



DELTA STEWARDSHIP COUNCIL
A California State Agency

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August 29, 2013

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Stephanie Stowers
San Joaquin County Community Development Department
1810 E. Hazelton Avenue
Stockton, California 95205

RE: PA-1000102 (TE) 20 Megawatt Solar Facility

Dear Ms. Stowers:

Thank you for giving the Delta Stewardship Council (DSC) the opportunity to review San Joaquin County's Initial Study and Negative Declaration for a one-year extension to meet the conditions of site approval for a 20 megawatt photovoltaic solar power facility on Lower Roberts Island in the Delta's Primary Zone. The DSC is submitting these comments as an agency that may have a degree of jurisdiction over projects that occur in the Delta and have impacts on California's coequal goals (California Water Code Section 85054).

As you may know, in 2009 the California Legislature created the DSC to develop and implement a long-term sustainable management plan for the Delta, and was granted specific regulatory and appellate authority over certain actions that take place in whole or in part in the Delta, known as "covered actions". To this end, the Delta Plan contains a set of regulatory policies with which state and local agencies are required to be consistent beginning Sept. 1, 2013. The Delta Reform Act specifically established a certification process for compliance with the Delta Plan (See attachment on Covered Actions for details).

While the Council itself has not reviewed or discussed this Initial Study, DSC staff has reviewed the project and determined that, as currently described, you may find this project meets the statutory definition of a "covered action" and, as such, would require a certification of consistency from San Joaquin County. We encourage you to consult with Council staff to better understand the covered action process and how this project may or may not be consistent with the Delta Plan. It is my understanding that such a discussion is already being planned for the week of Sept. 2.

"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

The Council adopted the Delta Plan on May 16, 2013, and the Plan's regulatory policies were approved by the Office of Administrative Law on August 7, 2013, with an effective date of Sept. 1, 2013. According to statute, it is the state or local agency approving or funding the project that must determine consistency with the Delta Plan, a decision that is subject to appeal to the Council. In that vein, we offer the following observations for your consideration:

We call your attention to the following Delta Plan regulatory policies, which seem especially applicable to determining consistency of your project with the Delta Plan and CEQA guidelines.

- **Protect Opportunities to Restore Habitat.** The project is located in the Lower San Joaquin River Floodplain, one of six priority habitat restoration areas designated in the Delta Plan.¹ In order to be consistent the Delta Plan Policy ER P3 (23 CCR Section 5007), significant impacts to the opportunity to restore habitat in this area must be avoided or mitigated. Potential mitigation measures could include elevating facilities so that water can flow underneath to allow for future restoration of habitats dependent on tides or periodic flooding, or locating facilities at the edge of the restoration area, rather than in the middle, to improve opportunities for restoring habitat connectivity. The mitigation shall be determined, in consultation with the Department of Fish and Wildlife, considering the size of the project area and the type and value of habitat that could be restored in that area.
- **Locate New Urban Development Wisely.** The proposed project would allow new industrial development in an area that is designated for agriculture in the San Joaquin General Plan. In order to be consistent with Delta Plan Policy DP P1 (23 CCR Section 5010), new industrial development is permitted in this area only if it is consistent with the land use designated in the relevant county general plan as of the date of the Delta Plan's adoption. The San Joaquin County General Plan states, in part, that "non-farm uses shall be compatible with agricultural operations and shall satisfy the following criteria: (a) the use requires a location in agricultural area because of unusual site area requirements, operational characteristics, resource orientation, or because it is providing a service to the surrounding agricultural area...." The county's consideration of this project should include a clear explanation of how conversion of farmland to a solar facility to produce power for export to the grid does meets these criteria. In addition, the proposed project would be located in a 100-year floodplain. The Land Use Development section of the San Joaquin County General Plan states, "New industrial areas should not be planned in areas subject to hazards." If they are located in the 100-year flood plain, flood proofing must be used.

¹ The priority habitat restoration areas are described in ER R2 of the Delta Plan and depicted in Figure 4-8.

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In addition, per Appendix G of the State CEQA guidelines, an initial study prepared to comply with CEQA must address consistency of the proposed project with existing plans and policies. Appendix G also states that a project that is inconsistent with any applicable land use plan, policy or regulation may result in a finding of significant impact on biological resources.

Lastly, the DSC consults with the Delta Protection Commission (DPC) on land use issues in the Primary Zone of the Delta, where the two agencies have concurrent jurisdiction (Public Resources Code section 29703.5(a)). Per its letter dated July 12, 2013, the DPC staff has determined that this project is not consistent with its Land Use and Resource Management Plan (LURMP), especially as it relates to goals focused on development and conversion of agricultural lands and economic vitality and long term viability of agriculture in the Delta.

Sincerely,

A handwritten signature in blue ink that reads "Carl Lischerke for". The signature is written in a cursive style.

Cindy Messer
Deputy Executive Officer