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DELTA STEWARDSHIP COUNCIL

A California State Agency

October 11, 2018

Chair
Randy Fiorini

Michael Tree
Tri-Valley San Joaquin Valley Regional Rail Authority
Attn: Valley Link Rail Project
1362 Rutan Court, Suite 100
Livermore, CA 94551

Members
Frank C. Damrell, Jr.
Maria Mehranian
Susan Tatayon
Skip Thomson
Ken Weinberg
Michael Gatto

Executive Officer
Jessica R. Pearson

Via email: info@valleylinkrail.com

RE: Comments on Notice of Preparation of an Environmental Impact Report and Scoping Meeting for the Proposed Valley Link Rail Project, SCH# 2018092027

Dear Mr. Tree:

Thank you for the opportunity to review and comment on the Valley Link Rail Project Notice of Preparation (NOP) of an Environmental Impact Report (EIR). The Delta Stewardship Council (Council) recognizes the goal of the Tri-Valley San Joaquin Valley Regional Rail Authority (Rail Authority) and the Valley Link Rail Project (proposed project) to provide rail connectivity between the Bay Area Rapid Transit District (BART) rapid transit system and the Altamont Corridor Express (ACE) commuter service in the Tri-Valley.

Based on the project description in the NOP, the Council understands that the proposed project will be located within the Delta Secondary Zone¹ and therefore is required to comply with the Sacramento-San Joaquin Delta Reform Act of 2009 (SBX7 1; Delta Reform Act). As explained in this letter, through the Delta Reform Act, the Council has specific regulatory and appellate authority over certain actions that take place in whole or in part in the Delta and Suisun Marsh, which are referred to as "covered actions". State and local agencies are required to demonstrate consistency with 14 regulatory policies identified in the Delta Plan (23 Cal. Code Reg. sections 5001-5012) when carrying out, approving, or funding a covered action.

¹ The Council understands that the proposed EIR will evaluate two phases of improvements, Phase I and Phase II. Phase I improvements located within the Delta Secondary Zone include platforms, parking, pedestrian facilities, and other improvements at new stations at Mountain House, Downtown Tracy, River Islands, and North Lathrop, as well as upgrades of existing track and/or new rail alignments in or along existing rail rights-of-way from west of Tracy to Lathrop. Phase II improvements located within the Delta Secondary Zone include upgrades of existing track and/or new rail alignments along with potential new infill rail stations in or along existing rail rights-of-way from Lathrop to Stockton.

"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

Based on the project location and scope described in the NOP, the proposed project is a potential covered action. The Rail Authority must determine if the project is a covered action, and if so, submit a certification of consistency with the Delta Plan to the Council prior to project implementation. More information on covered actions, early consultation, and the certification process can be found on the Council website, <http://deltacouncil.ca.gov/covered-actions>.

In addition, please consider our California Environmental Quality Act (CEQA) comments and address them in the draft EIR.

Comments on the Notice of Preparation

In preparation of the Draft EIR for the project, we offer the following comments for your consideration:

Regulatory Setting

Please identify the Delta Plan in the Draft EIR's description of the regulatory setting for each applicable resource section. Where possible, please reference specific applicable regulatory policies.

Mitigation Measures

Delta Plan Policy **G P1** (23 Cal. Code Reg. section 5002) requires that actions not exempt from CEQA and subject to Delta Plan regulations must include applicable feasible mitigation measures consistent with those identified in the Delta Plan Program EIR or substitute mitigation measures that are equally or more effective. Mitigation measures in the Delta Plan's Mitigation and Monitoring Report Program (Delta Plan MMRP) are available at:

http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%202.pdf

The NOP states that the Draft EIR for the proposed project will address direct, indirect, and cumulative effects in each of the following CEQA environmental issue areas:

- Aesthetics
- Agriculture Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Energy
- Geology and Soils
- Greenhouse Gas Emissions
- Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Noise and Vibration
- Population and Housing
- Public Services
- Recreation
- Transportation/Traffic
- Safety and Security
- Utilities and Service Systems

Council staff recommends that the Rail Authority review the Delta Plan MMRP to determine if feasible mitigation measures related to significant impacts identified in the proposed project's Draft EIR would apply. If Delta Plan Program EIR mitigation measures are applicable and feasible, please incorporate such measures in the Draft EIR.

Impacts to Stewart Tract and Paradise Cut

Delta Plan Policy **ER P3** (23 Cal. Code Reg. section 5007) states that within priority habitat restoration areas depicted in Appendix 5 (<http://deltacouncil.ca.gov/docs/appendix-5>), significant adverse impacts to the opportunity to restore habitat at appropriate locations must be avoided or mitigated.

Please acknowledge Delta Plan Policy ER P3 in the Biological Resources section of the Draft EIR. Based on the map provided in the NOP, it appears the proposed project would cross the Lower San Joaquin River Floodplain priority habitat restoration area at a location between River Islands and Lathrop on Stewart Tract using existing railroad right-of-way. Please describe within the Draft EIR how the proposed project would avoid or mitigate impacts to this priority habitat restoration area relative to completion and implementation of the Lower San Joaquin Flood Bypass (Paradise Cut) project proposed by the South Delta Levee Protection and Channel Maintenance Authority and its partners. Key to this analysis is the extent to which the proposed project utilizes existing or proposed new rail bridges to cross Paradise Cut and the lower San Joaquin River. Please evaluate the potential for the proposed project to impact implementation of the systemwide actions identified in the Central Valley Flood Protection Plan and accompanying Draft San Joaquin Basin-wide Feasibility Study. Specifically, the project should consider implications for specific flood risk reduction improvements, existing natural resources, and ecosystem restoration elements of the Paradise Cut multi-benefit improvement project. The Rail Authority should ensure that bridge structures used as part of the proposed project are elevated so that water can flow underneath to allow for restoration of aquatic habitat dependent on tides or periodic flooding considering effects of sea level rise. As discussed in the Draft San Joaquin Basin-wide Feasibility Study, the rail bridges which transect the upstream portion of Paradise Cut have implications for flow conveyance, and constrain opportunities to incorporate riparian and shaded riverine aquatic vegetation within the bypass. In some alternatives evaluated by the Department of Water Resources (DWR), these hydraulic constraints require dredging of bypass sediments and removal of riparian vegetation to accommodate flow conveyance.

Impacts to the Delta as an Evolving Place

Delta Plan Policy **DP P1** (23 Cal. Code Reg. section 5010) places certain limits on new urban development within the Delta. As relates to the proposed project, Policy DP P2 states that new residential, commercial, or industrial development must be limited to areas that city or county general plans as of the date of the Delta Plan's adoption (May

2013) designate for residential, commercial, and industrial development in cities or their spheres of influence; or areas within the Mountain House General Plan Community Boundary in San Joaquin County. This policy is intended to strengthen existing Delta communities while protecting farmland and open space, providing land for ecosystem restoration needs, and reducing flood risk.

Please acknowledge Delta Plan Policy DP P1 (23 Cal. Code Reg. section 5010) both in the Land Use and Planning section of the Draft EIR, as well as in the growth inducement discussion. The Council seeks to ensure that the proposed project would avoid potential to induce new residential, commercial, or industrial development that would be inconsistent with Policy DP P1 in the Delta. Based on the limitations of Policy DP P1 and the project alignment presented in the NOP, this analysis should address potential to induce new residential, commercial, or industrial development that was not designated in adopted local general plans near the Phase I station sites at Mountain House (station location is outside the Mountain House General Plan Community Boundary), Downtown Tracy, River Islands, and North Lathrop, as well as any planned Phase II station locations between Lathrop and Stockton.

Comments regarding Delta Plan Policies and Potential Consistency Certification

As stated before, the Rail Authority must determine if the project is a covered action, and if so, submit a certification of consistency with the Delta Plan to the Council prior to project implementation. The following section describes Delta Plan policies that may apply to the proposed project based on the available information. This information is offered to assist the Rail Authority to better describe the relationship between the proposed project and the Delta Plan.

The Delta Plan includes regulatory policies that apply to all covered actions. Below, we have highlighted key regulatory policies that may be specifically relevant to the proposed project. We encourage the Rail Authority to review the following Delta Plan policies prior to completing the Draft EIR and in anticipation of determining the proposed project's covered action status and potential certification of consistency.

Best Available Science and Adaptive Management

Delta Plan Policy **G P1** (23 Cal. Code Reg. section 5002(b)(3)) states that actions subject to Delta Plan regulations must document use of best available science as relevant to the purpose and nature of the project. The regulatory definition of "best available science" is provided in Appendix 1A of the Delta Plan (<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%201A.pdf>)

Delta Plan Policy **G P1** (23 Cal. Code Reg. section 5002(b)(4)) also requires that ecosystem restoration and water management covered actions include adequate provisions for continued implementation of adaptive management, appropriate to the scope of the action. This requirement is satisfied through a) the development of an adaptive management plan that is consistent with the framework described in Appendix 1 B of the Delta Plan (<http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%201B.pdf>), and b) documentation of adequate resources to implement the proposed adaptive management plan.

Best available science and adaptive management principles may apply if habitat mitigation within the Delta is required of the proposed project. The Delta Science Program's Adaptive Management Liaisons are available to provide consultation and guidance to help project proponents with the appropriate application of best available science and adaptive management during early consultation in advance of a certification of consistency with the Delta Plan.

Protect Opportunities to Restore Habitat

As noted previously, Delta Plan Policy **ER P3** (23 Cal. Code Reg. section 5007) states that within priority habitat restoration areas depicted in Appendix 5 (<http://deltacouncil.ca.gov/docs/appendix-5>), significant adverse impacts to the opportunity to restore habitat at appropriate locations must be avoided or mitigated. We encourage the Rail Authority to review Delta Plan Policy ER P3 prior to completing the Draft EIR and in anticipation of determining the proposed project's covered action status and potential certification of consistency.

Locate New Urban Development Wisely

As noted previously, Delta Plan Policy **DP P1** (23 Cal. Code Reg. section 5010) places certain limits on new urban development within the Delta. We encourage the Rail Authority to review Delta Plan Policy DP P1 prior to completing the Draft EIR and in anticipation of determining the proposed project's covered action status and potential certification of consistency.

Respect Local Land Use when Siting Water or Flood Facilities or Restoring Habitats

Delta Plan Policy **DP P2** (23 Cal. Code Reg. section 5011) states that plans for ecosystem restoration must be sited to avoid or reduce conflicts with existing or planned future land uses when feasible.

Policy DP P2 may apply if habitat mitigation within the Delta is required of the proposed project.

Protect Floodways

Delta Plan Policy **RR P3** (23 Cal. Code Reg. section 5014) restricts encroachment in floodways that are not either a designated floodway or a regulated stream. Policy RR P3 states that "no encroachment shall be allowed or constructed in a floodway unless it can be demonstrated by appropriate analysis that the encroachment will not unduly impede the free flow of water in the floodway or jeopardize public safety".

Please see previous comments under Policy ER P3 concerning the Central Valley Flood Protection Plan and accompanying Draft San Joaquin Basin-wide Feasibility Study. Please consider Policy RR P3 would apply to any proposed new facilities on or near Stewart Tract.

Closing Comments

As the Rail Authority proceeds with design, development, and environmental impact analysis of the project, we invite you to engage Council staff in early consultation to discuss project features and mitigation measures that would enable consistency with the Delta Plan. We are available to discuss the issues outlined in this letter as you proceed in the next stages of your project design and approval processes. Please contact Anthony Navasero at (916) 445-5471 (Anthony.Navasero@deltacouncil.ca.gov) with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Henderson", with a long horizontal line extending to the right.

Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council