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DELTA STEWARDSHIP COUNCIL

A California State Agency

April 7, 2017

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**RE: Notice of Preparation of a Draft Environmental Impact Report for the San Joaquin Council of Governments 2018 Regional Transportation Plan/Sustainable Communities Strategy
SCH# 2017032042**

Dear Mr. Sheridan:

Delta Stewardship Council (Council) staff has reviewed the San Joaquin County Council of Governments' (SJCOCG) Notice of Preparation (NOP) to prepare a Program Environmental Impact Report (PEIR) for the 2018 Regional Transportation Plan (RTP), which will include a Sustainable Communities Strategy (SCS). The proposed 2018 RTP will include an update to both the RTP and SCS components of the 2014 RTP/SCS, pursuant to the requirements of SB 375. The 2018 RTP/SCS will be an integrated land use, housing, and transportation plan for San Joaquin County, covering the planning period through the year 2042.

We appreciate the opportunity to comment on the NOP, which was circulated to obtain input regarding the scope and content of the environmental analysis to be included in the PEIR. We also look forward to providing input regarding how to ensure the continued consistency of the RTP/SCS with the Delta Plan. Council staff are particularly interested in coordinating with your agency regarding the exemption process for "covered actions" defined in Water Code section 85057.5.

The Delta Plan, adopted by the Council in 2013, is an enforceable plan to further the achievement of the coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem, in a manner that protects and enhances the unique values of the Delta as an evolving place (Water Code section 85054).

The Council was granted specific regulatory and appellate authority over certain actions that take place in whole or in part in the Delta. To do this, the Delta Plan contains a set of regulatory policies with which State and local agencies are required to comply. The Delta Reform Act specifically established a certification process for compliance with the Delta Plan.

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. 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."

– CA Water Code §85054

This means that State and local agencies that propose to carry out, approve, or fund a qualifying action in whole or in part in the Delta, called a "covered action," must certify that this covered action is consistent with the Delta Plan and must file a certificate of consistency with the Council that includes detailed findings.

Only certain activities qualify as covered actions, and the Delta Reform Act establishes specific criteria and categories for exempting actions from the regulatory authority of the Council. One of the exemptions is for regional transportation plans prepared pursuant Government Code section 65080 (Water Code section 85057.5(b)(3)). Another exemption is for actions within the secondary zone of the Delta that a metropolitan planning organization determines are consistent with its SCS. Such proposed actions are *not* "covered actions" regulated by the Council. Water Code section 85057.5(b)(4) states:

"Covered action" does not include any of the following: ...Any plan, program, project, or activity within the secondary zone of the Delta that the applicable metropolitan planning organization under Section 65080 of the Government Code has determined is consistent with either a sustainable communities strategy or an alternative planning strategy that the State Air Resources Board has determined would, if implemented, achieve the greenhouse gas emission reduction targets established by that board pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code. For purposes of this paragraph, "consistent with" means consistent with the use designation, density, building intensity, transportation plan, and applicable policies specified for the area in the sustainable communities strategy or the alternative planning strategy, as applicable, and any infrastructure necessary to support the plan, program, project, or activity.

The ability to exempt certain actions from the Council's certification process provides SJCOG with a potentially significant role in shaping how development occurs in the secondary zone of the Delta and the way in which planning for metropolitan areas and the Delta are coordinated. Therefore, we are particularly interested in seeing the updated SCS, as SB 375 requires that the SCS identify the general location of uses, residential densities, and building intensities as well as areas to house future residents.

We also look forward to receiving the draft RTP/SCS. Pursuant to Water Code section 85212, the Council will be required to review the RTP/SCS for consistency with Delta Plan:

The council shall review and provide timely advice to local and regional planning agencies regarding the consistency of local and regional planning documents, including sustainable communities strategies and alternative planning strategies prepared pursuant to Section 65080 of the Government Code, with the Delta Plan. The council's input shall include, but not be limited to, reviewing the consistency of local and regional planning documents with the ecosystem restoration needs of the Delta and reviewing whether the lands set aside for natural resource protection are sufficient to meet the Delta's ecosystem needs. A metropolitan planning organization preparing a regional transportation plan under Section 65080 of the Government Code that includes land

within the primary or secondary zones of the Delta shall consult with the council early in the planning process regarding the issues and policy choices relating to the council's advice. No later than 60 days prior to the adoption of a final regional transportation plan, the metropolitan planning organization shall provide the council with a draft sustainable communities strategy and an alternative planning strategy, if any. Concurrently, the metropolitan planning organization shall provide notice of its submission to the council in the same manner in which agencies file a certificate of consistency pursuant to Section 85225. If the council concludes that the draft sustainable communities strategy or alternative planning strategy is inconsistent with the Delta Plan, the council shall provide written notice of the claimed inconsistency to the metropolitan planning organization no later than 30 days prior to the adoption of the final regional transportation plan. If the council provides timely notice of a claimed inconsistency, the metropolitan planning organization's adoption of the final regional transportation plan shall include a detailed response to the council's notice.

Comments on the NOP

Based on our review of the NOP, we recommend the following matters be discussed or included in the draft PEIR for the 2018 RTP/SCS:

- **Inconsistencies with the Delta Plan.** The draft PEIR should discuss any inconsistencies between the proposed project and applicable regional plans, such as the Delta Plan, as required by section 15125(d) of the California Environmental Quality Act (CEQA) Guidelines. Please note that the CEQA Guidelines' Appendix G indicates that a project that is inconsistent with any applicable land use plan, policy, or regulation may result in a finding of significant impact on the environment. Should any inconsistencies be identified that result in significant impacts, please consider including the applicable mitigation measures of the Delta Plan Mitigation and Monitoring Reporting Program to avoid, minimize, or mitigate those impacts. These mitigation measures can be found in the Delta Plan Mitigation and Monitoring Reporting Program (http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%202.pdf).
- **Land Use and Planning.** Delta Plan Policy DP P1 (23 Cal. Code of Regs. section 5010), Locate New Urban Development Wisely, is intended to strengthen existing Delta communities while protecting farmland and open space, reserving land for ecosystem restoration needs, and reducing flood risk. In order to be consistent with Delta Plan Policy DP P1, new residential, commercial, or industrial development is permitted only if it is located in areas designated for development in city or county general plans as of the date of the Delta Plan's adoption (May 16, 2013), as reflected in Appendix 7 of the Delta Plan regulations.

The NOP states, "The EIR will consider the 2018 RTP programmed projects and preferred SCS scenario, a No Project Alternative, the SCS alternative scenarios carried forward, and any alternatives to address identified significant impacts" (page 5). Council

staff encourages SJCOG, when considering its RTP scenarios and alternatives, to be mindful of the boundaries shown in Appendix 7, Figures 7-10 and 7-11, of the Delta Plan regulations (<http://deltacouncil.ca.gov/docs/appendix-7>).

Council staff also encourages SJCOG to include in the draft PEIR a land use map depicting the areas of future development under each scenario being considered. Council staff especially looks forward to seeing a map depicting anticipated areas of new residential, commercial, and industrial development under the preferred plan analyzed in the draft PEIR.

In the draft PEIR, please cite Delta Plan Policy DP P1 (23 Cal. Code of Regs. section 5010). Should any significant impacts to land use and planning be identified under the preferred scenario, please consider including in the draft PEIR the applicable Land Use and Planning mitigation measures of the Delta Plan Mitigation and Monitoring Reporting Program to avoid, minimize, or mitigate those impacts. (See Mitigation Measures 6-1, 6-2.)

- **Biological Resources.** Delta Plan Policy ER P3 (23 Cal. Code of Regs. section 5007), Protect Opportunities to Restore Habitat, calls for protecting opportunities to restore habitat within priority habitat restoration areas, which are depicted in Appendix 5 of the Delta Plan regulations (<http://deltacouncil.ca.gov/docs/appendix-5>). As shown in this appendix, one priority habitat restoration area, the Lower San Joaquin River Floodplain, and a portion of another, Cosumnes/Mokelumne Confluence, lie within San Joaquin County.

In the draft PEIR, please consider adding the regulatory policies and recommendations of the Delta Plan to the Biological Resources Regulatory Setting section of the draft PEIR. In addition, please cite Delta Plan Policy ER P3 and describe how any potential conflicts with the policy resulting from the preferred scenario, such as road construction, can be avoided or mitigated. In addition, please consider including the applicable Delta Flood Risk mitigation measures of the Delta Plan Mitigation and Monitoring Reporting Program. (See Mitigation Measures 4-1 through 4-5.)

- **Hydrology and Water Quality.** Land use planning for the project should reduce flood risk, and Delta Plan Policy RR P2 (23 Cal. Code of Regs. section 5013), Require Flood Protection for Residential Development in Rural Areas, is meant to reduce risk while preserving the Delta's unique character and agricultural way of life. This policy requires protecting new residential development of five or more parcels through flood proofing to a level 12 inches above the 100-year base flood elevation, plus sufficient additional elevation to protect against a 55-inch rise in sea level at the Golden Gate, unless the development is located within the boundaries shown in Appendix 7. In addition, Council staff would like to point out that Delta Plan Policy RR P3 (23 Cal. Code of Regs. section 5014) restricts encroachment in Delta floodways, and Delta Plan Policy RR P4 (23 Cal. Code of Regs. section 5014) restricts encroachment in Delta floodplains, including the Lower San Joaquin River Floodplain and the Cosumnes/Mokelumne Confluence.

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Please refer to the aforementioned maps when formulating the RTP's scenarios and alternatives.

In the draft PEIR, please analyze and discuss whether urbanization of agricultural and open space, if any is proposed under the preferred scenario, could produce an increase in flood risk, and describe how that risk could be avoided, minimized, or mitigated. In addition, please consider including the applicable Delta Flood Risk mitigation measures of the Delta Plan Mitigation and Monitoring Reporting Program. (See Mitigation Measures 5-1 through 5-5.)

Council staff looks forward to working with you to ensure consistency between 2018 RTP/SCS and the Delta Plan, so that the two plans are complementary and serve to protect the Delta while promoting sustainable growth and reducing greenhouse gas emissions in San Joaquin County. I encourage you to contact Jeff Juarez at jeff.juarez@deltacouncil.ca.gov or (916) 445-5528 with your questions, comments, or concerns.

Sincerely,



For Cassandra Enos-Nobriga

Cassandra Enos-Nobriga
Deputy Executive Officer
Delta Stewardship Council