal funding for the ULOP 200-year flood protection improvements that have been mandated by the State with the passage of Senate Bill 5. This action by the USACE results in an increased cost to both the State and the local agencies who must provide the matching funds.

In discussing the letter sent by the Council to the USACE, the Council staff report states, "We supported SJAFCA's position in our letter to the USACE in which they discussed the need to provide protection of existing urban areas in RD 17 while avoiding the potential growth-inducing effects of bringing the entire levee up to the urban level of protection." Lathrop's concern with this position is that it does not distinguish between the development that has already been approved in Lathrop's General Plan, and the potential for future development beyond the City's General Plan limits. Lathrop is not defending development beyond General Plan boundaries. However, development within the City's General Plan boundaries is critical in order to provide tens of millions in developer funding for the local share of the RD 17 levee improvements.

Urban Flood Risk Reduction Program Funding Recommendations

Lathrop is also concerned with the Council's position on the Urban Flood Risk Reduction (UFRR) program funding recommendations. While Lathrop appreciates the Council's concerns over development that exceeds preapproved General Plan limits, protecting only a portion of RD 17 results in major cost, liability and hydraulic implications.

Such partial flood protection options are much less cost effective than the "fix-in-place" option. Lathrop understands the Council's position that much of the "possible" development in RD 17 (beyond the approved General Plan/Sphere of Influence boundaries) is in violation of the Delta Plan.

Assuming the construction of 200-year flood control levees would not alter this interpretation, we are requesting the Council encourage the most cost effective flood protection solution that provides the greatest flood protection benefit. This is represented by a fix-in-place plan for flood control which, could result in 200-year flood improvements for all of RD 17 and would not allow development unless it is consistent with the Delta Plan.

If you have any questions, I can be reached by email at ggebhardt@ci.lathrop.ca.us or by phone (209) 941-7292.

Thank you,

Glenn Gebhardt

Glenn Gebhardt
City Engineer

Att: Delta Stewardship Council, Agenda Item 13:
Meeting Date: August 27-28, 2015, Appropriate Land Use to Reduce Flood Risk in San Joaquin County.

cc: Stephen J. Salvatore, City Manager
Salvador Navarrete, City Attorney
Karen McLaughlin, Manteca City Manager
Dante Nomellini, Reclamation District 17
Cathleen Galgiani, Senator
Kerry Sullivan, San Joaquin County Community Development Director
David Kwong, City of Stockton Community Development Director
Dave Peterson, Peterson Brustad Inc.
Kyle Bickler, Department of Water Resources
Michael Sabbaghian, Department of Water Resources

980 9th Street, Suite 1500
Sacramento, CA 95814
www.deltacouncil.ca.gov

Attachment

Appropriate Land Uses to Reduce Flood Risk in San Joaquin County

Summary: This report highlights recent efforts to reduce flood risk in the Delta by encouraging appropriate land uses, as required by the Delta Reform Act (Water Code sections 85020(g) and 85212). Staff's intent through these efforts is to ensure consistency with Delta Plan Policy DP P1, and thereby protect agriculture and open space while preventing urban development in the floodplain. The purpose of this report is to inform the Council of the proposals of some local stakeholders that may be inconsistent with the policy, as well as staff efforts to promote coordination and consistency.

Background

The Delta has a history of urbanization in flood-prone areas. While flood protection for existing urban areas is a top State priority, further urbanization of flood-prone areas is discouraged. Land use planning is an important means of minimizing future flood risk by preventing more development in floodplains. Similarly, avoiding investments by the State that induce growth in floodplains is another important tool to reduce risk.

The Delta Reform Act and the Delta Plan

The Delta Reform Act states that one of the basic goals of the State is to improve flood protection in the Delta by structural and nonstructural means (Public Resources Code section 29702(d)). The Legislature further determined that one of the objectives inherent in the coequal goals for management of the Delta is to reduce risks to people, property, and state interests in the Delta by promoting effective emergency preparedness, appropriate land uses, and strategic levee investments (Water Code section 85305(a)).

The Legislature directed the Council to develop a Delta Plan that would address these three elements of risk reduction (Water Code section 85305(a)).To address the land use element of flood risk reduction the Council adopted a policy that prohibits new development in rural floodplains. Delta Plan Policy DP P1 requires new development to be limited to areas already designated for residential, commercial or industrial uses in city and county general plans in effect as of the date of the Delta Plan's adoption, May 16, 2013.

In addition to granting the Council authority for planning and regulating land use that significantly affects the coequal goals, the Delta Reform Act states that the Council shall provide advice to local and regional planning agencies regarding the consistency of their plans with the Delta Plan (Water Code section 85212).

Delta Levee Investment Strategy Principles

As directed by the Delta Reform Act of 2009, the Council has been developing a Delta Levees Investment Strategy (DLIS) that combines risk analysis, economics, engineering, and decision-support techniques to identify funding priorities and assemble a

comprehensive investment strategy for the Delta's levees. In July 2015, the Council adopted a set of principles to provide interim guidance for the development of a Delta Flood Management Strategy that includes the DLIS. Two principles that directly address the Council's balanced approach to flood risk reduction for urban areas are:

- State investment in flood management to protect urban areas is the first priority; and
- State funding should not assist further urbanization of flood-prone Delta land.

Recent Council Staff Efforts

Over the past several months, Council staff has taken action to reduce flood risk by encouraging appropriate land uses, in accordance with the Delta Reform Act, the Delta Plan and the Delta Flood Management Strategy principles. We have focused on two different efforts within San Joaquin County; (1) the San Joaquin County 2035 General Plan Update and (2) investments in Lower San Joaquin River levees. Our focus on these efforts has resulted in a series of comment letters and other interactions with pertinent agencies.

Council staff has sent five comment letters over the last two years discouraging urban development in areas currently designated for agriculture in the Delta Plan regulations, which reflect agricultural designations in the San Joaquin County general plan. Staff has also interacted with various local and state agency staff to discuss issues presented in the comment letters.

San Joaquin County 2035 General Plan Update

The San Joaquin County 2035 General Plan update proposes changing the designation of six areas from agriculture or open space to commercial or industrial land uses within the Delta. Four of these sites are within the 100-year floodplain and one is located in the 200-year floodplain. These are notable changes from the 2010 General Plan adopted in 1992 and amended in 1993. These proposed changes, which are intended to generate jobs, could create inconsistencies with Delta Plan Policy DP P1. The proposed General Plan update contains a new policy (LU-6.3) encouraging new employment centers and industrial developments to locate near existing or future freeway interchanges and major highway intersections and along existing or future transit, bicycle, and pedestrian and trail corridors. This policy may be used as a justification for some of the proposed land use changes that could be inconsistent with the Delta Plan.

Council staff began a dialogue with San Joaquin County planning staff in 2013 to provide information about how to achieve Delta Plan consistency. We provided County staff with a briefing on the covered action process soon after the Delta Plan regulations went into effect in September 2013. We sent a comment letter on the County's notice of preparation of a Draft EIR for the general plan update in November 2013, and discussed key policy changes by phone in May 2014. After the County released its draft general plan and Draft EIR in October 2014, Council staff sent a comment letter to San Joaquin County on Dec. 5, 2014. Staff consulted with the Delta Protection Commission, the Governor's Office of Planning and Research, the State Attorney General's Office, and the Central Valley Flood Protection Board before finalizing our comments.

In our letter, Council staff states that, to achieve consistency, the county should retain existing agricultural land designations for all six areas proposed for conversion to commercial or industrial use that are located in the Delta and outside city limits and spheres of influence. Our letter further stated:

> The Draft EIR describes a significant and unavoidable impact to agricultural resources: "Implementation of the proposed 2035 General Plan would result in the conversion of Prime Farmland, Unique Farmland, and Farmland of Statewide Importance to nonagricultural uses" (Impact 4.B-1). All the areas proposed for land use changes in the Delta are prime farmland located outside cities and their spheres of influence. These significant impacts are, in fact, avoidable. According to Colliers International, San Joaquin County had an industrial vacancy rate of 9.5 percent in mid-2014, indicating that current demand can be met without conversion of agricultural land. Moreover, commercial and industrial development, when needed, can be accommodated within areas of Tracy and Stockton that are already designated for such development but are not yet built out. For example, the Port of Stockton currently has over 600 acres of available land designated for industrial development within Stockton's city limits, and the recently approved Cordes Ranch Specific Plan for the City of Tracy designates approximately 1,500 acres as industrial. The San Joaquin County General Plan should support the policies in the City of Tracy's General Plan and the City of Stockton's Climate Action Plan that call for infill development by retaining agricultural land use designations in unincorporated areas. The County should also follow the advice of the San Joaquin Council of Governments' Regional Transportation Plan/Sustainable Communities Strategy, which calls on local governments to "Encourage Efficient Development Patterns that Maintain Agricultural Viability and Natural Resources."

Council member Patrick Johnston and Council staff met with San Joaquin County Board of Supervisors Chair Kathy Miller and County staff in March 2015 to discuss our comments. County staff currently is developing a response to our comments for the San Joaquin County Board of Supervisors . Council staff continues to coordinate with County staff and, though no firm date is set for responses to be completed and presented to the Board of Supervisors, we anticipate this will occur in the near-term. Depending on the nature of the responses to our comments and the questions posed by the Board of Supervisors, staff may need further guidance from the Council on this topic.

Lower San Joaquin River Feasibility Report/DEIR/DEIS

On April 13, 2015, Council staff sent two comment letters on the Lower San Joaquin River Feasibility Report/ Draft Environmental Impact Report/Draft Environmental Impact Statement (DEIR/DEIS), one to the U.S. Army Corps of Engineers (USACE) and one to the San Joaquin Area Flood Control Agency (SJAFCA). The feasibility report describes the USACE's proposed plan to improve approximately 23 miles of levee in North and Central Stockton to reduce flood risk. The tentatively selected plan would implement a variety of levee improvements including installing cutoff walls, building new levees and adding erosion protection. It would also add closure structures at Fourteen Mile Slough and Smith Canal to decrease riverine and tidal flows during high water events. The feasibility report is part of an integrated document that also assesses potential environmental impacts associated with the project proposed. The USACE is the federal partner and lead on the feasibility report

and draft EIS and the Central Valley Flood Protection Board and SJAFCA are local partners for the study. SJAFCA is the California Environmental Quality Act (CEQA) lead.

As a result of the feasibility study and largely based on Executive Order 11988, USACE determined that there is no federal interest in funding risk reduction measures protecting the Reclamation District 17 (RD 17) area because of the potential for such investment to have growth-inducing effects. We contacted SJAFCA staff and learned that they accepted the USACE's decision, but wanted to see an additional study to address flood protection for existing population centers and critical infrastructure in the RD 17 area. We supported SJAFCA's position in our letter to the USACE, in which we discussed the need to provide protection of existing urban areas in RD 17 while avoiding the potential growth-inducing effects of bringing the entire levee up to the urban level of protection. Specifically we stated:

> Regarding Reclamation District 17 (RD 17), which is within the study area, we support the USACE's decision, based on the project screening criteria consistent with Executive Order 11988, to minimize induced development of currently undeveloped land in RD 17 and associated environmental impacts, such as conversion of prime farmland in the floodplain. The Delta Plan designates these lands for agriculture, not urban uses. The applicable city and county general plans also currently designate the lands for agriculture. Although we support the USACE in this decision about non-urban agricultural areas within RD 17, certain developed areas within RD 17 have high population densities, such as downtown Lathrop, and some existing critical infrastructure such as schools, fire and police stations, the county jail, the Sharpe Army Depot and a hospital, as well as major transportation routes including Interstate 5 and Highway 120. In the final FR/EIS/EIR, or future additional studies, USACE should consider and evaluate additional localized flood management structures to protect these existing urban areas. ...This balanced approach to addressing the needs within RD 17 is consistent with the Delta Plan's goals of protecting urban and adjacent urbanizing areas consistent with State law, while minimizing new development in flood-prone areas of the Delta and protecting agriculture in the region. Continued coordination between the USACE and SJAFCA is critical in evaluating possible measures to protect existing developed areas within RD 17.

In our letter to SJAFCA we noted that this proposed project may be a "covered action", and therefore subject to Delta Plan regulations, although that determination ultimately resides with SJAFCA. Because SJAFCA is the CEQA lead for this project we also provided general comments on the draft EIR, mostly related to consistency with the Delta Plan and requests for further clarification on some of the analysis presented in the draft EIR.

Urban Flood Risk Reduction Program Funding Recommendations

On May 28, 2015, Council staff provided comments to the Department of Water Resources (DWR) on its Urban Flood Risk Reduction (UFRR) Program funding recommendations. Prior to sending the comment letter to DWR, Council staff met with DWR staff to discuss our concerns regarding RD 17 levee investment, as well as our interest in improving coordination between our agencies regarding funding decisions.

As mentioned above, USACE decided not to fund levee improvements that could potentially induce urbanization of undeveloped land in RD 17, but the City of Lathrop continued to seek funding from the State. According to the UFRR funding recommendations, DWR reduced the City of Lathrop's requested funding amount from $20.5 million to $5 million. DWR's revised project description provides limited funding for feasibility analysis and preliminary design activities for levee improvements within the RD 17 levee basin.

Our letter to DWR noted that large portions of RD 17 are not planned for future urban use, but instead are designated for agriculture and/or open space in the Delta Plan and the San Joaquin County General Plan. Our letter recommended that "Guidance should be provided in DWR's grant agreement for this feasibility study to specify that alternatives to be investigated in the study should limit 200-year protection to that needed to protect only areas planned for urban uses in the Delta Plan, at a maximum, rather than for all of RD 17." DWR is still in discussion with its grantees and has not yet made final decisions regarding the grants.

Conclusion

Through these meetings and letters, Council staff's has worked to ensure consistency with Delta Plan Policy DP P1, and thereby protect agriculture and open space while preventing urban development in the floodplain. By informing the Council of recent efforts by staff to reduce flood risk by encouraging appropriate land use, staff seeks to confirm the Council's support for continuing to advocate this position, which is consistent with the Delta Reform Act, the Delta Plan, and the Council's Delta Flood Management Strategy principles.

Links to Letters Cited

1.) Letter to San Joaquin County Regarding Council Staff's Comments on their Proposed General Plan Update
http://deltacouncil.ca.gov/sites/default/files/2014/12/SJCountyGPU_DSC_DetailedComments%202014%2012%2005.pdf

2.) Letters to SJAFCA and USACE Regarding Lower San Joaquin River Feasibility Report/DEIR/DEIS
http://deltacouncil.ca.gov/sites/default/files/2015/04/15-0413_DSC_Comment_Ltr_SJ%20Area%20Flood%20Control%20Agency.pdf and
http://deltacouncil.ca.gov/sites/default/files/2015/04/15-0413_DSC_Comment_ltr_USACE.pdf)

3.) Letter to DWR Regarding UFRRP Grant Recommendation
http://deltacouncil.ca.gov/sites/default/files/2015/05/5-28-2015%20Comment%20ltr%20to%20Gary%20%20Bardini%20re%20Urban%20Flood%20Risk%20Reduction%20Program%20Funding.pdf)

Contact

Jessica Davenport
Program Manager, Ecosystem Restoration and Land Use
Phone: (916) 445-2168