ANN JOHNSTON
Mayor

KATHERINE M. MILLER
Vice Mayor
District 2

Stockton
All-America City
2004
1999

CITY OF STOCKTON

OFFICE OF THE CITY COUNCIL
CITY HALL • 425 N. El Dorado Street • Stockton, CA 95202-1997
209 / 937-8244 • Fax 209 / 937-8568

ELBERT H. HOLMAN, JR.
District 1

PAUL CANEPA
District 3

DIANA LOWERY
District 4

SUSAN TALAMANTES EGGMAN
District 5

DALE FRITCHEN
District 6

February 2, 2012

Phil Isenberg, Chairman, and Council Members
Delta Stewardship Council
Attn: P. Joseph Grindstaff, Executive Officer
980 Ninth Street, Suite 1500
Sacramento, California 95814

**CITY OF STOCKTON COMMENTS ON THE DRAFT PROGRAM ENVIRONMENTAL IMPACT REPORT (DRAFT EIR) FOR THE FIFTH STAFF DRAFT DELTA PLAN**

The City of Stockton (City) appreciates the opportunity to review and comment on the Draft Program Environmental Impact Report (Draft EIR or DEIR) for the Draft Delta Plan (Plan). This letter provides the City's individual detailed written comments on the Draft EIR in accordance with the provisions of the California Environmental Quality Act (CEQA) and CEQA Guidelines. In addition to this comment letter, the City, in conjunction with other Delta Coalition stakeholders, is submitting a separately transmitted joint comment letter, which is incorporated by this reference.

The City has been an active participant in the public process associated with development of the Delta Plan and EIR. The City has submitted detailed comments on the 5th Draft Plan, which is the subject of the EIR, as well as the prior drafts of the Plan. The City has not received any response to any of its prior comments on the drafts of the Plan and thus continues to have significant concerns about the scope and regulatory effect of the Plan. As the largest urban area in the Delta, the City is particularly concerned about the Plan's effect on the City's ability to provide for orderly planned development within its boundary and sphere of influence, as well as the related environmental, governance, water supply reliability, economic sustainability, and fiscal effects that may result from the implementation of the Draft Delta Plan.

The City's comments include both general and specific concerns regarding the technical and legal adequacy of the Draft EIR. Based on the substantive comments provided below and those of the other Delta Coalition stakeholders, the City believes that the Draft EIR fails to meet CEQA's informational mandate. In accordance with CEQA Guidelines Section 15088.5, the City respectfully requests that the Draft EIR be redrafted to adequately describe the scope and regulatory effect of the Delta Plan and

fully evaluate the Plan's potential significant environmental impacts and recirculated for another 90-day noticed public review and comment period.

## A. MAJOR CONCERNS/COMMENTS

Despite its extensive length, the Draft EIR leaves many key questions about the scope and effect of the Plan unanswered. The lack of information about critical elements of the Plan have deprived the City and public of the opportunity to understand and comment on key elements of the Plan and its effects and render the EIR inadequate as an informational document. The following comments summarize the City's overarching concerns/comments with regard to the technical and legal adequacy of the Draft EIR.

### 1. The EIR Does Not Adequately Address the Potential for Delta Plan Implementation to Halt or Redirect The City's Planned Growth

The Draft EIR should specifically acknowledge that over 50 percent (21,256 acres) of the City of Stockton's incorporated urban area and an additional 7,932 acres within the City's Sphere of Influence are located within the Secondary or Primary Zones of the Delta (see attached Exhibit 1). All development within these boundaries must be consistent with the City's adopted 2035 General Plan, Infrastructure Master Plans, and the Local Agency Formation Commission's adopted Sphere Plan and Municipal Service Review for the City. A comprehensive Environmental Impact Report, which was in full compliance with CEQA and certified on December 11, 2007, and for which a Notice of Determination was filed on December 12, 2007, addressed those approved plans.

As there are still discretionary approvals required for some projects contemplated by these approved plans, the Delta Plan, as currently drafted, could act as a de facto *reversal* of the prior approvals and indirectly usurp the City's existing land use authority within the areas covered by the Delta Plan. The Delta Plan certainly cannot retroactively invalidate otherwise lawfully adopted plans and should be revised to eliminate the potential conflicts with existing adopted plans. The Draft Delta Plan should be amended to incorporate and/or exempt the City's adopted General Plan, Infrastructure Master Plans, Sphere of Influence/Municipal Service Review, and certified EIR and the Draft EIR for the Delta Plan should acknowledge that incorporation to or exemption from the Delta Plan.

The Delta Reform Act requires the Delta Council to review local land use plans. (DEIR, Section 6, Land Use, p. 6-1.) If the Council treats adopted land use plans as covered actions and requires changes in those plans, or projects that implement those plans, that have the effect of prohibiting or limiting growth, that could cause growth to be shifted away from planned areas, with resulting unevaluated, and potentially greater, impacts. If it is the Council's view that land use plans and projects implementing adopted plans constitute "covered actions," then the EIR needs to plainly disclose this and evaluate the Plan's effect on local land use

decisions and development pursuant to those plans. If the Council seeks to limit or redirect growth within the Secondary Zone of the Delta, the EIR must disclose that as an effect of the Plan and disclose the types of impacts the Plan's prohibitory effect could cause.

For example, if the Council's exercise of its appellate authority over a covered action leads to the inability to build in an area planned for development, that growth that otherwise would have occurred may be shifted to another area with different or more significant impacts, including those resulting from the potential loss of agricultural land, habitat, construction of new infrastructure (including roads, schools, utilities and wastewater treatment and conveyance facilities) and increases in vehicle miles traveled, air pollutant emissions and greenhouse gases. The redirection of planned growth as a result of the Delta Plan may also have significant growth inducing effects if infrastructure such as roads and sewer lines are required to be extended to areas outside the current urban services boundaries.

As discussed in our comment B.1, below, the City believes the statutory language indicates the Legislature did not intend that the Delta Plan stifle progress in existing urban areas or prevent orderly and carefully planned growth within the Secondary Zone of the Delta. However, because the Plan language is not clear, and statements by Council staff have raised concerns about the scope of the Plan, the Draft Delta Plan should be amended to clarify the regulatory provisions for “consistency determinations” as applied to urban areas within the Secondary Zone of the Delta and should be revised to exempt planned urban development within the incorporated City limits and the City’s adopted Sphere of Influence (which would include development consistent with the City’s adopted General Plan, Infrastructure Master Plans and Sphere of Influence/Municipal Service Review) which is defined as of the effective date of the Delta Plan.

The Draft EIR should be revised to specifically acknowledge and address those amendments, and make clear that the Delta Plan does not intend to stifle progress in existing urban areas or prevent orderly and carefully planned growth within the Secondary Zone of the Delta. See Detailed Comment B.1, below.

In this vein, the Draft EIR also should specifically acknowledge that existing and planned urban development within existing adopted planning areas in the Secondary Zone of the Delta, located behind levees that meet, or are planned to meet, current State or Federal standards, should be considered consistent with the Delta Plan.

**2. CEQA Review and Council Approval of the Delta Plan is Premature Because The Legislatively Mandated Performance Measures Have Not Yet Been Identified**

The Delta Reform Act of 2009 provides that the Delta Plan include concrete measures to simultaneously improve water supply reliability and to restore the Delta ecosystem, while protecting and enhancing the Delta as a Place. Specifically, the Act requires that the Plan "include quantified or otherwise measurable targets associated with achieving the objectives of the Delta Plan." (Water Code § 85308 (b).) However, the Delta Plan still contains no measurable or otherwise quantifiable targets. How does the Council intend to accomplish this mandate? What types of performance measures are being considered, and what will the process be for developing and adopting these measures? When will the required measurable quantifiable targets be adopted? How does the Council intend to comply with CEQA in adopting the required targets? The lack of discussion of the required targets in the project description and failure to evaluate the potential impacts associated with these targets makes it impossible for the City to know what the impacts of the Delta Plan will be.

**3. The Project Description is Inadequate**

The Project Description is incomplete and does not provide the reader with an adequate understanding of what the Delta Plan is intended to do, and what changes the public can expect as a result of adopting the Delta Plan. An "accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730.) The failure of the DEIR to adequately define and identify the scope of the project precludes the public from being able to assess the Project's environmental impacts. (See *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730 ["an accurate project description is necessary for an intelligent evaluation" of project impacts.].) Indeed, with the wide reaching nature of the Delta Plan and its invasive policies and recommendations, the lack of an accurate, stable, and finite project description leave many potentially subject to the Delta Plan unsure of the plan's impact on the environment.

The DEIR asserts that the Delta Plan "will be a legally enforceable, comprehensive management plan for the [Delta] that achieves the coequal goals and all of the inherent subgoals and objectives . . ." (See e.g. DEIR, 2A-1, 2A-84.) On the other hand, the DEIR characterizes the Project as being comprised merely of "regulatory policies" and "non-binding recommendations that are no more than "statements of policy direction to other agencies which, if the direction is followed, could lead to other types of specific physical action." (DEIR, p. ES-2.) The DEIR indicates that the "Delta Plan does not direct the construction of specific projects, nor would projects be implemented under the direct authority of the Delta Stewardship

Council." (DEIR, 3-85.) Instead, the DEIR posits that the Delta Plan seeks to achieve the coequal goals by "encouraging" various actions and projects. If it is true, as the DEIR suggests, that the Plan itself will not mandate any physical changes in the environment, it is not clear how the Plan will achieve its goals, subgoals, and objectives. Neither the Delta Plan nor the DEIR explain how the Delta Plan *will* achieve the coequal goals if the Delta Plan does not mandate any actions.

If the Plan will have no actual effect on the environment, the DEIR needs to be clearer about the lack of any real changes and acknowledge that the Plan as drafted will have no discernible effect on achievement of the coequal goals.

The lack of any clear identification of how the Plan affirmatively achieves the project objectives also prevents any analysis of relative environmental impacts of the Project. In particular, if the Project will not result in any physical changes to the Delta region, it is not clear how the Project is superior to the No Project Alternative. The DEIR dismisses potential alternatives, including the No Project alternative, explaining that none of the alternatives will successfully achieve the coequal goals – at least not as well as the Project.

In each of the "Policy Elements" identified in Table 2-4 of the DEIR, the DEIR suggests that the Project will effectively do "more" than the No Project Alternative to achieve the Policy Elements. However, the DEIR fails to identify and discuss how the project does more and what changes result from the Proposed Project. If the DEIR's argument that the Project will obtain results that none of the alternatives can obtain is to be believed, the DEIR must explain with reference to substantial evidence how the Project obtains these results.

## 4. The DEIR's Discussion of the No Project Alternative is Inconsistent and Not Supported by Substantial Evidence in the Record

The DEIR's discussion of the No Project Alternative and the likely effects of this alternative is internally inconsistent and contradicted by evidence in the DEIR itself. For example, the DEIR's discussion of Water Quality Improvement states that under the No Project Alternative, "drinking water quality would continue to be impaired in communities in the Delta and areas outside the Delta." (DEIR, p. 2A-88.) No evidence or analysis is cited in support of this conclusion. The DEIR also states that the "[i]mplementation of additional local and regional water treatment facilities may not be reasonably expected to occur in the foreseeable future under the No Project Alternative based on current plans and available infrastructure." (Ibid.)

These statements are contradicted by information in the DEIR regarding the ongoing efforts of the Regional Water Quality Control Board to develop more stringent and comprehensive water quality objectives that can be expected to drive

the construction of additional treatment facilities. (See, e.g., DEIR p. 2A-40 et seq., section 2.2.3.1.) In fact, these ongoing efforts are recognized in the numerous Plan recommendations encouraging the adoption of these standards. (Id.; see also Draft Plan Recommendations WQ R1, WQ R5, WQ R6.) If these efforts cannot be expected to result in improved water quality, what is to be gained by the Delta Plan encouraging their adoption? And many wastewater treatment facilities that discharge into the Delta are in the process of planning for or constructing upgraded treatment facilities. In Section 3.3.4.2.2 of the DEIR, San Joaquin River Watershed, Surface Water Quality, the DEIR acknowledges that cleanup programs are underway for pathogens, dissolved oxygen, and pesticides through TMDLs. Additionally, in Section 3.3.5.2.2., San Francisco Bay Area, Surface Water Quality, the DEIR notes that additional TMDLs are proposed or are being established to deal with sediments, nutrients, mercury, polychlorinated byphenols and urban pesticides. Furthermore, the DEIR notes that in addition to wastewater treatment plants, flood control, stream restoration, and land use management are being used to improve water quality through TMDLs.

The most illustrative example of planned improvements to regional wastewater treatment facilities is the recently adopted discharge permit by the Central Valley Regional Water Quality Control Board for the Sacramento Regional County Sanitation District. The costs estimated to meet this permit run into the billions of dollars. While portions of the new permit are under appeal, the Sacramento Regional County Sanitation District is already moving forward with design of additional wastewater treatment.

If the Delta Plan merely encourages the adoption of water quality regulations that are already being considered by other agencies, and new or modified wastewater treatment facilities are a likely consequence of both the Draft Plan and the No Project Alternative, it is not clear what the evidentiary basis is for concluding that water quality would improve as a result of the Plan and thus that the project offers any environmental benefit over the No Project Alternative. The DEIR's discussion of the No Project Alternative appears to be a "straw man" designed to make the proposed project appear more desirable, rather than a realistic reflection of future conditions under the existing regulatory environment.

## 5. The DEIR Fails to Discuss How Incorporation of the Bay Delta Conservation Plan Will Affect the Scope and Impacts of the Delta Plan

The Delta Reform Act directs that the Bay Delta Conservation Plan (BDCP) be automatically incorporated into the Delta Plan if the BDCP meets certain statutory requirements. The BDCP is described as covering the operation of the State Water

Project[1], the construction and operation of facilities for movement of water through the Delta, the implementation of conservation actions, and diversion and discharge of water by Mirant. However, the EIR does not clearly explain how the incorporation of the BDCP into the Delta Plan will change the scope and regulatory effect of the Delta Plan. Thus the EIR's discussion of the BDCP raises more questions than it answers, both as to the BDCP's effect on the scope of the Delta Plan and its potential environmental effects.

Standing on its own, if the BDCP is adopted as a HCP/NCCP, it will apply only to those entities that voluntarily seek to participate in it and who obtain ESA coverage under the terms of any permits issued by the relevant agencies. How will the regulatory effect of the BDCP change if it is incorporated into the Delta Plan? If the BDCP is incorporated into the Delta Plan, will its provisions be deemed to constitute "policies" of the Delta Plan with which all covered actions under the Plan must demonstrate consistency? If so, then the BDCP's incorporation into the Delta Plan would dramatically expand the scope of both the BDCP and the Delta Plan, converting what was intended to be voluntary participation in a HCP into a mandatory regulatory program affecting a much wider range of actions within the Delta.

While there is a passing reference to imposing the BDCP on third parties through the consistency determination, Section 23 of the DEIR completely fails to discuss any of these potentially significant issues. (See e.g. DEIR, 2A-24 ["If BDCP is incorporated into the Delta Plan, it will become part of the Delta Plan and, therefore, part of the basis for future consistency determinations."].) How will the BDCP be used for future consistency determinations and what impacts are associated with imposing the BDCP on non-participants?

CEQA requires that an EIR evaluate the whole of the action that will be approved, including the reasonably foreseeable indirect physical changes to the environment that will occur from the project. Given that the Delta Reform Act deprives the Council of any discretion as to the Delta Plan's incorporation of the BDCP, the BDCP should properly be treated as a reasonably foreseeable future element of the Project, rather than a cumulative project, as in the Draft EIR. The DEIR should provide a full discussion of the BDCP in the project description and evaluate the impacts of the BDCP as part of the project and all alternatives. The DEIR should be revised to clearly explain how, if at all, the mandatory incorporation of the BDCP into the Delta Plan would alter or expand the scope of the Delta Plan's regulatory effect, and analyze the potential environmental effects of this expanded regulatory scope of the BDCP. For example, how would incorporation of the BDCP into the

[1] The BDCP will also provide certain authorization for the continued operation of the federal Central Valley Project (CVP). It is unclear why the DEIR omits mention of operation of the CVP from a description of the BDCP.

Delta Plan affect the existing HCPs within the Delta? (See our Detailed Comments B.11 and B.12 below)

When the Legislature directed that the BDCP be automatically incorporated into the Delta Plan, it must have presumed that the BDCP would be completed prior to the Delta Plan and thus the scope and impacts of the BDCP would be known to the Council, public and potentially regulated entities. Given that the BDCP remains incomplete and continues to evolve, it is impossible to understand its impact on scope and impacts of the Delta Plan. The lack of information in the Draft EIR about the regulatory and environmental consequences of incorporating the BDCP into the Delta Plan makes it impossible for the Council and the public to comprehend the environmental consequences of adoption of the Delta Plan. The significance of this information to potentially regulated parties cannot be understated. It would be both imprudent and inconsistent with CEQA's informational mandate for the Council to adopt a Plan that is likely to have far-reaching significant impacts as a result of incorporation of the BDCP prior to the completion of the BDCP and certification of the BDCP EIR and Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA).

For these reasons, the Council should put CEQA review of the Plan on hold and request that the Legislature revise the Delta Reform Act to remove automatic incorporation of the BDCP from the Delta Plan. If the Council elects to move forward and certify an EIR on the Plan as drafted, to comply with CEQA, it must revise the Draft EIR so that the project description and impacts analysis clearly and thoroughly explain the scope of the Plan with respect to the BDCP and evaluate the resulting environmental impacts. Specifically, the DEIR must be revised to fully explain the BDCP's role in the Delta Plan and the type and significance of environmental effects that will occur if all covered actions are required to comply with the BDCP. Because the BDCP continues to evolve, the revised EIR should describe the changes that have been made to the BDCP since the Draft EIR was prepared as well as evaluate any significant environmental effects associated with those changes. The revised DEIR must then be recirculated for public review and comment so that the public, potentially regulated parties and the Council can properly evaluate the project and its impacts.

## 6. The DEIR Fails to Analyze the Effects of Implementing the Recommended New Flow Criteria and a More Natural Flow Regime

Much of the City is protected by levees in compliance with the federal 100-year standard of flood protection The City is protected from flooding by approximately 140 miles of levees and other flood control facilities. In the 1800's, levees were first constructed for agricultural protection, but over the years have evolved to provide protection for residents and businesses in our community. There are currently levee improvement efforts underway and future flood protection projects under study. The City is concerned about the effects on its existing levees, and the

safety of its residents, homes and businesses, of potential changes in Delta flow criteria that may result from the Plan.

The Draft EIR assumes that the SWRCB will follow the recommendations contained in the Delta Plan and develop flow criteria and flow objectives for the Delta and its tributaries. (Draft EIR, 2A-39.) The Draft EIR also anticipates a "more natural flow regime" as a result of setting flow criteria and objectives. The Draft EIR, however, fails to identify the potential environmental risks associated with requiring the various water and flood control projects to operate in such a way as to provide a more natural flow regime. While the Draft EIR does discuss a natural flow regime in the context of ecosystem restoration and also discusses the State's flood control system – it fails to discuss them in a way that informs the public of the critical connection between the two.

For example, the Draft EIR characterizes the existing Delta flood protection system as fragile. (Draft EIR, 5-11.) At the same time, the Draft EIR (and the Delta Plan) suggests that the State's flood protection system be re-operated to provide a more natural flow regime in the Delta. The flood protection system, however, was constructed and is operated to release peak flows gradually following storm events. (Draft EIR, 5-4.) Any change in operations of the various flood control facilities to allow for water to flow more naturally could have adverse impacts on the flood control system and levees generally. To the extent a more natural flow regime would result in higher peak flows or prolonged flows – can our levee system handle this added pressure? Will levees rebound from storm events with the higher water levels one would expect from a "more natural flow regime?"

Section 5.4.3.2 of the Draft EIR, discussing Delta Flood Risk in the context of Delta Ecosystem Restoration, fails to even acknowledge the presence of increased flows in certain times of the year as part of a "more natural flow regime." If the Delta Plan and Draft EIR assume the SWRCB will follow the Delta Plan's recommendations and implement a more natural flow regime in the Delta – the Draft EIR must explain the connection between flows and flood risk and adequately describe the environmental impacts and risks to the public associated with those increased flows.

**7. The Plan Should Exclude From the Definition of "Covered Action" Projects Undertaken to Implement Regulatory Actions of Other State Agencies**

The Delta Plan exempts from the definition of "covered actions" regulatory actions by other state agencies. (DEIR, p. 2A-2.) However, the DEIR states that the underlying actions regulated by those agencies would not be exempt. (Id.) The failure to exempt projects undertaken to implement regulatory requirements, such as wastewater treatment plant upgrades necessitated by a NPDES permit issued by the Regional Water Quality Control Board, is a mistake that may have significant adverse consequences for these projects. The need for entities charged

with implementing regulatory requirements to prepare detailed findings of consistency with the Delta Plan and the potential for environmentally beneficial projects to be delayed by a lengthy and uncertain appellate process (not to mention the likelihood of litigation over the consistency determination) are unreasonable and counterproductive obstacles to these projects. Moreover, to the extent the Delta Council would seek to modify the projects that implement those permits, those modifications would effectively substitute the Council's inexpert judgment for that of the permitting agency.

The Delta Plan should do everything possible to facilitate and encourage projects that implement regulatory requirements, rather than creating substantial obstacles in terms of time and cost that unreasonably delay their implementation. To that end, the Delta Plan should be revised to clearly exempt projects that implement NPDES permits and similar regulatory requirements adopted for the protection of the environment. The Draft EIR should specifically acknowledge that all projects undertaken to comply with a regulatory action, including but not limited to the anticipated upgrades to the City's Regional Wastewater Control Facility (RWCF) to meet state water quality requirements, should also be exempt from the Delta Plan's "covered actions".

In a similar vein, the Delta Plan should be revised to make clear, and the Draft EIR should specifically acknowledge, that all levee improvements and other flood control projects in the Secondary Zone of the Delta, which are consistent with State and/or Federal standards and which have complied with CEQA and/or the National Environmental Policy Act (NEPA), should be exempt from the Delta Plan's consistency determination process.

**8. The Plan Should Exclude From the Definition of "Covered Action" All Projects Exempt from CEQA**

The Draft Delta Plan should be amended to incorporate the general definition of "project" to mirror the definition of "project" in CEQA, including all of the exemptions recognized by CEQA, many of which are specifically exempt because they are environmentally beneficial or otherwise desirable or necessary projects whose implementation should be facilitated, not hindered. It is illogical to subject projects that the Legislature already has determined should be exempt from CEQA to Delta Plan consistency determinations, which include the need to prepare detailed CEQA-type findings and pose the likelihood of a lengthy and uncertain appeals process. Any benefit conferred by the CEQA exemption is lost if such projects are not also exempt from the Delta Plan definition of covered action. The failure to exempt such projects creates the potential that they will be discouraged, delayed or otherwise rendered infeasible. The Draft EIR should discuss the potentially significant environmental effects that could occur from failure or substantial delay of CEQA-exempt projects as a result of the Delta Plan consistency process.

**9. The EIR Does Not Address the Secondary Physical Environmental Impacts That Are Likely to Result from the Plan's Financing Measures and Regulatory Delays**

In accordance with CEQA Guidelines Section 15131, the Draft EIR should acknowledge and address the secondary physical environmental effects that may result from the socio-economic/economic sustainability impacts of the Delta Plan within the Secondary Zone of the Delta, particularly in urban areas like Stockton and the Port of Stockton. The Draft EIR should specifically address the Economic Sustainability Plan prepared by the Delta Protection Commission (DPC), which focuses solely on the Primary Zone of the Delta. It should be noted that the Economic Sustainability Plan does not address the economic sustainability impacts within the Secondary Zone of the Delta. Accordingly, the Draft EIR fails to address the secondary physical environmental effects that may result from the socio-economic/economic sustainability impacts of the Delta Plan.

The implementation of the Delta Plan could adversely impact the financial viability of local communities through increased restrictions and by creating regulatory uncertainties, delays, and potentially leading to extended and costly litigation. The Draft EIR should address the Draft Plan's potential to nullify the intent and implementation of the City's General Plan and other important plans that have been adopted as a result of years of planning, community participation and at great expense. Under the Draft Plan the DSC could find that specific projects that implement the City's General Plan, specific plans or community plans or the Port of Stockton's Rough and Ready Island Development Plan, are inconsistent with the Delta Plan, thereby frustrating the City's and Port of Stockton's ability to provide for orderly planned development within their respective boundaries. This also introduces an element of uncertainty to the land development process that could stifle needed and desirable development within the existing urban areas of the Delta. If landowners and developers cannot rely on the measure of certainty provided by proposing development consistent with an adopted General Plan, specific or master plan, development agreements, and/or other land use entitlements, it is foreseeable they will choose to go elsewhere, depriving Delta cities and counties of needed economic and redevelopment. For example, the potential closure or relocation of industrial, agriculturally-related, port-related, and/or commercial businesses and the resulting loss of jobs in Stockton and San Joaquin County may lead to a corresponding loss of income, retail sales taxes, and property taxes and a resulting increase in residential and non-residential vacancies and foreclosures, which may result in an increased level of urban blight. As discussed in Comment B.42 below, Stockton already has more residential foreclosures than any other city in the United States.

Accordingly, the Draft EIR should address economic sustainability impacts that may result within the Secondary Zone of the Delta, particularly on urban areas like

Stockton and the Port of Stockton (e.g., impacts on shipping, dredging, and industrial development and operations within and in the vicinity of the Port of Stockton; agricultural operations; boating, marinas, parks, and other recreational/tourism land uses and operations; and the corresponding secondary environmental impacts that may result in increased vacancies, foreclosures, and urban blighting, etc.).

**10. The EIR Fails to Evaluate the Effect of Area of Origin Protections on the Ability to Implement Plan Policies Related to Water Supply**

The Draft EIR should acknowledge and address the fact that the Delta Plan cannot be developed, drafted, or implemented in a way that would undermine the current protections for the areas of origin, as codified in California Water Code, Section 11460. The Draft EIR should acknowledge that the Delta Plan cannot be used to prohibit water users within the areas of origin from continuing to put water to reasonable and beneficial use. The Draft EIR should note that the Delta Stewardship Council does not have authority over the diversion and use of water, and the determination of whether existing or future diversion and/or use of water complies with state law currently rests with the State Water Resources Control Board. The Draft EIR should note that the Delta Plan must not alter this regulatory framework.

**11. The EIR Fails to Recognize the Lack of Alternate Sources of Water for Delta Communities**

The Draft EIR should acknowledge and address the fact that the Delta Plan requires water users to “reduce reliance” on the Delta. The Draft EIR should note that for many local communities within the Delta, the local water supplies include the Delta and it may not be possible or practicable to find alternate sources of water. The Draft EIR should acknowledge and address the potential impacts to local water supplies and the possible environmental impacts associated with having to find alternate sources of water supplies not tied to the Delta. The Draft EIR should also discuss how the Delta Plan policies could actually inhibit regional self-reliance through the continued beneficial use of water from local sources, including the Delta.

## B. DETAILED COMMENTS

This section provides detailed substantive and technical comments regarding specific documentation and/or determinations contained in the Draft EIR, which are listed in sequential order by page number, section, and/or line numbers, as applicable, in the Draft EIR.

1. Pages ES-2-3, Executive Summary, Description of the Project; Page 2A-3, Proposed Project and Alternatives, Sec. 2.1.2.1, Lines 24-35, Statutory Exemptions of a Covered Action; Page 2A-4, Sec. 2.2 Proposed Project; and other applicable sections of the Draft EIR:

   In accordance with California Water Code, Sections 85057.5(b)(6A and B) and (7A), a "Covered Action" does **not** include the following:

   (6) Any 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) Any project within the Secondary Zone, as defined pursuant to Section 29731 of 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.

   These sections of the Water Code suggest that planned development within the Secondary Zone of the Delta was not intended to be a "covered action" within the regulatory scope of the Delta Stewardship Council. Additional statements throughout the Draft Plan and DEIR seem to confirm this. For example, the Plan policies and recommendations all relate to water use and management, water quality improvement, habitat restoration and enhancing the Delta as a place and would not apply to urban development within incorporated areas and/or the Delta Secondary Zone. Also, the EIR's statements relating to covered actions seem to indicate that land use projects in urban areas are not considered to be covered actions. For example, all of the examples of the types of projects that would be covered actions that are listed in footnote 2, DEIR p. ES-2, are water supply projects. Throughout the Project Description are discussion of the many different types of projects the Council seeks to influence; none of these is a typical land use project, such as a land use plan or development project. Also, Page 2-B2 states that the majority of other agency actions evaluated by the EIR will be noncovered actions. Appendix H lists the types of projects the DEIR states the Council intends the Plan to cover: these projects include water supply projects (including reservoirs, and desalination plants), park and habitat restoration actions, and dredging activities. Typical urban development is not included in the list of representative covered actions. Also, the DEIR states that policy RR P3 which addresses levee standards for all types of development, would "not preclude development where provided in local plans." In the population and housing

discussion, the EIR acknowledges land use changes as possible actions by others in response to the plan policies, but the only types of land use changes discussed are land fallowing, or development of new infrastructure such as wastewater treatment plants, or restoration projects. Finally, Table 22, which lists projects that the EIR does not consider to be "covered actions," and so are discussed as cumulative projects, lists the General Plan Updates for Sacramento and San Joaquin Counties as well as the Delta Protection Commission's Land Use and Resource Management Plan.

The DEIR thus strongly suggests that development undertaken pursuant to adopted land use plans of local agencies would not be considered to be "covered actions." However, the Plan and EIR's failure to clarify this issue has created substantial uncertainty among local land use jurisdictions, property owners and developers.

Based on the above-noted California Water Code Sections and the cited EIR sections, the Description of the Project and Statutory Exemptions should include a specific acknowledgment and/or clarification that existing and planned urban areas in the Secondary Zone of the Delta, including planned urban development, consistent with adopted General Plans, Specific Plans, Master Development Plans, and/or other entitlements and related certified environmental documentation, within a city's incorporated city limits and/or Sphere of Influence in the Secondary Zone of the Delta, shall be exempt from the "consistency determination" requirements for "covered actions".

By way of examples, planned development within the Secondary Zone of the Delta is covered by the City's adopted 2035 General Plan and Infrastructure Master Plans and the corresponding comprehensive Environmental Impact Report, which was certified on December 11, 2007 and a Notice of Determination, which was filed by the City on December 12, 2007, and by the San Joaquin County Local Agency Formation Commission's modified Sphere of Influence Sphere Plan and Municipal Service Review for the City, which was adopted on September 19, 2008. These plans and programs, as well as contemplated urban developments consistent with those adopted land use and infrastructure plans and implementation programs, should, therefore, be exempt from the "covered actions" provisions under California Water Code, Sections 85057.5(b)(6A and B) and (7A). Similarly, several master planned developments and related entitlements within the Secondary Zone of the Delta and the City's Sphere of Influence and/or City limits, such as the Sanctuary Master Planned Community, for which a Master Development Plan, Development Agreement, General Plan Amendments, Prezoning, a large-lot Tentative Subdivision Map, other entitlements, and corresponding environmental documents were approved/certified and a Notice of Determination was filed prior to September 30, 2009 and prior to the effective date of the Delta Plan. Such projects should also be deemed exempt from "covered actions" provisions under California Water Code, Sections 85057.5(b)(6A and B) and (7A).

Subsequent development approvals, such as small-lot Tentative Subdivision Maps, within the above-noted planning boundaries, which are consistent with the City's General Plan and approved Master Development Plans or Specific Plans, Development Agreements, and related entitlements, should also be exempt from "covered actions" provisions. This comment is consistent with the following comment and request, as previously stated in the City's September 29, 2011 comment letter regarding the 5th Staff Draft Delta Plan:

The City of Stockton and/or the Port of Stockton have several fully-entitled and environmentally-cleared development projects in the City limits located within the Secondary Zone of the Delta that are in various phases of the development process (see attached Exhibit 2). Some of those projects have approved Master Development Plans with Development Agreements, Planned Development Permits, Large-lot and/or Small-lot Tentative Subdivision Maps, or property leases, and are approaching buildout (requiring only ministerial approvals, such as Final Subdivision/Parcel Maps, building permits, etc.). Other approved master planned projects are in the early phases of the development process and may require additional discretionary entitlements (e.g., Small-lot Tentative Subdivision or Parcel Maps, Conditional Use Permits, etc.). The City respectfully requests that the buildout of those projects and future planned urban development projects in the City's corporate limits and Sphere of Influence, located within the Secondary Zone of the Delta, be exempt from the "consistency determination" provisions of the Draft Plan.

2. Pages 2A-24-25, Sec. 2.2.2 Delta Ecosystem Restoration:

   This section and subsequent applicable sections of the Draft EIR should recognize and incorporate the existing and on-going habitat conservation/mitigation activities of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) as part of the existing regulatory setting and as part of the project description for San Joaquin County.

3. Page 2A-46, Overview of Improved Drinking Water and Environmental Water Quality Programs, Sec. 2.2.3.1.9 Wells:

   The City (and California Water Service Company) has already implemented a program of abandoning contaminated wells, replacing them with new wells in areas with better quality water, and initiated groundwater recharge programs. However, this has limited practicality due to an over-drafted aquifer and limited surface water availability for groundwater recharge.

4. Page 2A-52, Protection and Enhancement of Delta as an Evolving Place, Sec. 2.2.5.1 Overview of the Economic Sustainability Plan:

   It should be noted that the Delta Protection Commission's Economic Sustainability Plan only covers the Primary Zone of the Delta and is, therefore, incomplete. The

Economic Sustainability Plan must be expanded by addressing the Secondary Zone of the Delta and the Suisun Marsh areas to provide a comprehensive analysis of the entire Delta. Absent the completion of the Economic Sustainability Plan for the entire Delta, the Draft EIR is also incomplete with regard to addressing the potential secondary environmental effects that may result from the socio-economic/economic sustainability impacts of the Delta Plan within the Secondary Zone of the Delta and the Suisun Marsh.

See Comment A.9 above for a description of the types of reasonably foreseeable economic and land use impacts that may lead to significant physical effects.

5. Page 2A-56, Sec. 2.2.6 Recommendations for Financing Framework, Lines 31-32:

The City disagrees with the conclusion that the Finance Plan Framework recommendations shall not be considered separately in the Draft EIR. The establishment of “stressor fees” and other fees may adversely affect the ability of local agencies to implement public improvement projects, which may, in turn, result in adverse physical environmental effects if projects are delayed or abandoned. Therefore, these recommendations should be considered separately in the Draft EIR.

Moreover, information about the Finance Plan is critical to understanding the feasibility of the proposed Delta Plan, especially in relation to the alternatives. The Plan assumes that it will be successful and that the funding for Plan projects will come from entities contributing to the problem (i.e., "stressor pays"). As a result of Proposition 218, the Delta Council and potentially regulated entities such as the City lack authority to levy fees for projects such as water quality improvement projects. Instead, such fees require approval of a 2/3 vote of the electorate. History has shown that such approval is highly unlikely.

The City's efforts to increase revenues to fund stormwater quality improvements are instructive. In August of 2010, the City of Stockton mailed ballots for a vote on a Clean Water Fee for stormwater permit compliance and infrastructure operation, maintenance and repair. The existing stormwater fee of $2.10 per month per home (without a CPI) dated from the early 1990s. The proposed fee was $2.88, to be in addition to the $2.10. City staff made 37 separate presentations to industrial and commercial groups, homeowner associations, rental associations and community leadership groups. Educational newsletters were mailed to 77,000 stormwater customers, a hot-line and web site was maintained, and the local government channel ran an educational video. The results of the balloting were 16,374 opposed and 7,813 in favor.

6. P. 2A-88, Section 2.3.2.4 Flood Risk Reduction, line 28:

Should include Stockton, the largest municipality in the Delta, as an example.

7. Page 3-10 Water Resources, Section 3.3.3.2. Surface Water Quality, Lines 36-43:

   The statement that low dissolved oxygen is a concern in the interior Delta because of enhanced treated effluent loading from Stockton, and that loading from the Stockton Regional Wastewater Control Facility has the greatest effect in reducing DO is inaccurate. The source sited (Jassby and Hiewenhuyse, 2005) is out of date. The Final Report, Stockton Deep Water Ship Channel Demonstration Dissolved Oxygen Aeration Facility Project (ICF International, Dec. 2010) states that the Aeration Facility can increase the DWSC DO by about 1 mg/l, enough to maintain the DO objectives because the major source of inflow BOD has been eliminated since 2007 with the completion of the City of Stockton's RWCF nitrification facility.

8. Page 3-16 Water Resources, Sec. 3.3.3.4.3 Groundwater Use, Lines 3-4 and Page 3-34, Sec. 3.3.4.2.4 Groundwater Use, Lines 27-28:

   The statement that the City of Stockton depends almost entirely on groundwater for its municipal and industrial water needs is incorrect. The City (and California Water Service Company) has a policy and practice of conjunctive use of surface water and groundwater, with a current allocation of approximately 75% surface water and 25% groundwater.

9. Page 4-2 Biological Resources, Environmental Setting, Sec. 4.2 Regulatory Framework:

   A brief summary listing/description of all of the adopted Habitat Conservation Plans (HCPs) and Natural Community Conservation Plans (NCCPs), as described in Appendix D, should be provided as part of the environmental and regulatory setting and should be incorporated as part of the project description for the Delta Plan.

10. Page 4-3 Biological Resources, Environmental Setting, Sec. 4.3.1 Major Sources of Information:

    This listing should also include the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and other adopted HCPs and NCCPs, as listed in Appendix D.

11. Page 4-67 Biological Resources, Impact Analysis, Sec. 4.4.3.1.5 Impact 4-5a, Lines 1-3:

    It is noted that the Proposed Project would not affect the provisions of adopted (HCP and NCCP) plans or the long-term assurances received by the permitted entities regarding incidental take. Upon incorporation of the BDCP as an integral component of the Delta Plan, would existing adopted HCPs and NCCPs be superseded by the BDCP?

12. Page 4-72 Biological Resources, Impact Analysis, Sec. 4.4.3.2.5 Impact 4-5b, Lines 1-4:

    The Draft EIR should address the potential individual and cumulative effects related to the increase in demand for lands suitable for ecosystem restoration actions associated with the implementation of the BDCP and the noted DFG Conservation Strategy and the extent to which said ecosystem restoration activities could restrict the availability of land for mitigation actions by permit holders under the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and the East Contra Costa County HCP/NCCP.

13. Page 4-110 Biological Resources, Sec. 4.5 References:

    Include reference for San Joaquin Council of Governments. 2000. San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP).

14. P. 5-8, Sec. 5.3.4.2 San Joaquin River Flood Control Project, line 33:

    Should Mormon Slough be on the Lower San Joaquin River Control Project?

15. P. 5-8, Sec. 5.3.4.2 San Joaquin River Flood Control Project, line 38+:

    Should also include existing Paradise Cut bypass.

16. P. 5-9, Figure 5-3:

    Not the San Joaquin River Flood Control Project.

17. P. 5-10, Sec. 5.3.4.3 Non-Project Levees in the Delta and Suisun Marsh, lines 17-23:

    Should be rewritten. The Flood Protection Restoration Project is not a “recently initiated non-project flood protection facilities in the Delta.” The Project was completed in the late 1990s and consisted of raising existing project levees upstream of I-5 to correct freeboard deficiencies. It also did not include any new levees. The design and construction of the Project was approved/certified by USACE. As a result of the Project, FEMA did not place the greater Stockton metro area into the 100-year floodplain.

18. P. 5-13, Sec. 5.3.5.1.1 FEMA Analyses, line 3:

    FEMA accepted the certification submitted by RD 17. This area no longer has a PAL designation.

19. P. 5-13, Sec. 5.3.5.1.2 FEMA Flood Areas, line 39:

FEMA accepted the certification submitted by RD 17. This area no longer has a PAL designation.

20. P. 5-14, Sec. 5.3.5.1.2 FEMA Flood Areas, line 6:

    FEMA accepted the certification submitted by RD 17. This area no longer has a PAL designation. Also, typo, “Western Ranch” should by “Weston Ranch”.

21. P. 5-14, Sec. 5.3.5.1.2 FEMA Flood Areas, lines 33-38:

    Certification documentation for all the PAL levees in San Joaquin County were submitted to and approved by FEMA with two exceptions: i) south levee of Bear Creek west of I-5 adjacent to Twin Creeks; and ii) east levee of San Joaquin River from French Camp Slough to Stockton Deep Water Ship Channel and north levee of French Camp Slough from I-5 to San Joaquin River.

22. P. 5-15, Sec. 5.3.5.1.2 FEMA Flood Areas, line 16:

    FEMA has approved the levee certifications for the Stockton, Mossdale areas with the exceptions noted in comment #20 above.

23. P. 5-20, Sec. 5.3.5.1.4 Additional Analyses, line 8:

    Should be revised. If you have 100-year flood protection, there is a 26% chance of a 100-year event (not flooding because of the 100-year protection) over the life of a 30-year mortgage.

24. P. 5-20, Sec. 5.3.5.2, Earthquake Risks, line 23:

    It should mention that strong ground motions will not only affect existing levees but also any new water conveyance within the Delta.

25. P. 5-24, Sec. 5.3.6 Current Levee Design Standards, line 30:

    Should also include commercial/industrial structures.

26. P. 5-24, Sec. 5.3.6 Current Levee Design Standards, line 43:

    Need to certify after 2015 that 200-year protection is available or adequate progress.

27. P. 5-35, Sec. 5.4.1 Assessment Methods, line 44:

    Define “major development.”

28. P. 5-42, Sec. 5.4.3.1.4 Impact 5-4a, lines 1-11:

The 5th Staff Draft Delta Plan, P. 166, **Levee Classifications for Protection of Land and Resources Uses,** 4th paragraph: States that "…flood hazards in the Delta cannot be eliminated… Therefore, to be assured consistency with the Delta plan, future land use decisions should not permit or encourage construction of significant numbers of new residences in the Delta in the face of the flood hazards." This conflicts with the EIR, PP. 23-30 & 23-31 which states that BDCP-related ecosystem restoration and enhancement and Delta conveyance "are not likely to expose people or structures to flood hazards….because the design of levee modifications…. would be required by federal and State law to be completed in accordance with the requirements and or guidelines of the U.S. Army Corps of Engineers…, Federal Emergency Management Agency,…Central Valley Flood Protection Board, DWR and local flood management agencies. Why are these levees "not likely to expose people to flood hazards", but levees built to the same standards to protect residences should not be permitted?

29. P. 5-69, Sec. 5.4.3.6.3 Mitigation Measure 5-4, lines 17 & 18:

    Same as comment #28 above. Also, why is a conveyance facility failure "unlikely" and a levee failure around development in the Secondary Zone too risky?

30. Page 6-3 Land Use and Planning, Sec. 6.2 Regulatory Framework, Lines 12-13:

    This section states that "Appendix D provides an overview of the federal, State, and regional, and local plans, policies, laws, and regulations relating to the land use and planning within the study area". However, the land use and planning sections of local City and County General Plans and regulatory documents are not listed or described in Appendix D.

31. Page 6-45 Land Use and Planning, Impacts Analysis, Sec. 6.4.2 Thresholds of Significance; Page 6-46, Sec. 6.4.3 Proposed Project; and Pages 6-62 – 6-64 Mitigation Measures:

    The impact analyses, thresholds of significance, and mitigation measures addressed in relation to potential conflicts with applicable land use plans, policies, or regulations of local agencies are overly limited and inadequate for a statutory and regulatory plan of this magnitude and with such far reaching implications to affected local governments. The Draft EIR should specifically address the potential implications and any potential conflicts of the governance and regulatory provisions contained in the Draft Delta Plan on and with each of the applicable local land use plans and regulatory documents listed under Section 6.2.1 (Local Land Use Plans) of the Draft EIR.

    The Delta Plan may conflict with the Stockton General Plan (approved December 2007) that includes several goals and policies (listed below) adopted for the protection of the environment and to promote infill development and redevelopment. Given this potential conflict, Stockton's growth may not be able to

proceed in an orderly, phased, manner, and infill development may be hampered (portions of the Downtown and most of the infill areas of the City are located in the Secondary Zone of the Delta). Should the Council limit or impede development in the Secondary Zone, urban sprawl into existing agricultural lands may be induced. The provision of public services may be made less efficient if the Council treats adopted land use plans as covered actions and requires changes in those plans, or projects that implement those plans. Treating adopted land use plans as covered actions will have the effect of prohibiting or limiting growth in the Secondary Zone, which in turn could cause growth to be shifted away from planned areas, with resulting unevaluated, and potentially greater, environmental impacts. If it is the Council's view that land use plans and projects implementing adopted plans constitute "covered actions," then the EIR needs to plainly disclose this and evaluate the Plan's effect on local land use decisions and development pursuant to those plans. If the Council seeks to limit or redirect growth within the Secondary Zone of the Delta, the EIR must disclose that as an effect of the Plan and disclose the types of impacts the Plan's prohibitory effect could cause.

The following General Plan Goals and Policies demonstrate the City's commitment to environmental protection and smart, sustainable growth:

**Goal LU-1** To ensure that Stockton's future growth will proceed in an orderly manner, encourage and provide incentives for infill development, prevent urban sprawl, and promote the efficient and equitable provision of public services.

**Policy LU-1.12 Commuting Distances**
The City shall strive to minimize the commuting distances between residential concentrations and employment centers by encouraging infill development and a mix of residential densities.

**Policy LU-1.13 Growth Phasing**
The City shall phase growth based on the availability of adequate water supplies, market forces, infrastructure financing capacity, and the timing of the design, approval, and construction of water supply and transportation facilities and other infrastructure.

**Goal LU-2** To promote the protection of agricultural lands outside the Urban Service Area to the north and east, and to discourage the premature conversion of agricultural lands within the Urban Service Area.

**LU-2.1 Agricultural Land Preservation**
The City shall limit the wasteful and inefficient sprawl of urban uses into agricultural lands.

Should the Council consider already adopted land use entitlements as being subject to the covered action provisions of the Delta Plan, Stockton's efforts to: reduce VMT, through promotion of an efficient arrangement of land uses, improved public transit, increased mode-share of bicycle and pedestrian travel, maximize use of existing investments in Downtown transit facilities and Bus Rapid Transit, facilitate TOD projects (including those in and around the Altamont Commuter Express (ACE) neighborhood, and encouraging job creation in the Downtown and Port of Stockton will be severely constrained. If already planned and approved development in the Secondary Zone is pushed to other areas on the edge of Stockton as a result of the Council's covered actions provisions, it would result in environmental impacts ranging from increased air pollution (including green house gas emissions), longer commute distances, less "smart growth" projects, and increased reliance on the single-occupant vehicle. Additionally, the ability of the Port of Stockton, a major economic engine in the region, to develop and produce jobs will be significantly curtailed. The City has also committed to meet the requirements of Assembly Bill 32 and the 2008 Settlement Agreement with the Sierra Club and state Attorney General, to locate 4,400 of Stockton's new housing units in the Downtown. The following Goals and Policies of the Stockton General Plan demonstrate the City's commitment to smart growth:

**Policy TC-2.17 Vehicle Miles Traveled (VMT) Reduction**
To improve air quality and reduce congestion, the City shall seek to reduce vehicle-miles-traveled per household by making efficient use of existing and planned transportation facilities; supporting policies are detailed in the City's adopted list of Reasonably Available Control Measures. These measures include:
a. Promoting efficient arrangement of land uses.
b. Improving public transportation and ridesharing.
c. Facilitating more direct routes for pedestrians and bicyclists and other non-polluting modes.

**Goal TC-3** To minimize single-occupant vehicle demand and reduce vehicle emissions on the transportation system and reduce vehicle emissions by encouraging use of alternative transportation modes as well as alternatives to travel.

**Policy TC-3.8 Downtown Transit Facilities/Services**
The City shall enhance the Downtown's intermodal role by integrating mass transit facilities and services such as Bus Rapid Transit.

**Policy TC-3.9 Programs for Smart Growth/Transit-Oriented-Development**
To facilitate development of transit-oriented development projects, the City shall support and capitalize on existing and proposed "smart growth" or transit-oriented development (TOD) programs, which award funds for transportation projects to

local jurisdictions that approve building permits for compact housing and mixed use development near transit.

**Goal TC-5** To promote development of pedestrian and bikeway facilities for transportation and recreation.

**Goal TC-8** To encourage and maintain the operation of the Port of Stockton as an asset to the community and a source of jobs, while minimizing environmental impacts in accordance with CEQA.

**Goal HS-4** To improve air quality and to minimize the adverse effects of air pollution on human health and the economy.

**Policy HS4-15 Infill Near Employment**
The City shall identify and adopt incentives for planning and implementing infill development projects within urbanized areas near job centers and transportation nodes.

**Policy HS-4.20 Develop Policies Requiring Minimizing of Greenhouse Gas Emissions**
The City shall adopt new policies, in the form of a new ordinance, resolution, or other type of policy document, that will require new development to reduce its greenhouse gas emissions to the extent feasible in a manner consistent with state legislative policy as set forth in Assembly Bill (AB) 32 (Health & Safety Code, § 38500 et seq.) and with specific mitigation strategies developed by the California Air Resources Board (CARB) pursuant to AB 32. In furtherance of this effort, the City shall monitor the process by which CARB promulgates rules, regulations, limits, plans, and reduction measures pursuant to AB 32 to determine whether they result in recommended or mandatory principles or strategies by which greenhouse gas emissions reductions or minimization can be achieved through the land use planning process. If CARB does formulate any such principles or strategies, the City's own greenhouse gas emission reduction and minimization strategies shall be consistent with those promulgated by CARB. If CARB's efforts pursuant to AB 32 do not result in recommended or mandatory principles or strategies by which greenhouse gas emissions reductions or minimization can be achieved through the land use planning process, the City shall develop its own such principles and strategies. In doing so, the City shall consider the following potential mitigation strategies:

a. Increased density or intensity of land use, as a means of reducing per capita vehicle miles traveled by increasing pedestrian activities, bicycle usage, and public or private transit usage;

b. Increased energy conservation through means such as those described in Appendix F of the State Guidelines for the California Environmental Quality Act;

c. Greenhouse gas sequestration measures, such as increasing the effectiveness of carbon dioxide sinks through tree-planting, for example;

d. The payment of fair share fees, or participation in fair share measures, that are imposed pursuant to a reasonable mitigation plan under which the fair share payment or fair share participation will foreseeably result in actual, enforceable mitigation that will offset some or all of the greenhouse gas emissions of development projects (e.g., through energy conservation, greenhouse gas sequestration, or increased usage of energy sources that do not contribute, or contribute only minimally, to global warming). In order to help achieve the maximum technologically feasible and cost effective greenhouse gas emissions reductions, and in furtherance of the inter-agency coordination objectives of AB 32, such a reasonable mitigation plan may include a multiple-agency program by which City imposed fees are used to fund mitigation strategies implemented in whole or in part by regional or state agencies (e.g., the Air Resources Board, the Public Utilities Commission, or the State Energy Resources Conservation and Development Commission).

e. Public education measures intended to instruct future landowners, tenants, and users with respect to means by which they can reduce their own greenhouse gas emissions. For purposes of this policy, “feasible” shall have the same meaning as that set forth in Section 15364 of Title 14 of the California Code of Regulations and in case law interpreting the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.).

32. Page 6-45 Land Use and Planning, Impacts Analysis, Sec. 6.4.2 Thresholds of Significance; Page 6-46, Sec. 6.4.3 Proposed Project; and Pages 6-62 – 6-64 Mitigation Measures:

The Draft EIR should specifically address the potential environmental implications from the implementation of Delta Plan Governance Policy G P1 (Certifications of Consistency with the Delta Plan) on the City’s ability to implement planned urban development and infrastructure as designated in, and/or which is consistent with, the City’s adopted General Plan, Sphere of Influence/Municipal Service Review Sphere Plan, Infrastructure Master Plans (Water, Wastewater, Stormwater, Transportation/Circulation, Bicycle, and Parks), Specific Plans, Master Development Plans, and related land use entitlements and regulatory documents. The Draft EIR should also specifically address the potential individual and cumulative socio-economic, economic sustainability, and fiscal impacts and associated secondary physical environmental effects that may result should the Delta Stewardship Council (DSC) uphold appeals and/or order modifications to approved projects that effectively nullify local land use decisions within the Secondary Zone of the Delta that are consistent with local land use plans.

As mentioned above, the 2008 Settlement Agreement between the City, the Sierra Club, and the Attorney General of the state of California requires that at least 4,400 units of Stockton's new housing growth be located in the Downtown area. As previously mentioned, much of the Downtown area is located in the Secondary Zone of the Delta. The Settlement Agreement also requires that City staff submit, for City Council adoption, policies and programs (e.g. Climate Action Plan, amendments to the 2035 General Plan) that specifically direct growth to infill areas (e.g. Downtown). Should the City not be able to fulfill it's commitments to accommodate new infill growth in the Secondary Zone, then Stockton will necessarily grow into areas on the urban fringe, thereby violating the intent of the 2008 Settlement Agreement, the Goals and Policies of the General Plan, and cause previously unanticipated significant environmental impacts as a result of pushing growth, including supporting utility infrastructure to the edge of the urbanized area.

The Draft EIR should address the proposed project's and alternatives' potential environmental, socio-economic, and fiscal impacts that may result should the Delta Stewardship Council (DSC) uphold appeals and/or order modifications to approved projects that effectively nullify local land use decisions within the Secondary Zone of the Delta that are otherwise consistent with the City's General Plan and other local land use plans for the western half of the City of Stockton and its Sphere of Influence. Specifically, the Draft EIR should address the effects of the potential relocation of planned development from the western half of the City and the City's Sphere of Influence to other eastern areas within and outside of the City's existing 10-year Sphere of Influence Sphere Plan. In particular, the Draft EIR should address the potential effects on groundwater supplies, water quality, traffic, noise, air quality, flood protection and storm drainage facilities, wastewater collection and treatment facilities, police and fire protection services, and other utilities and services, as well as socio-economic and fiscal impacts that may affect existing adjacent unincorporated communities, such as the Morada community on the City's northeastern border, and other developed areas and undeveloped agricultural areas on the City's eastern fringe, which are located within and outside of the City's 10-year Sphere of Influence.

33. Page 6-59 – 6-60 Land Use and Planning, Impacts Analysis, Sec. 6.4.3.4.2 Impact 6-2d, Conflict of Flood Risk Protection Policy (Reduced Risk Policy 3) with Local Land Use Plans, Lines 39-41 on Page 6-59 and Lines 1-12 on Page 6-60:

This section notes that Reduced Risk Policy 3 "requires a minimum level of flood protection based on specified levee design criteria currently used throughout the Delta" and that "this policy would not change the minimum level of flood protection on areas within urban areas (defined as an area with a population greater than 10,000) …" Please confirm that this policy is not intended to change the existing law as it applies to the City of Stockton, with a population of over 293,000 and the remaining area within the City's 10-year Sphere of Influence Plan, is and will

continue to be subject to the current 100 year federal flood protection level, until the State's 200 year flood protection level becomes effective in the year 2025.

34. Page 7-18 Agriculture and Forestry Resources, Impacts Analysis of Project and Alternatives:

    The Draft EIR should specifically address the potential environmental implications from the implementation of the Delta Plan on the conversion of agricultural land and related impacts on agricultural resources due to redirected urban development from currently designated growth areas within the City's General Plan boundaries located within the Secondary Zone of the Delta to areas located outside of the Secondary Zone. The redirection of urban development may result if the Delta Stewardship Council (DSC) upholds appeals, and/or orders modifications to approved projects such that they become infeasible thereby, effectively nullifying land use decisions, that are otherwise consistent with adopted land use plans for areas within the City's General Plan boundaries located within the Secondary Zone.

35. Page 9-13 Air Quality, Impacts Analysis of Project and Alternatives:

    The Draft EIR should specifically address the potential environmental implications from the implementation of the Delta Plan on the localized air quality conditions due to redirected urban development from currently designated growth areas within the City's General Plan boundaries located within the Secondary Zone of the Delta to areas located outside of the Secondary Zone. The redirection of urban development may result if the Delta Stewardship Council (DSC) upholds appeals and/or orders modifications to approved projects such that they become infeasible, thereby effectively nullifying local land use decisions that are otherwise consistent with adopted land use plans for areas within the City's General Plan boundaries located within the Secondary Zone. Secondary impacts that could occur include, but are not limited to, increased air pollutant and greenhouse gas emissions from the construction of infrastructure to serve new growth areas as well as increased vehicle emissions from longer trips associated with growth that occurs farther from existing services and job centers.

36. Page 16-15 Population and Housing, Impacts Analysis of Project and Alternatives:

    On page 16-15, the EIR's thresholds of significance for population and housing impacts address the Plan's potential to induce growth based on projects the Plan could encourage. If the Plan is intended to prevent urban development in areas where it is planned, the EIR must be revised to acknowledge this and analyze the potentially significant impacts that could occur as a result of projects the Plan prevents, not just projects the Plan encourages. For example, if the Council's actions implementing the Plan result in restrictions or prohibitions on land development in the Delta, there may be significant environmental impacts of shifting planned growth elsewhere. The Draft EIR should specifically address the

potential environmental implications from the implementation of the Delta Plan on population and housing growth and related secondary physical environmental impacts of associated urban growth due to redirected urban development from currently designated growth areas within the City's General Plan boundaries located within the Secondary Zone of the Delta to areas located outside of the Secondary Zone. The redirection of urban development may result if the Delta Stewardship Council (DSC) upholds appeals and/or orders modifications to approved projects such that they become infeasible, thereby effectively nullifying local land use decisions that are otherwise consistent with adopted land use plans for areas within the City's General Plan boundaries located within the Secondary Zone. These impacts may preclude the development of anticipated housing projects, which may, in turn, result in the City's non-compliance with our adopted Housing Element goals and in the non-achievement of our Fair Share Housing Allocation.

37. Page 17-29 Public Services, Impacts Analysis of Project and Alternatives:

The Draft EIR should specifically address the potential environmental implications from the implementation of the Delta Plan on the provision of local public services and related secondary physical environmental impacts associated with reduced service levels in existing and planned urban areas due to redirected urban development from currently designated growth areas within the City's General Plan boundaries located within the Secondary Zone of the Delta to areas located outside of the Secondary Zone. The redirection of urban development may result if the Delta Stewardship Council (DSC) upholds appeals and/or orders modifications to approved projects such that they become infeasible, thereby effectively nullifying local land use decisions that are otherwise consistent with adopted land use plans for areas within the City's General Plan boundaries located within the Secondary Zone.

As an example, if growth in a partially developed area of the City was effectively halted as a result of DSC action on a City approved project (e.g. small lot tentative map to implement a master plan development), the already developed part of the project could experience higher vacancies and foreclosures, resulting in reduced property values, lower private and public revenues (e.g. decreased rents, utility payments, property taxes), reduced or diluted City services, and increased crime. This may lead to a direct physical impact on the community in the form of blight. Such a scenario is not hypothetical in that Stockton has already experienced blight in some areas of the City where development was only partially completed as a result of the foreclosure crisis.

38. Page 19-17 Transportation, Traffic, and Circulation, Impacts Analysis of Project and Alternatives:

The Draft EIR should specifically address the potential environmental implications from the implementation of the Delta Plan on the construction, operation, and

management of the existing and planned transportation, traffic, and circulation system and related secondary environmental impacts associated with the reduced long-term operability, service levels, and function of transportation facilities and systems in existing and planned urban areas due to redirected urban development from currently designated growth areas within the City's General Plan boundaries located within the Secondary Zone of the Delta to areas located outside of the Secondary Zone. The redirection of urban development may result if the Delta Stewardship Council (DSC) upholds appeals and/or orders modifications to approved projects such that they become infeasible, thereby effectively nullifying local land use decisions that are otherwise consistent with adopted land use plans for areas within the City's General Plan boundaries located within the Secondary Zone. Secondary environmental impacts could result from, but are not limited to, the need to construct new roads and growth inducing impacts from the extension of roads to areas currently not planned for growth.

39. Page 20-6 Utilities and Service Systems, Impacts Analysis of Project and Alternatives:

The Draft EIR should specifically address the potential environmental implications from the implementation of the Delta Plan on the construction, operation, and management of the existing and planned utilities and service system and related secondary environmental impacts associated with the reduced long-term operability, service levels, and function of utilities and systems in existing and planned urban areas due to redirected urban development from currently designated growth areas within the City's General Plan boundaries located within the Secondary Zone of the Delta to areas located outside of the Secondary Zone. The redirection of urban development may result if the Delta Stewardship Council (DSC) upholds appeals and/or orders modifications to approved projects such that they become infeasible, thereby effectively nullifying local land use decisions that are otherwise consistent with adopted land use plans for areas within the City's General Plan boundaries located within the Secondary Zone.

For example, if the City's planned expansion / modification of the City's wastewater treatment plant (located in the Primary and Secondary Zone of the Delta) was for all intents and purposes stopped as a result of DSC action, the City may be forced to move its wastewater treatment facility and related utility infrastructure out of the Delta. The geographical placement of the existing wastewater treatment plant takes advantage of gravity in-flows thereby reducing energy consumption and the resultant air pollution that would otherwise be needed to pump effluent for treatment. Relocating the existing wastewater treatment plant to anywhere else (i.e higher ground) in the City, would by necessity, increase air pollution due to increased pumping and no doubt cause a significant impact on an already impacted air basin. Should other existing and planned utilities and service systems need to be planned or relocated out of the Secondary Zone due the DSC's effective prohibition on development in this area to other areas of the City (e.g.

north or east) increases in environmental impacts would occur (e.g. agricultural land conversion, increased vehicle miles traveled, air pollution).

40. Pages 20-9 - 20-10, Impact 20-2: Require or Result in the Construction of New Wastewater Treatment Facilities or the Expansion of Existing Facilities, the Construction or Operation of Which Would Have Significant Environmental Effects:

    The statement that new wastewater systems are prompted by increased customer demand ignores the historic record of increasingly strict water quality regulations or that treatment plants constructed decades ago require reconstruction or the conversion to more efficient technology. Prior comments made by the City of Stockton on the Draft Delta Plan have suggested that construction at wastewater treatment plants to meet standards imposed by the Regional Water Quality Control Board should be exempt as covered actions, as the imposition of those standards are exempt from covered actions. Additionally, construction to replace aging and failing infrastructure or antiquated treatment technology should be exempt.

    The City is concerned that construction of new wastewater systems could be determined to not be in conformance with the Delta Plan. In particular, wastewater treatment plants are typically constructed to use gravity to the greatest extent possible to move wastewater to the plant. Consequently, Stockton's wastewater treatment plant is located within the legal Delta. By not excluding improvements to existing wastewater treatment plants to meet standards imposed by the Regional Water Quality Control Board, the City is concerned that the Delta Plan could require such construction to be moved out of the Secondary Zone. The potential impacts of such a move would necessarily involve substantial wastewater pumping with the associated energy demand, and could involve construction of a completely new treatment facility. Such impacts are not considered in the Draft EIR and could well be considered significant.

41. Pages 20-10 - 20-11, Impact 20-3: Require or Result in the Construction of New Stormwater Drainage Facilities or the Expansion of Existing Facilities, the Construction or Operation of Which Would Have Significant Environmental Effects:

    The Proposed Project does not exempt stormwater drainage facilities from covered actions. Stormwater drainage facilities, using gravity for water movement to the greatest extent possible, are, for the City of Stockton, primarily located within the Secondary Zone. The statement that new stormwater drainage facilities are prompted by increased impervious surfaces ignores the historic record of increasingly strict water quality regulations. Any decision that necessary stormwater drainage facilities are not consistent with the Delta Plan would put the City of Stockton in the untenable position of not being able to discharge stormwater from the City or not meeting imposed water quality requirements. It is difficult to imagine the potential environmental impacts of trying to move stormwater from within the Delta to outside of the Delta for discharge or treatment, particularly if

pumping plants are not exempt from covered actions. The EIR clearly does not address these potential impacts which could be significant.

42. Pages 22-2 - 22-20 Cumulative Impacts of the Proposed Project and Pages 22-20 – 22-22 Cumulative Impacts of the Project Alternatives:

The Cumulative Impacts section of the Draft EIR fails to address the potential cumulative effects of the proposed project and/or project alternatives related to environmental justice issues that may result from the implementation of the Delta Plan's policies and/or recommendations. California law (Government Code § 65040.12) defines Environmental Justice as: "The fair treatment of people of all races, cultures and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations and policies." The Draft EIR fails to acknowledge and address the fact that the City of Stockton, the surrounding metropolitan area, and San Joaquin County as a whole have been disproportionately severely impacted by the on-going economic recession and housing foreclosure crisis. For example, the potential loss of agricultural-related jobs due to conversion of agricultural land by ecosystem restoration and flood control projects associated with the proposed project will severely and disproportionately impact the existing low-income, minority population within the City and adjacent County areas within the Primary and Secondary Zones of the Delta. Specifically, the proposed project will further disproportionately impact that low-income, minority population by leading to a loss of jobs and the corresponding loss of income and resulting increase in foreclosures.

In 2007, approximately 55 percent of the City of Stockton's population was non-white, compared to 45 percent non-white in San Joaquin County or 40 percent for the state. Household incomes in Stockton are lower than incomes in the state. For example, approximately 36 percent of the Stockton households earned less than $30,000 in 2007, compared to 29 percent of state households. Households earning $75,000 or greater consisted of only 29 percent of Stockton households, but accounted for almost 40 percent of all California households.

In 1970 the residents of Stockton, the state of California and the nation as a whole had about the same average personal income. However, by the early 1980s, Stockton's average per capita income had decreased compared to California and national averages. From 1984 to 2006 the personal income gap between Stockton and the rest of California was four times greater ($12,354) than it was in 1984 ($3,091).

In 2010, the overall poverty rate for Stockton was 16.4 percent compared to 15.1 percent nationally. The change in median household income from 2007-2010 was a negative 9.4 percent. Stockton's poor population increased 56.4 percent from 2000 to 2010. According to the U.S. Census Bureau, in 2010 Stockton had the tenth highest poverty rate of all suburban areas in the nation.

At the end of 2011, Stockton had the highest foreclosure of any city in the U.S. One out every 120 homes got hit with a foreclosure filing in November, up 20% from October and 9% from November 2010. On average, foreclosures were filed on one out of every 579 homes in the U.S.

The Cumulative Impacts section of the Draft EIR should provide a programmatic environmental justice analysis of potentially disproportionately high and adverse human health or environmental effects to low-income or minority populations within the City of Stockton and surrounding County areas, consistent with the environmental justice provisions in California Government Code, Section 65040.12 and with the environmental justice guidelines for NEPA in the federal document, Environmental Justice: Guidance Under the National Environmental Policy Act (Council on Environmental Quality 1997).

43. P. 23-24, Table 23-1:

    Alternative 4A increases Delta outflow up to 1.5 million acre-feet/year. All the alternatives, including the existing, should have this information.

44. P. 23-25, Sec. 23.4.1 Proposed Project, line 1:

    Define “non-habitat restoration”.

45. P. 23-29, Sec. 23.6.1 Water Resources, lines 36-38:

    The Proposed Project will degrade water quality at the intake for Stockton’s Delta Water Supply Project.

46. P. 23-31, Sec. 23.6.5 Agriculture and Forestry Resources, lines 39-41:

    How can conveyance facilities not have a permanent impact to agriculture?

47. P. 23-34, Sec. 23.6.14 Population and Housing, line 42:

    Displaced residents are to be “accommodated within the Delta area.” How can this be done if development is not allowed or severely restricted in the Delta?

## C. CONCLUDING COMMENTS

Based on the substantive comments provided above and those of the other Delta Initiative stakeholders, the City believes that the current Draft EIR is technically and legally inadequate, as it does not comply with the provisions of CEQA and the CEQA Guidelines. In accordance with CEQA Guidelines Section 15088.5, the City respectfully requests that the Draft EIR be redrafted to adequately address our concerns and recirculated for another 90-day noticed public review and comment period.

The City appreciates the opportunity to review and comment on the first Draft EIR for the current (Fifth) Draft Delta Plan and looks forward to the opportunity to review a subsequently revised and recirculated Draft EIR that adequately addresses a modified (Sixth) Draft Delta Plan that acknowledges and addresses the City's concerns. City staff is committed to working closely with the DSC and DSC staff in ensuring that the Delta Plan is successful in achieving the coequal goals in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

Should you have any questions or wish to discuss these comments, please contact Community Development Program Specialist Michael M. Niblock at (209) 937-8090 or City Attorney John Luebberke at (209) 937-8934.

Ann Johnston

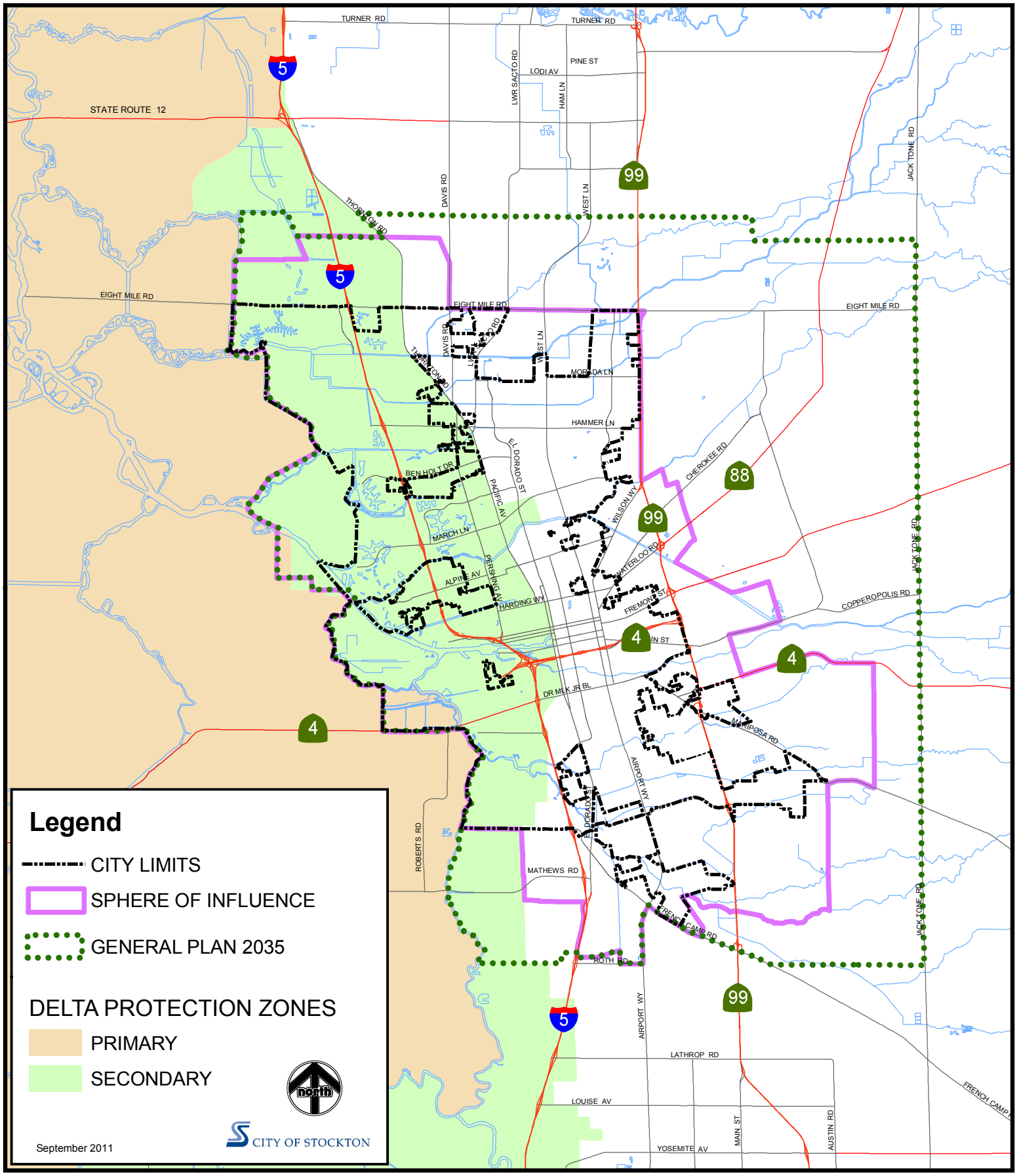
ANN JOHNSTON
MAYOR

AJ/ML/JL/MMN:ss

Attachments
emc: Stockton City Council w/attachment
Bob Deis, City Manager w/attachment
Michael E. Locke, Deputy City Manager w/attachment
John Luebberke, City Attorney w/attachment
Jeff Willett, Acting Municipal Utilities Director w/attachment
Michael Niblock, Community Development Program Specialist w/attachment
David Stagnaro, AICP, Planning Manager, CDD/Planning and Engineering Services Division w/attachment
Stockton Planning Commission w/attachment
Stockton Development Oversight Commission w/attachment
San Joaquin County Board of Supervisors w/attachment
Manuel Lopez, San Joaquin County Administrator w/attachment
David Wooten, San Joaquin County Counsel w/attachment
Terry Dermody, San Joaquin County Special Water Counsel w/attachment
Elena Reyes, San Joaquin County Deputy County Administrator w/attachment
Tom Gau, San Joaquin County Public Works Director w/attachment
Kerry Sullivan, San Joaquin County Community Development Director w/attachment
Mel Lytle, San Joaquin County Water Resources Coordinator w/attachment
Richard Aschieris, Director, Port of Stockton w/attachment
Steven Herum, Legal Counsel, Port of Stockton w/attachment
Daniel Kelly, Attorney, Somach Simmons & Dunn w/attachment
Mike Machado, Delta Protection Commission w/attachment
Delta Coalition w/attachment
Dante Nomellini, Nomellini, Grilli & McDaniel PLCs w/attachment
Tom Zuckerman, Central Delta Water Agency w/attachment
eircomments@deltacouncil.ca.gov w/attachment

::ODMA\GRPWISE\COS.CDD.CDD_Library:93638.1

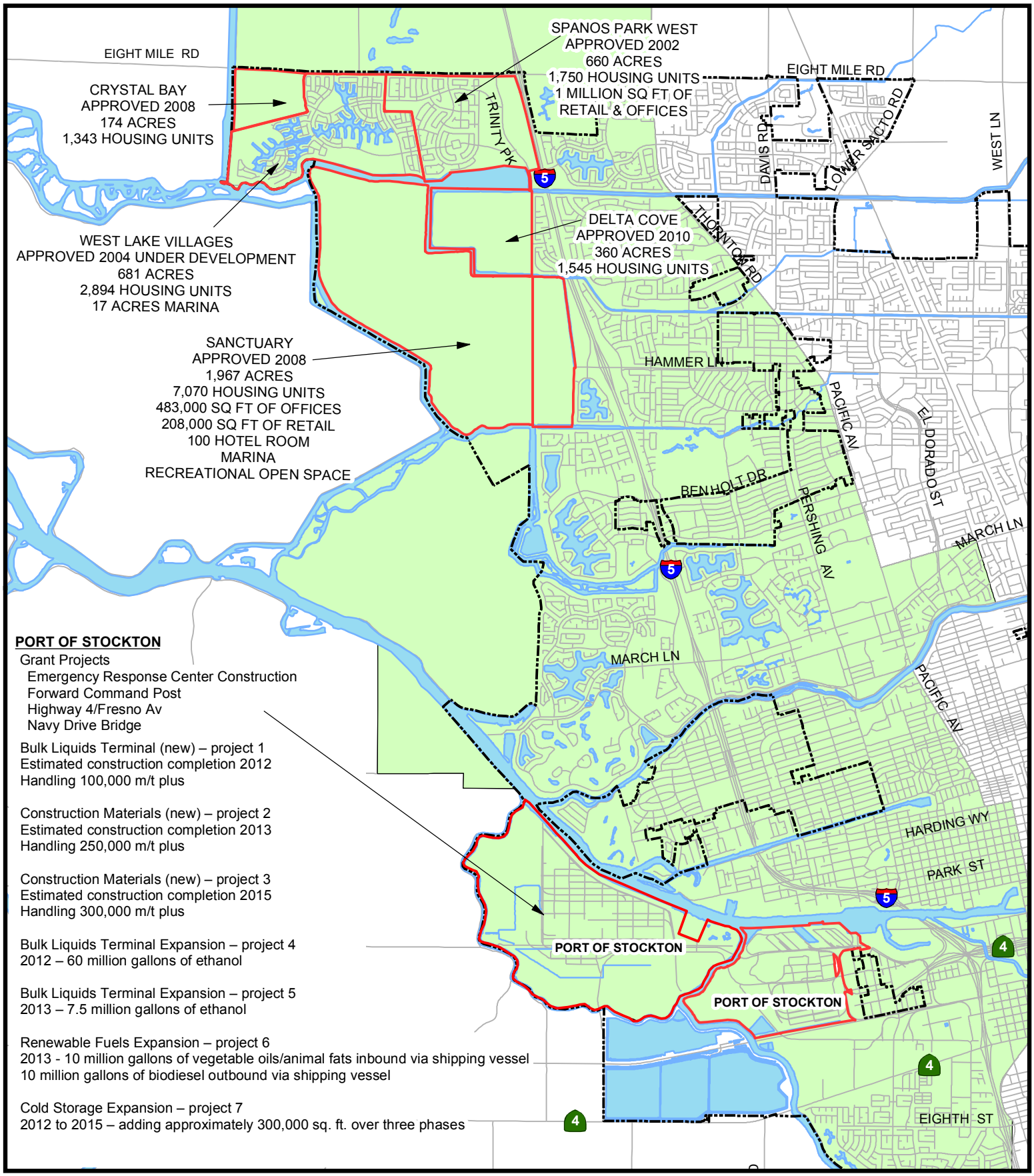
EXHIBIT 1




# DELTA PROTECTION ZONES / CITY BOUNDARIES

G:\CDD\priv_Staff_\Techs\Addie\Maps\Delta Plan Protection Zones_City Boundaries.mxd

EXHIBIT 2




# DELTA PLAN - SECONDARY ZONE DEVELOPMENT

G:\CDD\priv_Staff_\Techs\Addie\Maps\Delta Plan - Secondary Zone Development.mxd