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# Appendix D

## Statutory Exemptions from Covered Actions

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## Statutory Exemptions from Covered Actions

- 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) Any plan, program, project, or activity within the secondary zone of the Delta that the applicable metropolitan planning organization under Section 65080 of the Government Code has determined is consistent with either a sustainable communities strategy or an alternative planning strategy that the State Air Resources Board has determined would, if implemented, achieve the greenhouse gas emission reduction targets established by that board pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code. For purposes of this paragraph, “consistent with” means consistent with the use designation, density, building intensity, transportation plan, and applicable policies specified for the area in the sustainable communities strategy or the alternative planning strategy, as applicable, and any infrastructure necessary to support the plan, program, project, or activity.
  - (5) Routine maintenance and operation of any facility located, in whole or in part, in the Delta, that is owned or operated by a local public agency.

- (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.
- (B) Any 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) Any 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) Any 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.
- (c) Nothing in the application of this section shall be interpreted to authorize the abrogation of any vested right whether created by statute or by common law.