



DELTA STEWARDSHIP COUNCIL
A California State Agency

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October 14, 2019

San Joaquin Regional Rail Commission
Attn: Valley Rail Sacramento Extension NOP
949 E. Channel Street
Stockton, CA 95202

Via email: ace.sacramentoextension@gmail.com

Chair
Susan Tatayon

Members
Frank C. Damrell, Jr.
Randy Fiorini
Michael Gatto
Maria Mehranian
Oscar Villegas
Ken Weinberg

Executive Officer
Jessica R. Pearson

RE: Comments on Notice of Preparation of an Environmental Impact Report and Scoping Meeting for the Valley Rail Sacramento Extension Project, SCH# 2019090306

To Whom It May Concern:

Thank you for the opportunity to review and comment on the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Valley Rail Sacramento Extension Project (project). The Delta Stewardship Council (Council) recognizes the goal(s) of the San Joaquin Regional Rail Commission (SJRRRC) to expand passenger rail service, increase frequency of service, increase rail ridership, and reduce travel time between the San Joaquin Valley and the Sacramento area, among other project objectives. The intent of the proposed project is to increase connectivity between two key population centers in the Sacramento-San Joaquin River Delta (Delta), benefitting those who live and work in the region.

The Council is an independent state agency established by the Sacramento-San Joaquin Delta Reform Act of 2009, codified in Division 35 of the California Water Code, sections 85000-85350 (Delta Reform Act). The Reform Act charges the Council with furthering California's coequal goals of achieving a more reliable water supply and restoring the Delta ecosystem, to be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. (Cal. Water Code section 85054.)

Pursuant to the Delta Reform Act, the Council has adopted the Delta Plan, a legally enforceable management framework for the Delta and Suisun Marsh for achieving the coequal goals. The Delta Reform Act grants the Council specific regulatory and appellate authority over certain actions that take place in whole or in part in the Delta and Suisun Marsh, referred to as "covered actions." (Cal. Water Code section 85022(a) and 85057.5.) The Council exercises

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

that authority through its regulatory policies (set forth in Title 23 of the California Code of Regulations, Sections 5001 through 5016) and recommendations incorporated into the Delta Plan. State and local agencies are required to demonstrate consistency with the Delta Plan when carrying out, approving, or funding a covered action. (Cal. Water Code section 85057.5 and 85225.)

Covered Action Determination and Certification of Consistency with the Delta Plan

Based on the project location and scope, as provided in the NOP, the proposed project may meet the definition of a covered action. Water Code section 85057.5(a) provides the following four-part test to determine which activities would be considered covered actions:

1. Will occur in whole or in part within the boundaries of the Legal Delta (Water Code §12220) or Suisun Marsh (Public Resources Code §29101). Track curve reconstruction north of North New Hope Road and south of Desmond Road would occur within the boundaries of the Legal Delta. The proposed Thornton and Phillips Siding upgrades and extensions also appear to be within the boundaries of the Legal Delta.
2. Will be carried out, approved, or funded by the State or a local public agency. SJRRC is the lead agency for the project, and the project would be jointly implemented by SJRRC and the San Joaquin Joint Powers Authority (SJJPA), both of which are local public agencies.
3. Will have a significant impact (definition available at: http://deltacouncil.ca.gov/sites/default/files/documents/files/DeltaPlan_05-14-2012_Chapter2.pdf%23Page%3D24) on the achievement of one or both of the coequal goals or the implementation of a government-sponsored flood control program to reduce risks to people, property, and State interests in the Delta. The proposed project may have a significant impact on the achievement of the coequal goal to protect, restore, and enhance the Delta ecosystem and/or the implementation of a government-sponsored flood control program.
4. Is covered by one or more of the regulatory policies contained in the Delta Plan (23 CCR section 5003-5015). The Delta Plan includes 14 regulatory policies; some policies only apply in certain geographic areas, and others to specific types of actions. Delta Plan regulatory policies that may apply to the proposed project are discussed below.

It is the State or local agency approving, funding, or carrying out the project that ultimately must make a reasonable, good faith determination, consistent with the Delta Reform Act and its regulatory policies, if that project is a covered action and, if so, file a Certification of Consistency with the Delta Plan prior to project implementation. (Cal. Water Code section 85225; 23 CCR section 5001(j)(3).)

Comments Regarding Delta Plan Policies and Potential Consistency Certification

The following section describes the Delta Plan regulatory policies that may apply to the proposed project based on the available information in the NOP. This information is offered to assist SJRRC to prepare environmental documents that could be used to support a

Certification of Consistency for the project. This information may also assist SJRRC to better describe the relationship between the proposed project and the Delta Plan in the project's EIR.

General Policy 1: Detailed Finding to Establish Consistency with the Delta Plan

Delta Plan Policy **G P1** (23 CCR section 5002) specifies what must be addressed in a certification of consistency by a project proponent of a project that is a covered action.

- Delta Plan Policy **G P1(b)(2)** (23 CCR section 5002(b)(2)) requires that actions not exempt from CEQA and subject to Delta Plan regulations must include all applicable feasible mitigation measures in the Delta Plan as amended April 26, 2018 or substitute mitigation measures that are equally or more effective. Mitigation measures in the Delta Plan's Mitigation and Monitoring Report Program (Delta Plan MMRP) are available at: http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%202.pdf. If the project Draft EIR identifies significant impacts that require mitigation, SJRRC should review the Delta Plan MMRP and, when feasible, apply the mitigation measures identified in the Delta Plan as amended April 26, 2018 or substitute measures that are equally or more effective.
- Delta Plan Policy **G P1(b)(3)** (23 CCR section 5002(b)(3)) states that actions subject to Delta Plan regulations must document use of best available science as relevant to the purpose and nature of the project. The regulatory definition of "best available science" is provided in Appendix 1A of the Delta Plan (available at: <http://deltacouncil.ca.gov/sites/default/files/2015/09/Appendix%201A.pdf>)

Best available science is defined in the Delta Plan as the best scientific information and data for informing management and policy decisions. Six criteria are used to define best available science: relevance, inclusiveness, objectivity, transparency and openness, timeliness, and peer review. (23 CCR section 5001(f)) This policy generally requires the lead agency to clearly document and communicate the process for designing the project and analyzing project alternatives, impacts, and mitigation measures, in order to foster improved understanding and decision making and demonstrate the use of best available science as relevant to the purpose and nature of the project.

Ecosystem Restoration Policy 5: Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species

Delta Plan Policy **ER P5** (23 Cal. Code Regs. section 5009) requires that covered actions fully consider and avoid or mitigate the potential for new introductions of, or improved habitat conditions for, invasive, nonnative species in a way that appropriately protects the ecosystem. The EIR should analyze how the project will avoid or mitigate for conditions that would introduce or improve habitat for nonnative invasive species. In the event that mitigation is warranted, mitigation and minimization measures must include Delta Plan Mitigation Measure 4-1 (available at:

http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%202.pdf) or a substitute mitigation measure that is equally or more effective.

Delta as Place Policy 1: Locate New Urban Development Wisely

Delta Plan Policy **DP P1** (23 Cal. Code Regs. section 5010) places certain limits on new urban development within the Delta. As it applies to the proposed project, Policy DP P1 states that new residential, commercial, or industrial development must be limited to areas that city or county general plans designate for residential, commercial, and industrial development in cities or their spheres of influence as of the date of the Delta Plan's adoption (May 16, 2013). Policy DP P1 should be acknowledged in regulatory setting for the Land Use section of the EIR, as well as in the growth inducement discussion. The EIR should also analyze the potential of the project to induce new development in the Delta that was not accounted for in applicable city or county general plans as of May 16, 2013, particularly near station locations.

Risk Reduction Policy 3: Protect Floodways

Delta Plan Policy **RR P3** (23 Cal. Code Regs. section 5014) prohibits the presence or construction of encroachments in floodways (that are neither designated floodways nor regulated streams) unless it can be demonstrated by appropriate analysis that the encroachment will not unduly impede the free flow of water in the floodway or jeopardize public safety.

The proposed project alignment crosses the Cosumnes River Preserve, a portion of which is a designated floodway, near the Mokelumne River confluence, which is a regulated stream. If the project would encroach upon or be constructed in an undesignated floodway, the EIR should analyze how the project would not impede the free flow of water in the floodway or jeopardize public safety.

CEQA Regulatory Setting

For each resource section in which a Delta Plan policy is applicable, the EIR's description of the regulatory setting should include the Delta Plan and a reference to the specific applicable regulatory policy or policies.

Closing Comments

As the SJRRC proceeds with design, development, and environmental impact analysis of the project, the Council invites SJRRC to engage Council staff in early consultation (prior to submittal of a Certification of Consistency) to discuss project features and mitigation measures that would promote consistency with the Delta Plan. Council staff are available to discuss issues outlined in this letter as SJRRC proceeds in the next stages of its project and approval processes. Please contact Avery Livengood at (916) 445-0782 (Avery.Livengood@deltacouncil.ca.gov) with any questions.

Sincerely,

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

Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council