Appendix D
Statutory Exemptions from Covered Actions

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85057.5. (a) "Covered action" means a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:

(1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.

(2) Will be carried out, approved, or funded by the state or a local public agency.

(3) Is covered by one or more provisions of the Delta Plan.

(4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.

(b) "Covered action" does not include any of the following:

(1) A regulatory action of a state agency.

(2) Routine maintenance and operation of the State Water Project or the federal Central Valley Project.

(3) Regional transportation plans prepared pursuant to Section 65080 of the Government Code.

(4) A plan, program, project, or activity within the secondary zone of the Delta that the applicable metropolitan planning organization pursuant to 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.

(5) Routine maintenance and operation of a facility located, in whole or in part, in the Delta, that is owned or operated by a local public agency.

(6) A plan, program, project, or activity that occurs, in whole or in part, in the Delta, if both of the following conditions are met:

(A) The plan, program, project, or activity is undertaken by a local public agency that is located, in whole or in part, in the Delta.

(B) Either a notice of determination is filed, pursuant to Section 21152 of the Public Resources Code, for the plan, program, project, or activity by, or the plan, program, project, or activity is fully permitted by, September 30, 2009.

(7) (A) A project within the secondary zone, as defined pursuant to Section 29731 of the Public Resources Code as of January 1, 2009, for which a notice of approval or determination pursuant to Section 21152 of the Public Resources Code has been filed before the date on which the Delta Plan becomes effective.

(B) A project for which a notice of approval or determination is filed on or after the date on which the final Bay Delta Conservation Plan becomes effective, and before the date on which the Delta Plan becomes effective, is not a covered action but shall be consistent with the Bay Delta Conservation Plan.

(C) Subparagraphs (A) and (B) do not apply to either of the following:

(i) A project that is within a Restoration Opportunity Area as shown in Figure 3.1 of Chapter 3: Draft Conservation Strategy of the Bay Delta Conservation Plan, August 3, 2009, or as shown in a final Bay Delta Conservation Plan.

(ii) A project that is within the alignment of a conveyance facility as shown in Figures 1 to 5, inclusive, of the Final Draft Initial Assessment of Dual Delta Water Conveyance Report, April 23, 2008, and in future revisions of this document by the department.

(8) Leases approved by a special district if all of the following apply:

(A) The uses proposed by the lease are authorized by the applicable general plan and zoning ordinances of the city where the special district is located.

(B) The uses proposed by the lease are approved by the city where the special district is located and the city complies with Chapter 3 (commencing with Section 85225) of Part 3, if applicable, prior to approval of the lease by the special district.

(C) The special district complies with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) prior to approving the lease.

(9) (A) Routine dredging activities that are necessary for maintenance of facilities operated by a special district.

(B) For purposes of this paragraph, “routine dredging activities” are limited to the following:

(i) Dredging to maintain the Stockton Deep Water Ship Channel at a depth of 40 feet in the sediment trap at the confluence of the San Joaquin River, between river mile 39.3 to river mile 40.2, and to maintain the remaining Stockton Deep Water Ship Channel at a depth of 35 feet plus two feet overdredge from river mile 35 to river mile 43.

(ii) Dredging designed to maintain the Sacramento Deep Water Ship Channel at a depth of 30 feet plus 2 feet of overdredge from river mile 0.0 to river mile 30, and at a depth of 35 feet from river mile 35 to river mile 43.

(C) Except as provided by this subdivision, it is the intent of the Legislature that this exemption shall not be interpreted or treated as changing or modifying current substantive and procedural regulations applicable to the decision to approve dredging operations.

(i) For purposes of this section, "special district" means the Port of Stockton or the Port of West Sacramento.

(ii) This section shall not be interpreted to authorize the abrogation of a vested right whether created by statute or by common law.

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