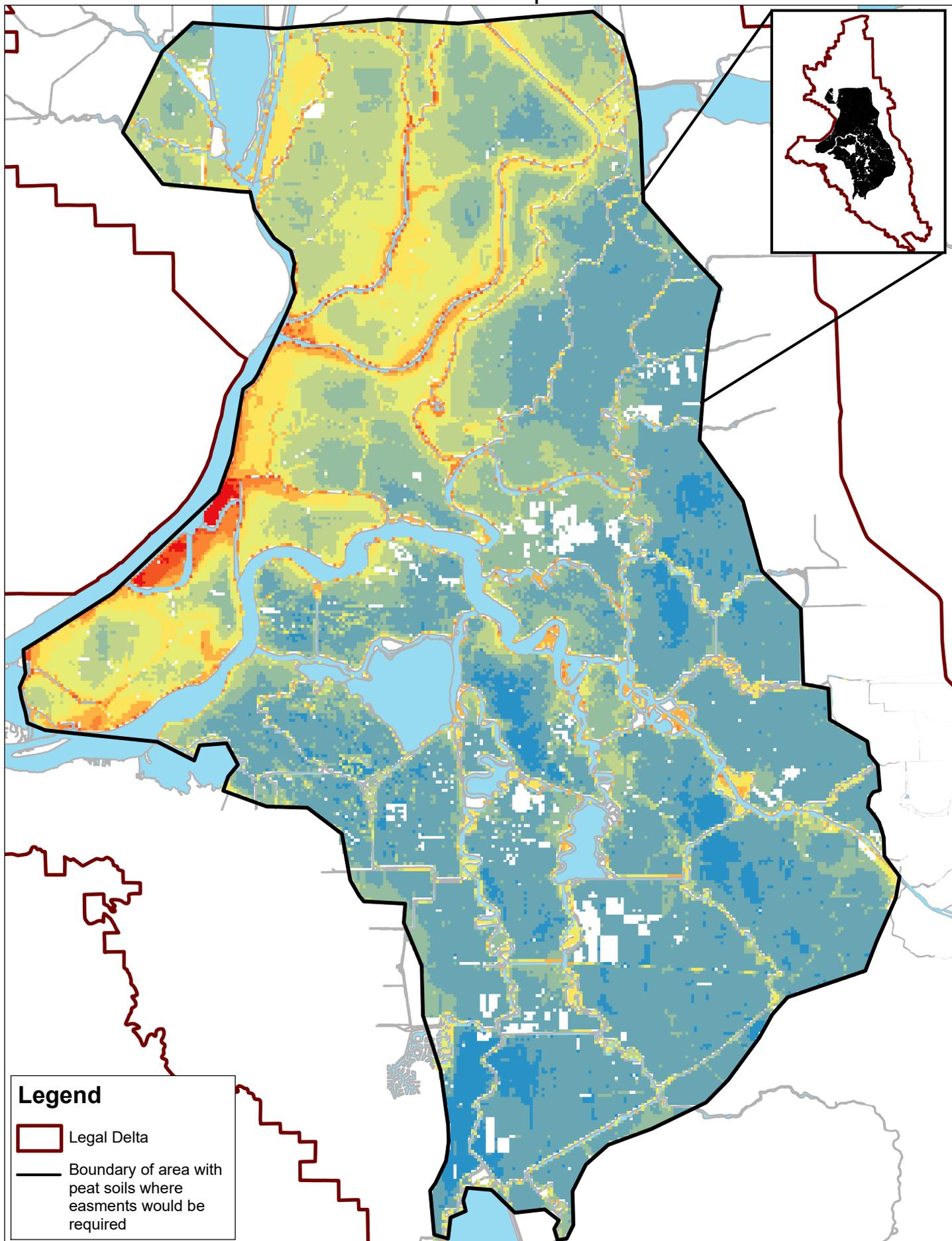


Figure 1. Areas Where Easements To Mitigate Subsidence Would Be Required



**RESOLUTION of Support for Bicycle Lanes in the Sacramento-San Joaquin  
Delta Along Improved Delta Levees**

01-12

**WHEREAS**, the California Constitution, Article 10, Section 4, guarantees a public right of access to the navigable waterways of the State, including our treasured Sacramento-San Joaquin Delta.

**WHEREAS**, SB 1556 (Torlakson) mandates the Delta Protection Commission to prepare a plan for the Great California Delta Trail System which is to be a continuous regional recreation corridor that will extend around the Sacramento-San Joaquin Delta; including, but not limited to, the delta's shorelines in Contra Costa, Solano, San Joaquin, Sacramento, and Yolo Counties.

**WHEREAS**, California Water Code section 11910 requires that the Department of Water Resources incorporate recreational features in flood control projects, such as levees, when consistent with other uses of the projects, and section 11910 mandates that the Department coordinate planning for recreation with other state agencies.

**WHEREAS**, the landscape of the Delta poses challenges for the development of a regional trail system as it is predominantly agricultural land in private ownership surrounded by narrow levee roads.

**WHEREAS**, as levee improvements are made, improved bicycle lanes (class II or class I if feasible) could be incorporated into a wider surface corridor.

**WHEREAS**, improved bicycle lanes (class II bicycle lanes, or class I lanes if feasible) along this these levees could be incorporated in into the California Delta Trail system to help fulfill SB 1556.

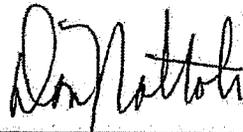
**WHEREAS**, such bicycle lanes would also support other plans which focus on the enhancement of Delta recreation to assist with economic sustainability of the region in a way that is consistent with the Delta Reform Act of 2009 and defining the Delta as an evolving place including California State Park's *Recreation Proposal for the Sacramento San Joaquin Delta and Suisun Marsh*, and the Delta Protection Commission's *Economic Sustainability Plan for the Sacramento-San Joaquin Delta*.

**NOW, THEREFORE, BE IT RESOLVED** that the Delta Protection Commission staff work with the Central Valley Flood Protection Board; the counties of Contra Costa, Sacramento, San Joaquin, Solano, and Yolo; Delta Reclamation Districts; and the Department of Water Resources to encourage the incorporation of improved bicycle lanes (class II lanes, or class I lanes if feasible) as Delta levees are designed, engineered and upgraded taking into account concerns of local residents and the viability of the Delta economy; and

**BE IT FURTHER RESOLVED** that the Delta Protection Commission hereby encourages the Department of Water Resources to revise and amend Department regulations and policies to make them consistent with the public policy of the State to encourage public access to waterways, and to increase opportunities for the public to use levees for nonmotorized recreation and transportation.

**PASSED AND ADOPTED**, this 26<sup>th</sup> day of July 2012:

**AYES: 10**  
**NOES: 1**  
**ABSTAIN: 0**  
**ABSENT: 3**



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Chair, Delta Protection Commission

*Friends of the*



*Sacramento*  
*River Parkway*

Supporting public access and  
recreation along the Sacramento River

February 20, 2015

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

Re: Delta Levees Investment Strategy: Item 8; February 26, 2015, Agenda

Dear Mr. Fiorini, Chair of the Delta Stewardship Council, and Honorable Members:

We write to provide some information that may assist in your discussion of Item 8 (Draft Levee Investment Strategy Update) on the agenda for your February 26, 2015, meeting. We assume that the Delta Levees Investment Strategy Issue Paper (January 9, 2015) ("Issue Paper"), figures into your discussion. We appreciate the Issue Paper's acknowledgment of your statutory duty to give consideration to recreational uses of our Delta levees. We believe we have some helpful input in that regard about the Public Trust Doctrine.

First, let me describe our interest. We believe the time is long overdue to complete the Sacramento River Parkway, a plan our city council approved forty years ago. The Parkway includes a multi-use trail that remains less than half complete on the levee crown from Old Sacramento to the city's southern limits. Our city council unanimously approved a plan to move forward in November 2012 and the city is taking tentative steps to fill in the gaps.

But our interest also includes the planning, promotion, and completion of the Great California Delta Trail, a statutorily mandated plan for a trail from Sacramento to the San Francisco Bay Trail. Our Parkway is the first link in the Delta Trail. Without the completion of our Parkway, all but a minuscule portion of Sacramento will lack a bike-friendly link to the Delta Trail. We have supported efforts by the Delta Protection Commission to convince Caltrans to incorporate protected bicycle lanes as Caltrans improves delta highways, and to convince the Central Valley Flood Protection Board ("CVFPB") that its regulations should not discourage "bicycle trails" on levee crowns.

We applaud your Issue Paper for acknowledging the statutory duty of state agencies to fully consider opportunities for recreational uses of flood-control projects. Regrettably, we have found that you appear to be among very few agencies that recognize their duty to consider

recreational opportunities on levees. In our experience, other agencies are not even aware of this statutory mandate and, as a result, discourage rather than encourage recreation even when recreational amenities such as paved trails would enhance flood-control efforts and decrease maintenance and operation costs.

However, we believe your Issue Paper slights your ability to ensure that Delta levees provide maximum recreational access. The Issue Paper states: "Access to Delta levees for recreation is a persistent issue, because most Delta levees are private property where trespassing is prohibited." (Issue Paper at 11, *ll.* 11-13.) In fact, no Delta levee is entirely private property and the failure to recognize this could cause the loss of opportunities to improve recreational access.

The Issue Paper briefly mentions the Public Trust Doctrine as an analog to the Reasonable Use Doctrine as water-use principles in the definition of "Co-Equal Goals." This branch of the Public Trust Doctrine dates back only to the 1983 California Supreme Court case, *National Audubon Society v. Superior Court*. The Public Trust Doctrine's more commonly used sense is a principle to protect the public's access to and use of navigable waterways.

On California's tidal waterways, such as the Delta, the State owns the land in fee simple below the "ordinary high water mark" and holds that land in trust for the public's use, including recreational use. (*See* Civil Code § 830.) The State Lands Commission is the state agency having primary responsibility to enforce the Public Trust Doctrine, but as the *Audubon Society* case holds, all state agencies bear the responsibility to enforce the Public Trust Doctrine and are vulnerable to litigation from any member of the public to enforce these responsibilities as a private attorney general. We have found far too often that state agencies neither protect Public Trust interests nor appreciate their duty to do so.

In leasing Public Trust land for use as recreational piers, the State Lands Commission reminds lessees that their leased interest is subservient to the public's interest:

Lessee acknowledges that the land described in Exhibit A of this Lease is subject to the Public Trust and is presently available to members of the public for recreation, waterborne commerce, navigation, fisheries, open space, or other recognized Public Trust uses and that Lessee's use of the Leased Premises shall not interfere or limit the Public Trust rights of the public.

The Reclamation Board, now known as the Central Valley Flood Protection Board, purported to protect Public Trust interests in its encroachment permits:

The waterward end of the removable fence shall not cross the public trust easement as determined by the State Lands Commission, the Attorney General, or a court of law. . . .

We respectfully suggest that the Council use its authority to require private levee owners to acknowledge the limits of their ownership interests as a condition to any assistance from the State. You might also seek assistance from staff at the State Lands Commission about methods for maximizing and possibly expanding the public's right to access levees throughout the Delta

Thank you for considering our suggestions. If you have any questions or need any additional information, please do not hesitate to contact the primary author of our comments, Jim Houpt, by e-mail at [jhaupt@houptlaw.com](mailto:jhoupt@houptlaw.com) or by phone at 916-396-7239. If you prefer, we would be pleased to meet with you or your staff to discuss these issues.

Very truly yours,



Anne Rudin

Former Mayor, City of Sacramento

And Founding Member, FSRP

cc: Jessica Person  
Executive Officer, Delta Stewardship Council

Jennifer Lucchesi, Esq.  
Executive Officer, State Lands Commission