



Delta Stewardship Council

A CALIFORNIA STATE AGENCY

January 27, 2021

Hailey Lang
San Joaquin Council of Governments
555 E. Weber Avenue
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Delivered via email: lang@sjcog.org

RE: Comments on Notice of Preparation of an Environmental Impact Report for the 2022 San Joaquin Council of Governments Regional Transportation Plan/Sustainable Communities Strategy, SCH# 2020120482

Dear Hailey Lang:

Thank you for the opportunity to review and comment on the San Joaquin Council of Governments' (SJCOG) Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the 2022 SJCOG Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS). The Delta Stewardship Council (Council) recognizes the objectives of the RTP/SCS to serve as a comprehensive long-range transportation plan for San Joaquin County that links land use, air quality, and transportation needs to meet federal and state air quality standards. This letter summarizes requirements of the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act), the Council's enabling statute, pertaining to the RTP/SCS. It also provides the Council's comments on the NOP regarding the scope and content of the EIR for the RTP/SCS.

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 Delta Reform Act charges the Council with furthering California's coequal goals of providing a more reliable water supply and protecting, restoring, and enhancing the Sacramento-San Joaquin River Delta (Delta) ecosystem. (Wat. Code, § 85054.) The Delta Reform Act further states that the coequal goals are 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.

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The Council is charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan. (Wat. Code, § 85300.)

Pursuant to the Delta Reform Act, the Council has adopted the Delta Plan, a comprehensive long-term management plan for the Delta and Suisun Marsh that furthers the coequal goals. The Delta Plan contains regulatory policies, which are set forth in California Code of Regulations, Title 23, sections 5001-5015. A state or local agency that proposes to carry out, approve, or fund a qualifying action in whole or in part in the Delta, called a "covered action," is required to prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and submit that certification to the Council prior to implementation of the covered action. (Wat. Code, § 85225.) As is discussed in more detail below, the Delta Reform Act also gives the Council specific authority to advise local and regional planning agencies regarding the consistency of local and regional planning documents with the Delta Plan. (Wat. Code, § 85212.)

Delta Reform Act Requirements concerning Local and Regional Planning Agencies

1. Early Consultation

The Delta Reform Act grants the Council specific authority to review and advise local and regional planning agencies regarding the consistency of local and regional planning documents, including sustainable communities strategies and alternative planning strategies, with the Delta Plan. The Delta Plan requires a metropolitan planning organization preparing a regional transportation plan that includes land within the Delta primary or secondary zones to consult with the Council early in the planning process regarding the issues and policy choices relating to the Council's advice. (Wat. Code, § 85212.)

Early consultation will enable the Council to offer timely advice on the consistency of the RTP/SCS with the Delta Plan. Council staff looks forward to consultations with SJCOG as preparation of the draft EIR and the RTP/SCS continues.

2. Council Review of the Draft Sustainable Communities Strategy

The RTP/SCS is a regional transportation plan and sustainable community strategy for San Joaquin County, which includes land within the Delta primary and secondary zones. In addition to early consultation (described above), Section 85212 of the Delta Reform Act requires SJCOG to provide to the Council:
a draft sustainable communities strategy and an alternative planning strategy, if any, **no later than 60 days prior to the adoption of the final RTP/SCS**; and

- **concurrent** notice of its submission of the strategy(ies) via electronic mail to coveredactions@deltacouncil.ca.gov.

If the Council concludes that the submitted draft sustainable communities strategy (or alternative planning strategy) is inconsistent with the Delta Plan, it will provide to SJCOG a written notice of the claimed inconsistency **no later than 30 days prior to the adoption of the final RTP/SCS**. If SJCOG receives a timely written notice of inconsistency from the Council, SJCOG's adoption of the final RTP/SCS must include a detailed response to the Council's notice. (Wat. Code, § 85212.)

Please keep Council staff informed of the project timeline so that staff can plan ahead for these statutory deadlines. We would also welcome a presentation by SJCOG staff on the draft sustainable communities strategy at a future Council meeting prior to SJCOG's adoption hearings.

Comments on Scope and Content of the EIR

A state or local agency that proposes to carry out, approve, or fund a covered action is required to prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and submit that certification to the Council prior to implementation of the project. (Wat. Code, § 85225.) A covered action is an action that is a plan, program, or project as defined pursuant to the California Environmental Quality Act (CEQA; Pub. Res. Code § 21065) 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; and
- (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. (Wat. Code § 85057.5(b)(4).)

The Delta Reform Act exempts actions within the secondary zone of the Delta that a metropolitan planning organization determines are consistent with its sustainable community strategy (or alternative planning strategy) that the State Air Resources Board has determined would achieve regional greenhouse gas emission reduction

targets. (Wat. Code, § 85057.5(b)(4).) SJCOG is the metropolitan planning organization for San Joaquin County, which contains a portion of the secondary zone of the Delta. Thus, Water Code Section 85057.5(b)(4) provides SJCOG with a significant role in shaping the State's Delta land use policy. Although the RTP/SCS is not a covered action (Wat. Code § 85057.5(b)(3)), SJCOG should ensure that it is consistent with the Delta Plan, as discussed in greater detail below.

1. Urban Expansion within the Delta

The Council exercises its authority through regulatory policies (set forth in Title 23 of the California Code of Regulations, Sections 5001 through 5016) and recommendations incorporated into the Delta Plan. One of these policies, Delta Plan Policy **DP P1** (Cal. Code Regs., tit. 23, § 5010), places certain limits on new urban development within the Delta. New residential, commercial, or industrial development must be limited to areas that city or county general plans designate for such development as of the date of the Delta Plan's adoption (May 16, 2013). This policy is intended to strengthen existing Delta communities while protecting farmland and open space, providing land for ecosystem restoration needs, and reducing flood risk.

Consequently, the EIR should analyze impacts of the RTP/SCS on new residential, commercial, and industrial development in the Delta, and particularly, whether the RTP/SCS would induce new residential, commercial, or industrial development in the Delta Secondary Zone that was not accounted for at the time of the Delta Plan's adoption.

The Council also has an interest in recommended transportation projects in the RTP/SCS that may induce urban expansion or improve or degrade connections to rural areas in a manner that would be inconsistent with Delta Plan Policy **DP P1**. The EIR should describe what infrastructure, beyond the recommended transportation projects, is necessary to support the strategy or the plans, programs, projects, or activities encompassed within it.

2. Consistency with Ecosystem Restoration Needs

Water Code Section 85212 requires that the Council's input on local and regional planning documents, including sustainable communities strategies, include, but not be limited to reviewing:

- the consistency of local and regional planning documents with the ecosystem restoration needs of the Delta; and

Hailey Lang
San Joaquin Council of Governments
January 27, 2021
Page 5

- whether the lands set aside for natural resource protection are sufficient to meet the Delta's ecosystem needs.

The Delta Plan designates six priority habitat restoration areas (PHRAs) that have the greatest potential for large-scale habitat restoration (Delta Plan, Chapter 4, p. 136-138). Delta Plan Policy **ER P3** (Cal. Code Regs., tit. 23, § 5007) states that significant adverse impacts to the opportunity to restore habitat must be avoided or mitigated in these areas (depicted in Appendix 5:

[https://govt.westlaw.com/calregs/Document/I23BAB44007AA11E39A73EBDA152904D8?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I23BAB44007AA11E39A73EBDA152904D8?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))).

Two PHRAs are located partially or wholly within the RTP/SCS planning area: (1) Cosumnes/Mokelumne Confluence and (2) Lower San Joaquin River Floodplain. The consistency of the RTP/SCS with the ecosystem restoration needs of the Delta is based in part on its impacts to the opportunity to restore habitat in these PHRAs. Consequently, the EIR should analyze whether the RTP/SCS would induce growth, or otherwise adversely impact the opportunity to restore habitat, in either of these PHRAs.

Closing Comments and Next Steps

As SJCOG proceeds with development and environmental impact analysis for the RTP/SCS, the Council invites SJCOG to engage Council staff to ensure consistency between the RTP/SCS and the Delta Plan, to ensure that the two Plans are complementary in nature and serve to protect the Delta while promoting sustainable growth and economic vitality in the broader region.

Please contact Avery Livengood at Avery.Livengood@deltacouncil.ca.gov with any questions.

Sincerely,



Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council