

Delta Vision

**Context Memorandum: Delta Land Use**

This context memorandum provides critical information about land use within the Delta to support policy making. As they are developed, the context memos will create a common understanding and language about the critical factors in establishing a Delta Vision. This is an iterative process and this document represents the beginning of a dialogue with you about how best to understand land use and to inform recommendations by the Delta Vision Blue Ribbon Task Force.

You have two weeks to submit comments that may be incorporated into the next iteration. You may submit your comments in two ways: either online at [dv\\_context@calwater.ca.gov](mailto:dv_context@calwater.ca.gov) or by mail. If you are using mail, please send your comments to: Delta Vision Context Memo: Land Use, 650 Capitol Mall, 5th Floor, Sacramento, CA 95814.

Your attributed comments will be posted on the Delta Vision web site (<http://www.deltavision.ca.gov>). Please cite page and line number with specific comments; general comments may be keyed to sections. Your participation in this iterative process is valuable and important and is greatly appreciated. Thank you for your comments.

# Context Memorandum: Land Use in the Delta-Suisun Region

Iteration 2: July 13, 2007

## 1 *Section 1. Implications of Urban Development*

2 While the *Delta-Suisun Status and Trends* report identifies urbanization as one of  
3 the six drivers of change in the Delta, it is not an inevitable result of uncontrolled natural  
4 forces. Urbanization is manageable through governmental policies that are needed to  
5 shape a durable plan for a sustainable Delta.

- 6 1. A shift in land use from agriculture or ecosystem conservation to urban  
7 development is irreversible.
- 8 2. Solutions for water quality, flood management, public safety risk reduction,  
9 habitat restoration and rising sea level are foreclosed if land use is urbanized  
10 both within the Delta-Suisun region and, in some places, on the surrounding  
11 lands.
- 12 3. Public safety is inherently compromised and state and local governments' legal  
13 and political liabilities multiplied and amplified with increased urbanization of  
14 lands below sea level and on river floodplains.
- 15 4. Private and public financing for needed urban development is disproportionately  
16 spent on the high risk regions of the Delta and Suisun areas rather than on less  
17 risky urban centers.

## 18 **Policy Issues**

19 To what extent should future land use change the Delta-Suisun region and limit the  
20 choices for future comprehensive strategies for water conveyance, utilities, agriculture,  
21 transportation and ecosystem restoration.

22 To what extent should Delta-Suisun land use be taken under consideration as more  
23 than a landscape for water conveyance and agriculture, and more than a utility corridor  
24 for roads, rail, gas, and power?

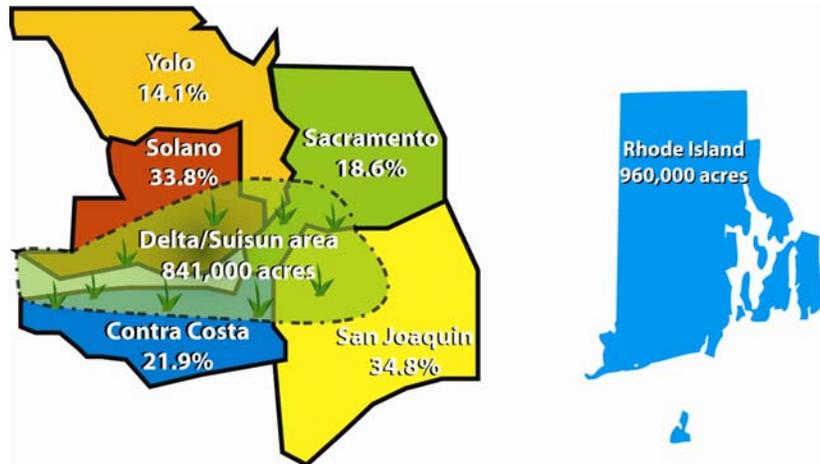
25 To what extent should the Delta-Suisun Marsh region be valued as a place with  
26 history, culture, and a unique regional identity with 1,300 miles of levees characterized  
27 as an inland coast where life and land use are shaped by physical constraints and public  
28 policies.

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## 1 Section 2. Land Uses in the Delta

2 The total California land and water acreage is approximately 100,000,000 acres  
3 (158,552 square miles<sup>1</sup>) with 23,500,000 acres of agricultural land. Other land uses  
4 represent 11,600,000 acres and the water area is 670,000 acres. Urban and built-Up  
5 land use is 3,500,000 acres increasing at the approximate rate of 100,000 acres per  
6 year.<sup>2</sup>



7  
8 **Figure 1. The Delta and Suisun area totals approximately 841,000 acres, or slightly**  
9 **smaller than the state of Rhode Island (approximately 960,000 acres). It represents 21.9 %**  
10 **of Contra Costa County, 33.8% of Solano County, 14.1% of Yolo County, 18.6% of**  
11 **Sacramento County, and 34.8% of San Joaquin County<sup>3</sup>.**

<sup>1</sup> California Water Plan Update 2005, Vol. 3, Regional Reports, Figure 1-1.

<sup>2</sup> California Energy Commission, November 10, 2004

<sup>3</sup> The legal Delta includes 0.09% of eastern Alameda County.

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2 **Figure 2. There are approximately 13 million housing units (single and multiple family)**  
3 **in California.<sup>4</sup>The current housing supply in the Delta-Suisun region is 165,764<sup>5</sup> or**  
4 **approximately one percent of the current housing supply in California.**

5 California population growth and urban development increases the pressure on  
6 Delta agricultural and open space lands by breaking the land up into small parcels and  
7 fragmenting them, or by urbanizing the land. Urbanization of available land within the  
8 Secondary zone created under the Delta Protection Act has the potential to add 600,000  
9 to 900,000 people in addition to the growth of surrounding counties outside of the legal  
10 Delta<sup>6</sup>. Figure 3 lists the Delta counties and the proposed development projects for both  
11 the Delta Protection Act's Primary and Secondary zones reviewed by the DPC in 2005  
12 and 2006 (the latest available).

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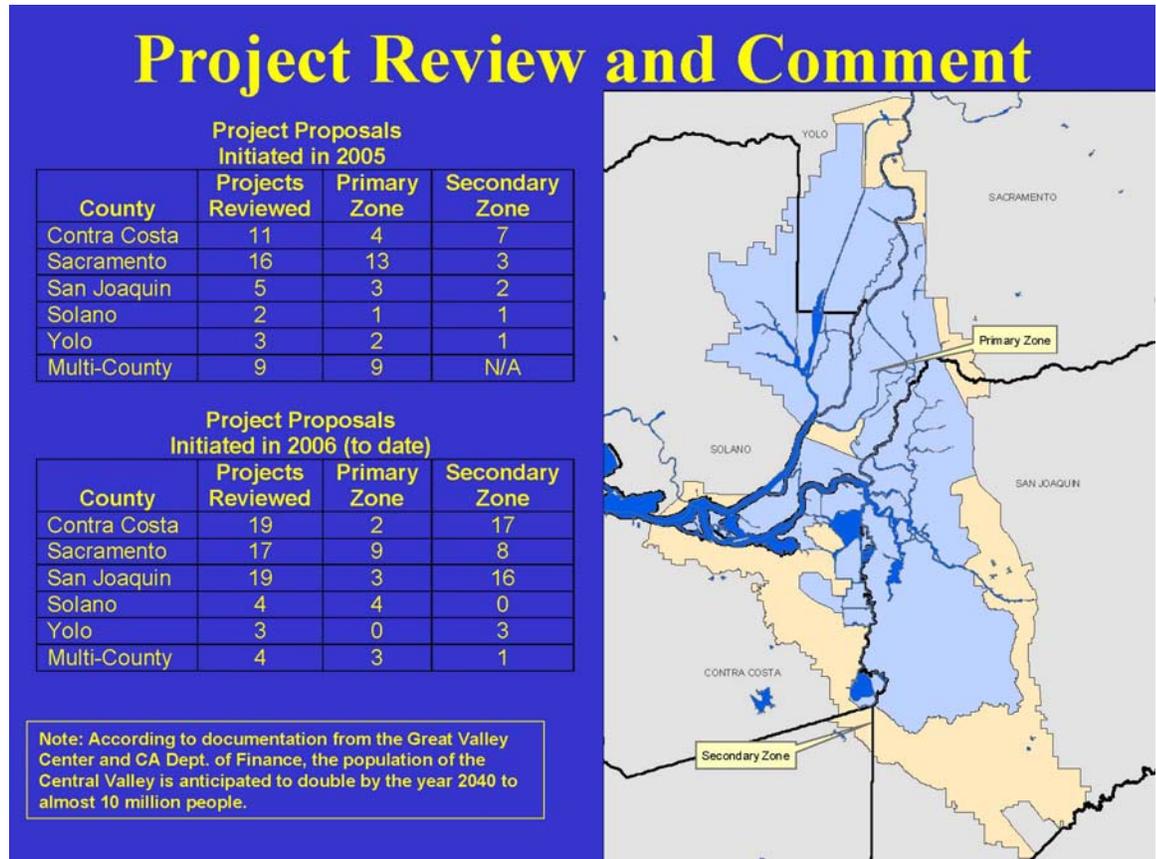
<sup>4</sup> Census of Population and Housing, 2000 [California]: Summary File 3

<sup>5</sup> DWR, *2000 Population and Housing* using United States Bureau of the Census, Census 2000

<sup>6</sup> Legal Delta is a term referring to the 1959 Delta Protection Act, California Water Code Section 12220.

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**Figure 3. Number of project proposals initiated in 2005 and 2006**

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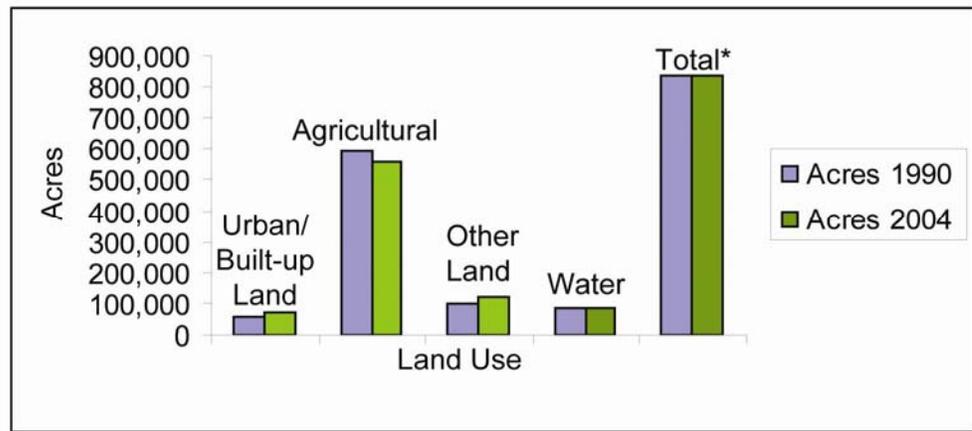
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Slower growth trends in the Delta Primary zone around the legacy towns are projected in the next twenty years. Such growth in both zones places more demand on the Delta-Suisun's services (recreation, transportation, utilities, water supply, and urban runoff). This growth creates more edge conflicts between agriculture and urban land uses.

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Figure 4. Land use change within the Delta and Suisun Marsh

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## Section 3. History, Institutions, Policies and Economics of Delta Land Use

4

5

### Drivers and limits to land use change in the Delta

6 When California joined the Union in 1850, the federal government granted “swamp  
7 and overflowed lands” to California. The land was surveyed by federal and state  
8 surveyors and by 1871 was determined to include over two million acres. Much of the  
9 “swamp and overflowed” land was sold or “patented” to private citizens for the purpose  
10 of agricultural reclamation. A line was drawn around the Delta for future state  
11 determination of whether these islands were swamp and overflowed lands, tide and  
12 submerged lands, or uplands. It is this original “lowlands boundary” that became the  
13 statutorily defined Delta. The “swamp land” which was sold during a 30-year period also  
14 included both navigable tidelands and submerged lands. Proceeds from the sale of  
15 swampland by the State were to go toward reclaiming the swamplands.<sup>7</sup>

16 In 1861, the State Legislature created the Board of Swamp and Overflowed Land  
17 Commissioners to manage reclamation projects. In 1866, the Board's authority was  
18 transferred to county boards of supervisors. In 1868, the Legislature removed acreage  
19 ownership limitations and by 1871 most of California's swampland was in private  
20 ownership.

21 At first, developers built levees that were 4 feet high and 12 feet at the base to  
22 protect Delta lands from tides and river overflow. But by 1869 more substantial levees  
23 were constructed on Sherman Island and Twitchell Island by Chinese laborers. In the  
24 1870s landowners realized high yields for grain and row crops.

<sup>7</sup> California State Lands Commission, Delta-Estuary, California's Inland Coast, May 1991.

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1           This encouraging agricultural success drove the effort to provide better and more  
2 stable levees and steam-powered dredges began to be used to move the large volume  
3 of alluvial soils from the river channels to construct the large levees. After World War I,  
4 the number of operating dredges decreased, as nearly all Delta marshland had been  
5 reclaimed. By this time, the Delta had been transformed from a large tidal marsh to the  
6 series of altered channels and leveed islands we are familiar with today.

7           The Delta was also a critical navigation route in the 19th century, linking the ocean  
8 to Sacramento, Stockton, and the Sierra gold fields. Historically, Delta towns grew along  
9 natural and artificial waterways because they supported local and regional commerce.  
10 Development of the Suisun Marsh during this period was limited to early hunting lodges  
11 which was the singular reason for the existing rail alignment across the marsh. The Delta  
12 waterways towns were constrained by other physical factors including periodic flooding,  
13 rural roads, and distance from urban centers. Today these legacy towns are key tourist  
14 attractions, while urban development is expanding from the periphery of the Delta and  
15 encroaching inward.

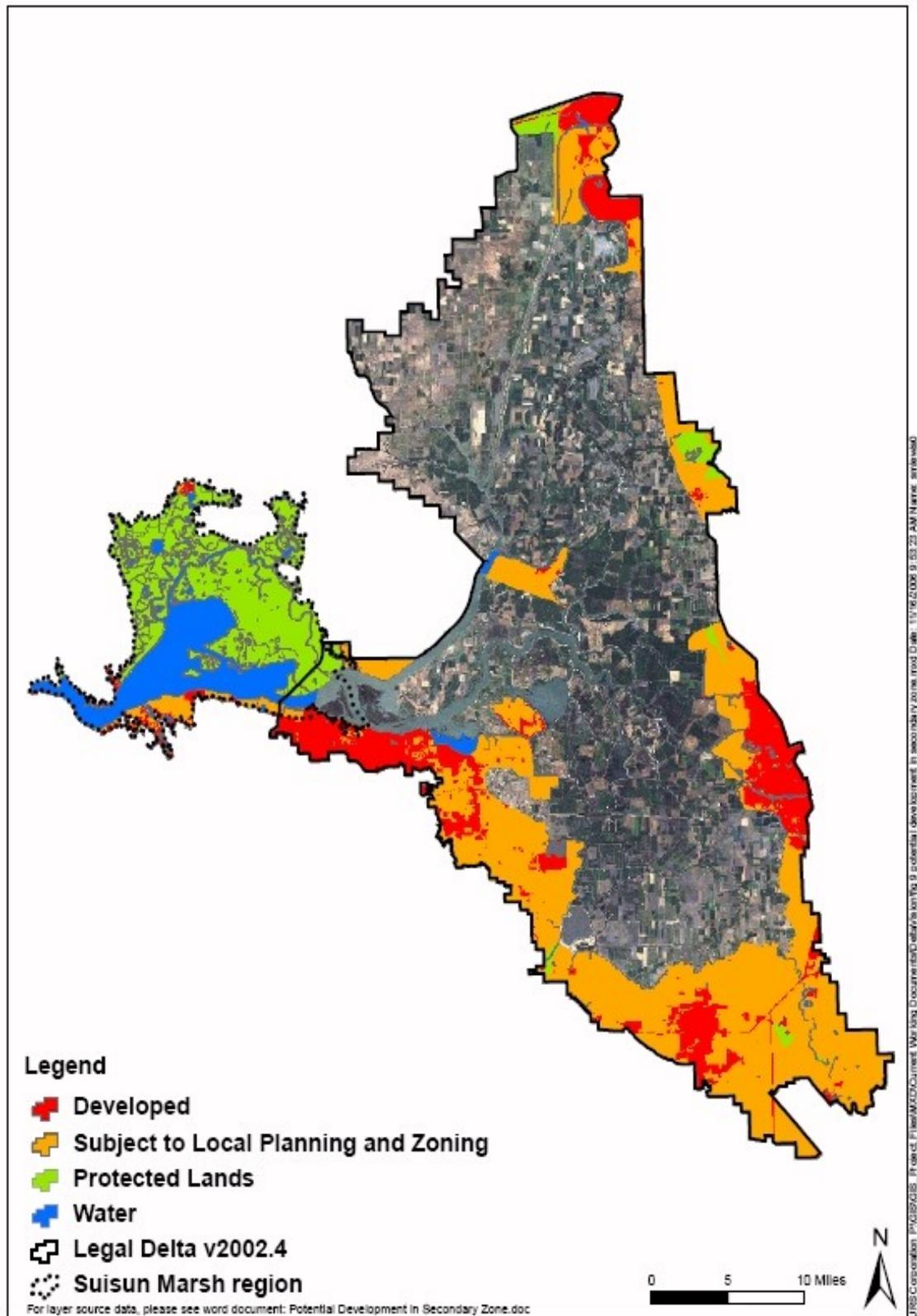
16           Figure 5 shows the current built land use in the Delta and the adopted general plan  
17 designated land use indicating future growth.<sup>8</sup>

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<sup>8</sup> Under state law, each land use jurisdiction must adopt general plans depicting the land uses (including required open space and housing) and circulation with the range of density for each land use category. Some jurisdictions bundle multiple land use changes (usually converting agricultural and open space to urban) in order to meet the state's limit of only four general plan amendments per year.

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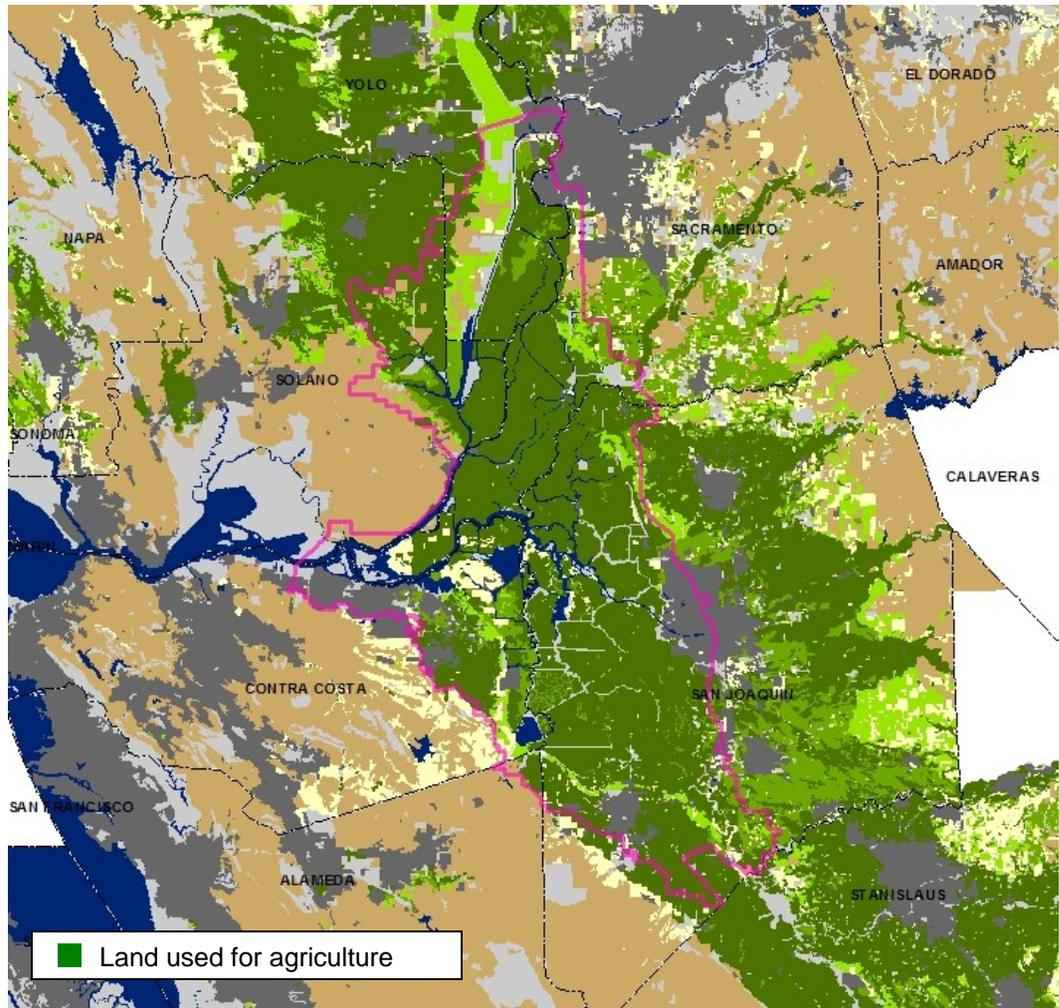


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Figure 5. Current built land use in the Delta

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**Figure 6. Most land use in the Delta is from Agriculture, totaling 560,000 acres**

The dominant constraint for both urban and agriculture land use, as well as for transportation, utility corridors and recreation, are the levees. The levees provide limited protection from flood inundation of Delta-Suisun floodplain lands – those lands flooded when rivers flood – and lands at or lying below sea level and also provide corridors for connecting the separate tracts of land. Levees also provide temporary protection from rising sea level although the long term risk grows as sea level rise increases.

Some suggest that levees are an opportunity for development. The reasoning is that levee construction is expensive and that the only land use capable of funding reconstruction or fortification of existing levees is urban development. Economic evaluation based on the life “expectancy” of a project, its maintenance and replacement value (life cycle costing) using the Delta Risk Management Study (DRMS) data and estimates, may not support this reasoning; however, levee reconstruction is currently a driver of urbanization.

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1           In addition to the growth inducing effects of urbanization from metropolitan and other  
2 urban centers outside the Delta, the pressure of urbanization on the edge of the Delta  
3 and its transportation needs drives the demand for roads to be widened or modified  
4 within the Delta to increase their capacity for traffic. Land use patterns play a direct role  
5 in vehicle miles traveled. The sinuous configuration of Delta land tracts and the road  
6 alignment results in inefficient land use patterns of rural roads, rather than the more  
7 efficient street grid pattern as seen in the legacy towns. Lack of services and proximity  
8 of jobs and housing further compounds the inefficient pattern of land use. Thus both the  
9 urbanization and the pattern of land use within the Delta and on the edge of the Delta  
10 are driving the increase in traffic on Delta roads which do not have capacity to  
11 accommodate this growth. Congestion is increasing with the regional movement of  
12 goods across the Delta in order to avoid the traffic on the interstate and state highways  
13 (I-80, I-205 and SR-12), which further exacerbates the limited road capacity within the  
14 Delta and Suisun region.

15           The state mandated Regional Housing Needs Assessment (RHNA) is considered by  
16 some experts to be another local land use driver. The Department of Housing and  
17 Community Development determines the regional share of the statewide housing need  
18 based on population projections produced by the Department of Finance, regional  
19 population forecasts used in preparing regional transportation plans, and through  
20 consultation with each council of governments serving the Delta (and Suisun).

21           Each jurisdiction prepares the mandated housing element of the general plan with  
22 the distribution of the regional share of housing in each city and county. These housing  
23 elements must be consistent with the designated land use of the general plans.  
24 Development projects are not always approved or built at the densities allowed by the  
25 General Plan (which are usually maximums) and zoning designations. Medium and large  
26 residential projects are also often subjected to environmental reviews that reduce the  
27 area or intensity of development to mitigate significant negative environmental impacts  
28 under the California Environmental Quality Act (CEQA) and other applicable state and  
29 federal regulations and laws. A developer will often meet with elected officials,  
30 community representatives, and/or planning staff in the early stages of designing a  
31 project and the formal entitlement application may be for less than the allowed number  
32 of units. The application-review process also often requires public hearings where  
33 opposition may lead to additional changes in the project. After a project is approved, an  
34 appeal opportunity exists, and the project may be legally challenged under a variety of  
35 causes of action (such as an inadequate environmental review). Given these  
36 considerations, it seems likely that the actual housing development projects will be  
37 smaller (i.e., have fewer units) than the General Plan and/or zoning permits. In short,  
38 real housing capacity may be substantially less than planned capacity.

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1           Thus, the regional share of the statewide housing needs is not met with the planned  
2 areas and there is increased pressure on new lands for development to meet the  
3 housing needs. Therefore some planners conclude that the RHNA is inherently growth  
4 inducing.

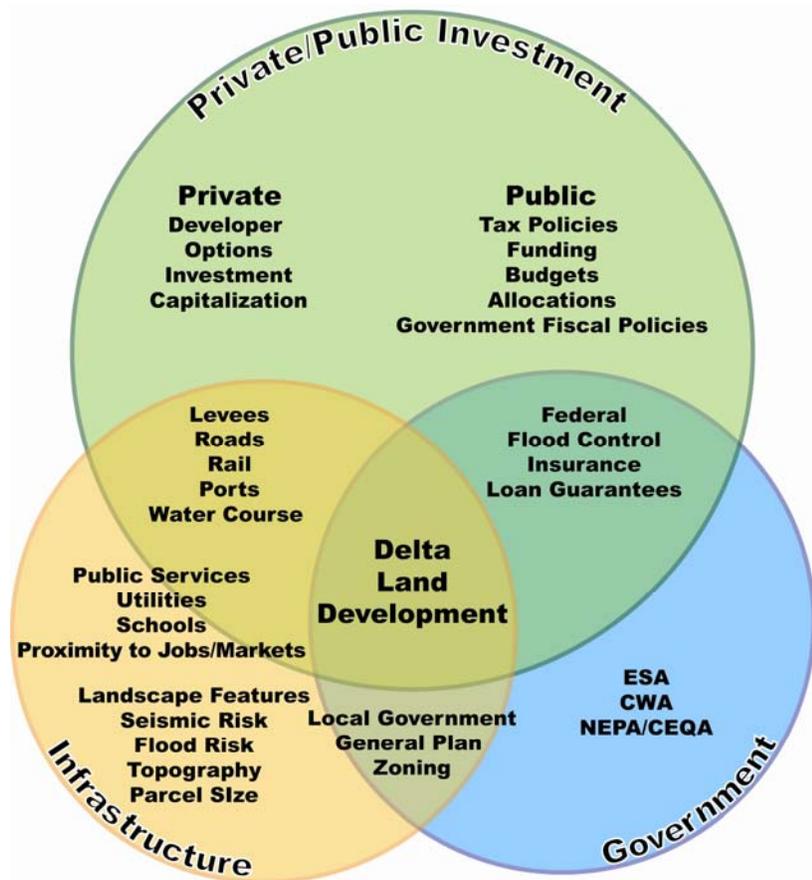
5           Each of the five counties with land use authority in the Delta has adopted the Delta  
6 Protection Commission's (DPC) Management Plan into its general plan as a planning  
7 document within the context of the state's housing needs mandate. Solano County also  
8 incorporates the Suisun Marsh Protection Plan for the Primary and Secondary zones.  
9 The housing goals are balanced with the DPC and Suisun Marsh management planning  
10 goals.

## 11 **Fiscal policies and economic incentives**

12           Access to revenues for cities and counties shape California's development patterns  
13 as local governments seek to balance revenues and expenditures by way of land use  
14 decisions. The passage of Proposition 13 and 218, which reduced the role of property-  
15 based taxation as a local government revenue source, and the decline of federal and  
16 state financing for funding of infrastructure, have forced local governments to be  
17 increasingly focused on the fiscal effects of land use decisions. Additional federal fiscal  
18 policies, such as capital gains taxes, make property ownership an attractive investment,  
19 adding to the rapid urban development expansion in recent years. These fiscal policies  
20 combine to encourage local governments to seek and approve development that  
21 increases sales tax revenue, such as regional retails and commercial uses. Local  
22 governments seek the higher priced housing over moderately priced housing because  
23 housing development only produces property tax at a fixed rate which is less than the  
24 rate of inflation for providing city-based services such as road repair, infrastructure  
25 maintenance, parks, libraries, and public safety. Focusing on higher end housing  
26 establishes a higher tax base for these on-going services. Overall, counties and cities  
27 favor development that generates higher property and sales tax which is referred to as  
28 "the fiscalization of land use."

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2 **Figure 7. Influencing elements of Delta land use decisions. Private and public**  
3 **financing are the most influential and are moderated by physical and regulatory**  
4 **constraints**

5 Financially strapped cities and counties are more inclined to favor land use for retail,  
6 commercial, and sales tax revenue over housing. For residential projects, communities  
7 have adopted “development pays its way” policies to cover infrastructure improvements  
8 ranging from roads, parks, and water to public safety and social infrastructure costs.  
9 The net result of these fiscal constraints is that the short term need for revenue that is  
10 generated by this type of land use is pursued without budgeting for the long term costs  
11 of such land use.

12 As a result of these property tax policies, local communities compete with one  
13 another for businesses that generate sales tax. Community housing needs and jobs are  
14 rarely balanced with the competition for revenue-driven development. These fiscal  
15 forces continue to collide across city and county boundaries in the Delta.

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## 1 Institutions and policies

2 Land use decisions in the Delta are made within the same institutional and policy  
3 matrix as other areas of the state, with the exception of the areas covered by Delta  
4 Protection Act and the Suisun Marsh Preservation Act.

5 The state has typically played a limited role in direct land use planning, granting the  
6 lion's share of land use authority to local governments. State law requires state policies,  
7 to the extent they exist for land use, to be expressed and "enforced" through local  
8 general plans which include the policies of the DPC Management Plan and zoning codes.  
9 State officials prepare functional plans, such as air pollution, water quality,  
10 transportation, and solid waste management plans to guide department programs,  
11 decisions, and projects<sup>9</sup>.

12 There is no cabinet-level administrative department in California dealing with land  
13 use planning or community affairs for the state, or specifically for the Delta. Unlike all  
14 other resources subject to management in the Delta – water, aquatic and terrestrial  
15 species and habitat, air, transportation, energy, and utilities – there is no state oversight  
16 agency for land use. The Governor's Office of Planning and Research (OPR), is  
17 responsible for coordination and direction for the state's functional plans. The OPR has  
18 several statutory duties and provides assistance to local government on planning issues.  
19 It is characterized as reflective of the governor's agenda and waxes and wanes  
20 accordingly. In a word, the dominant oversight for land use to ensure state policies and  
21 objectives are met is by the public citizen and enforcement by the courts.<sup>10</sup>

22 With the passage of AB 857 in 2002, the state legislature took a major step toward  
23 fostering more efficient land use patterns to promote infill development and social equity  
24 in existing communities, protect and conserve environmental and agricultural resources,  
25 and achieve more efficient use of land, transportation, energy and public resources  
26 outside the infill areas (Wiggins, Chapter 1016, Statutes of 2002).

27 AB 857 also requires the Governor's *Environmental Goals and Policy Report*  
28 (EGPR) to be consistent with these planning priorities. The EGPR is intended to provide  
29 a 20 to 30 year overview of state growth and development as well as articulate the  
30 Governor's environmental goals and policies including, but not limited to, land use,  
31 population growth and distribution, development, the conservation of natural resources,  
32 and air and water quality. The EGPR forms the basis for judgments about major state

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<sup>9</sup> California Energy Commission, draft staff paper The Role of Land Use in Meeting California's Energy and Climate Change Goals, June 2007 (CEC-600-2007-008-SD).

<sup>10</sup> Fulton, William, Guide to California Planning, 2001.

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1 investments and capital projects, including the allocation of state resources through the  
2 budget and appropriations process.

3 **Appendix A** briefly discusses state planning tools which include the California  
4 Environmental Quality Act, the State General Plan Guidelines, (OPR) California  
5 Transportation Plan (Caltrans), housing element updates (Department of Housing and  
6 Community Development), the California Water Plan (Department of Water Resources),  
7 and stormwater planning (State Water Resources Control Board), and Natural  
8 Community Conservation Planning (NCCP) (Department of Fish and Game).

9 As noted, the five Delta counties regulate land use through their general plans and  
10 zoning ordinances, and through the day-to-day review of proposed projects. This  
11 process is largely reactive to proposed development and lacks established  
12 environmental thresholds as required by the Delta Protection Act. State and federal  
13 projects are exempt from the local permit process and are reviewed only through the  
14 environmental review process. Counties in the Delta are required to incorporate the  
15 Delta Management Plan into their general plans by reference or as an element. As of  
16 2007 all but the County of Yolo have done so.

17 Recent state policy seeks to provide more regional coordination in land use  
18 decisions. The 2005 Regional Blueprint Planning Grants Program was initiated by the  
19 Secretary of Building, Transportation, and Housing and is managed by Caltrans. The  
20 Blueprint Grants program' purpose is to "encourage state land-use patterns that balance  
21 the location of employment-generating uses so that employment-related commuting is  
22 minimized," and to provide a forum for some of the State's most impacted regions to  
23 deal collaboratively on issues regarding jobs, housing, and transportation.

24 Bay Conservation and Development Commission (BCDC). Recognizing the threats  
25 to the Suisun Marsh from potential residential, commercial, and industrial developments,  
26 and the need to preserve this unique wildlife resource for future generations, the  
27 legislature passed and the governor signed the Nejedly-Bagley-Z'berg Suisun Marsh  
28 Preservation Act of 1974. The Act directs the Bay Conservation and Development  
29 Commission (BCDC) and the Department of Fish and Game to prepare the Suisun  
30 Marsh Protection Plan "to preserve the integrity and assure continued wildlife use" of the  
31 Suisun Marsh. The Protection Plan includes enforceable standards for development with  
32 the primary goal of protecting the resources.

33 The BCDC has land use and development permitting authority in the Primary  
34 management area. The county and city development actions within the Marsh must be  
35 consistent with the local protection plan that is in alignment with the state plan. Any  
36 action by a local government on an application for development in the Secondary

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1 management area may be appealed to BCDC which may issue the local permit if it finds  
2 the proposed development is consistent with the local protection program. The Act also  
3 incorporates the management program prepared by the Suisun Resource Conservation  
4 District designed to preserve, protect, and enhance the plant and wildlife communities  
5 within the Primary management area of the Marsh, including, but not limited to,  
6 enforceable standards for diking, flooding, draining, filling, and dredging of sloughs,  
7 managed wetlands, and marshes.

8 The Suisun Marsh Secondary zone requires more integration of the federal, state,  
9 regional and local planning efforts. The incentives for greater integration are the review  
10 standards by BCDC and the city-centered goals of Solano County General Plan.  
11 Because the Solano County Orderly Growth initiative of 1984 restricts urban  
12 development in the county thus limiting a revenue source, the county and cities agreed  
13 to share city revenues to ensure county services keep pace with development within the  
14 cities<sup>11</sup>.

15 **Delta Protection Commission.**<sup>12</sup> Anticipating the potential effects of urban  
16 development on the Delta, the state legislature passed and the governor signed the  
17 Delta Protection Act (ACT) of 1992 (Section 29780). The Delta Protection Commission  
18 (DPC) was created under the Act. This was the first regional planning agency since the  
19 1970s. The Primary and Secondary Zones of the Delta were identified pursuant to the  
20 Act. The Commission was charged with developing regional policies for the Delta to  
21 protect and enhance the existing land uses in the Primary Zone: agriculture, wildlife  
22 habitat, and recreation resources in the Primary Zone. The Commission adopted its  
23 regional plan in 1995. Local government incorporation of the policies and one regulation  
24 in the Plan was completed in 1995.

25 Unlike the Coastal Commission and the Bay Conservation and Development  
26 Commission (BCDC), the Delta Commission is not a regulatory body, but rather is an  
27 appeal body charged with preparation of a land use and resource management plan for  
28 the Primary management area of the Delta, as defined in the Delta Protection Act (see  
29 Figure 5). The policies of the Management Plan (adopted in 1995) have been adopted  
30 into Delta local government general plans for consideration in making local planning land  
31 use decisions. Failure to provide consistency with the policies of the plan in the approval  
32 of a project by a local entity is subject to appeal and remanding of the project until  
33 consistency can be demonstrated. Therefore, while not a permitting body, the

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<sup>11</sup> The county as of 2006 has one of the most robust reserves, and highest children services in the state which some planners explain is the result of urban development being directed toward the cities.

<sup>12</sup> <http://www.delta.ca.gov/>

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1 Commission does have some land use authority over land use decisions in the primary  
2 zone of the Delta.

3 The Act requires the Delta Protection Commission (Commission) to submit an  
4 annual report to the Governor and the Legislature describing the progress in achieving  
5 the objectives of the Act. The annual report is to include, among other requirements, the  
6 status of the environmental thresholds established by the Commission in the regional  
7 management plan.

8 The statutorily required environmental thresholds have never been established and  
9 would only provide a benchmark against which projects would be measured for the  
10 impacts or benefits. The intent of the threshold requirement was to provide rational and  
11 measurable tools to characterize physical, chemical and biological stressors, and to  
12 develop and validate new indicators of stress on the ecology. Such evaluation would  
13 document the existing environmental health of the Delta, the effects of urban  
14 development. This evaluation would be the basis for local land use jurisdictions'  
15 determinations in conjunction with the requirements of the California Environmental  
16 Quality Act (CEQA) impact assessment. It is not too late to pause in urban approvals  
17 and establish the mandated environmental thresholds for CEQA assessment. Such  
18 evaluation would be on a regional scale, with a cumulative impact context and may lead  
19 to better land use decisions for environmental protection and sustainability.

20 Meanwhile, the Commission relies on the county general plan land use designations  
21 and intensity of use for its benchmarks when considering appeals of a local approval. If  
22 the Commission does uphold an appeal, the project is remanded to the local jurisdiction  
23 for reconsideration. The local government must resubmit the matter to the Commission  
24 and the Commission must find in writing that the action is consistent with the resource  
25 management plan, approved parts of local government general plans that implement the  
26 resource management plan, and the Delta Protection Act.

27 The Primary Zone of the Delta was delineated to eliminate incorporated cities. Areas  
28 within sphere of influence of cities, and areas being studied to be included in spheres of  
29 influence, were also excluded. These areas have a high likelihood of being developed  
30 for residential or other urban uses in the future. These issues are being addressed in the  
31 separate county general plan updating processes underway. Many areas are currently  
32 being used for agricultural purposes and have value as agricultural lands. It was hoped  
33 by supporters of the Act that the review of the future development projects with the  
34 proposed environmental thresholds would find impacts of urbanization to be significant  
35 and alternatives including avoidance would be necessary.

36

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## 1 Delta County Land Use Policies

2       *The Primary Zone of the Delta.* The Primary Zone of the Delta, the focus of the  
3 Delta Plan, is under the land use permitting jurisdiction of the five Delta counties: Contra  
4 Costa, Sacramento, San Joaquin, Solano, and Yolo. Land use decisions are based  
5 primarily on the General Plan, required under State law and containing seven mandatory  
6 elements: (1) Land Use; (2) Circulation and Transportation; (3) Housing; (4) Open  
7 Space; (5) Conservation; (6) Safety; and (7) Noise.

8       *The Primary Zone of the Suisun Marsh.* The Primary Zone of the Suisun Marsh is  
9 subject to the Suisun Marsh Protection Plan (Plan) prohibiting urban development and  
10 restricting development from habitat, marshes and other sensitive habitats. Solano  
11 County issues permits which must be consistent with the Plan and BCDC also issues  
12 permits. The Secondary Zone is subject to Plan and requires the County and affected  
13 cities to prepare plans consistent with the Act.

14       *Contra Costa County* has adopted an Urban Limit Line with the Delta as outside the  
15 urban limit line due to flood hazards, soil subsistence, lack of infrastructure, and lack of  
16 services. The areas to the north and east are designated a special Delta Recreation and  
17 Resources area in the General Plan. Portions of the DPC Primary Zone are designated  
18 General Agriculture. There has been a great deal of suburban, residential development  
19 in the former agricultural lands in the Brentwood and Oakley areas. Development  
20 pressure continues in the Knightsen area.<sup>13</sup>

21       *Sacramento County* has an urban limit line in the General Plan with the Delta as  
22 outside the urban limit line. Sacramento County has several unincorporated communities  
23 within the DPC Primary Zone. Within these communities there is residential and  
24 commercial development. There are scattered areas of residential development along  
25 certain waterways, often at the toe of a levee. There is community review of proposed  
26 projects through the Municipal Advisory Council, made up of Delta residents.<sup>14</sup>

27       The County's General Plan is undergoing its first comprehensive update since it was  
28 last adopted in 1993 in order to plan for growth in the next planning cycle (2005-2030) as  
29 well as to address new emerging planning issues. Several topics are being addressed  
30 including smart growth principles and strengthening the already included Delta  
31 Protection Plan for the Primary zone as an element.<sup>15</sup>

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<sup>13</sup> <http://www.co.contra-costa.ca.us/depart/cd/current/advance/GeneralPlan.htm>

<sup>14</sup> In 2006 approximately eight tentative map applications were considered. All were approved except for one project proposal for six acres subdivided into 41 lots; project denied due to density, traffic, proximity to industrial uses and compatibility issues.

<sup>15</sup> <http://www.planning.saccounty.net/gpupdate/gpu-index.html>

## Context Memorandum: Land Use in the Delta-Suisun Region

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1           *San Joaquin County* does not have an urban limit line but promotes future growth  
2 within the existing cities and existing unincorporated communities. Three future new  
3 communities are identified in the county general plan, but none are in the Delta Primary  
4 Zone. (Mountain House is directly adjacent to the Primary Zone, south of Old River). A  
5 small portion of Thornton, at the intersection of I-5 and Walnut Grove, is planned for  
6 Freeway Service Commercial. There are no unincorporated communities in San Joaquin  
7 County's portion of the Delta. The closest is the large recreational development at Tower  
8 Park, which includes some permanent residents. The cities of Stockton and Lathrop  
9 have planned growth abutting the DPC Primary Zone.<sup>16</sup>

10           *Solano County* has a voter imposed urban growth boundary – the Orderly Growth  
11 Initiative - by restricting conversion of agricultural and watershed lands to urban uses  
12 without the majority of the voters of the county. The county general plan directs  
13 development into the existing cities (Vacaville, Fairfield, Rio Vista, Vallejo, Suisun City,  
14 Dixon, and Benicia). Much of the land in the DPC Primary Zone is above sea level and  
15 distant from the sloughs and rivers that provide riparian water for agriculture. There is  
16 also very little recreational development in the Primary Zone in Solano County. Portions  
17 of the sphere of influence of the City of Rio Vista are within the existing boundary of the  
18 Primary Zone, and if developed would be directly adjacent to agricultural lands in the  
19 Primary Zone. A ballot measure in 2006 to extend the Orderly Growth initiative (beyond  
20 2010) for thirty years to match the time span of a proposed transportation sales tax was  
21 defeated.

22           A draft of the Solano County General Plan will be developed in the summer and fall  
23 of 2007 that contains goals, policies, and implementation programs for the various  
24 issues addressed in each General Plan chapter. In addition, the General Plan will  
25 include Area Plans for Cordelia, Collinsville/Montezuma Hills, and Suisun Valley. The  
26 County will conduct workshops and receive public comments on the draft General Plan  
27 throughout late 2007 and early 2008 and will include the DPC Management Plan policies  
28 as a chapter as does the current general plan. The county general plan update is  
29 expected to be completed by 2008.<sup>17</sup>

30           *Yolo County* general plan's agricultural policies seek to protect agricultural uses;  
31 new residential, suburban, commercial and industrial uses are prohibited, unless directly  
32 related to and incidental to agriculture. Residential uses in agricultural areas are limited  
33 to farm owners or employees, on lands unsuited for agricultural use, or clustered. About  
34 half of its lands within the DPC Primary Zone are in the Yolo Bypass, a flood basin which  
35 is part of the federal flood control project between Collinsville and Red Bluff. The Yolo

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<sup>16</sup> <http://www.co.san-joaquin.ca.us/commdev/cgi-bin/cdyn.exe>

<sup>17</sup> <http://solanocountygeneralplan.net/index.htm>

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1 Bypass is west of the Port of Sacramento Deep Water Ship Channel and bounded by a  
2 levee generally located along the Yolo County-Solano County boundary. The eastern  
3 portion of Yolo County includes the unincorporated community of Clarksburg (in the  
4 Primary Zone), Merritt Island and agricultural. The special community plan for  
5 Clarksburg (1982/1992) outlines areas for new residential growth, although the  
6 community has no community water or sewage disposal systems. No significant  
7 intensification of commercial and residential land use is proposed. The Plan includes an  
8 urban limit line.

9 Yolo County initiated its General Plan update process in 2004. The General Plan  
10 update process will result in a plan that fulfills the county-wide vision for its desired  
11 future. It will establish a land use and policy framework to preserve the county's unique  
12 character, protect its agricultural, scenic and natural resources, promote a healthy and  
13 sustainable economy, and provide quality services and infrastructure to residents for  
14 decades to come. Yolo County's City of West Sacramento is in the Secondary Zone.  
15 Publication of the Draft General Plan is expected in early 2007, with General Plan  
16 adoption in late 2007.<sup>18</sup>

## 17 **Special Districts**

18 Special Districts can enter into contracts, employ workers, and acquire real property  
19 through purchase or eminent domain. They can also issue debt, impose taxes, levy  
20 assessments, and many charge fees for their services. State government, however,  
21 oversees special districts in several ways. For example, special districts must submit  
22 annual financial reports to the State Controller. Districts must also follow the state laws  
23 pertaining to public meetings, bonded debt, record keeping, and elections.

24 The most common and, coincidentally, most independent special districts in the  
25 Delta and Suisun region are the reclamation districts, formed under State law, to allow  
26 property owners to tax themselves to build and maintain levees for reclamation and flood  
27 control purposes. The reclamation districts prepare their own environmental documents  
28 and issue their own permits. Reclamation districts must obtain permits from State and  
29 federal agencies. There are 111<sup>19</sup> reclamation districts in the Delta-Suisun region.

30 **Regional Agencies.** Regional land use regulatory agencies address concerns that  
31 extend beyond local city and county boundaries. Some are advisory only, and others  
32 have true regulatory powers. Councils of government, which have a regional planning  
33 function, are an example of the former. The Bay Conservation and Development  
34 Commission is an example of the latter. Most of the actual permits issued by BCDC for

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<sup>18</sup> <http://www.yolocountygeneralplan.org/>

<sup>19</sup> per. conversation, Joel Dudas, May 2007, DWR.

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1 the Suisun Marsh Primary zone are natural gas projects and levee work. Currently  
2 BCDC is hearing an appeal of permit by the County for a landfill expansion in the  
3 Secondary zone of the Suisun Marsh. The appeal is based on the potential impacts to  
4 the primary zone by the expansion including growth inducing impacts associated with  
5 road widening to serve the landfill. Some regional bodies, such as the Bay Area's  
6 Metropolitan Transportation Commission, allocate federal funds in their regions, and in  
7 this way exercise considerable power.

8 **Council of Governments.** Federal transportation funding reform legislation in 1991  
9 directed federal transportation funds to be divided more evenly between land use  
10 planning and transportation planning. Local Metropolitan Planning Organizations  
11 (MPOs) were charged with providing planning grants for developing plans called  
12 Transportation for Livable Communities (TPLs) to further the ties between transportation  
13 and land use planning. MPO is a federal designation related to governmental  
14 organizations with responsibility for preparing regional transportation plans and funding  
15 allocation of funds. Councils of Governments (COGs) are joint powers agencies  
16 established to analyze the relationship between policies in one subject area and its  
17 impact upon other regional issues. These agencies were formed in the 1960s  
18 anticipating the growing movement toward state and federal regionalism and  
19 concomitant funding. Their only power is in direct proportion to the size of the purse –  
20 administering federal and state grants.

21 The Delta and Suisun region is divided into three COGs including the Sacramento  
22 Area Council of Government (COGs), the Association of Bay Area Governments (ABAG)  
23 and the San Joaquin Council of Governments (SJCOG).

24 *San Joaquin.* The San Joaquin Valley Blueprint Planning Process (SJV) is a joint  
25 initiative of the Councils of Governments representing each of the region's eight  
26 counties, the San Joaquin Valley Air Pollution Control District and the Great Valley  
27 Center.<sup>20</sup> The SJV will develop a cohesive regional framework that defines and offers  
28 alternative solutions to growth related issues for the Valley. The process involves the  
29 integration of transportation, housing, land use, economic development, and the  
30 environment to produce a preferred growth scenario to the year 2050. The SJV is funded  
31 by a \$4 million dollar grant from the State Business Transportation and Housing Agency  
32 with an additional \$500,000 of matching funds from the San Joaquin Valley Air Pollution  
33 Control District. The grant was provided to the eight (8) Metropolitan Planning  
34 Organizations (MPOs) in the San Joaquin Valley. The final product will include growth  
35 strategies at the County level and for the San Joaquin Valley as a whole. The outcomes  
36 of the planning process will not supersede a local jurisdiction's land use authority.

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<sup>20</sup> <http://www.valleyblueprint.org/>

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1           The Measure K Renewal Expenditure Plan and Ordinance identify a minimum of  
2 \$65 million in federal transportation funding or Measure K funding to be made available  
3 for infrastructure improvements that will assist local agencies in better integrating  
4 transportation and land use and to enhance infill development, neighborhood  
5 revitalization and downtown improvements. The development of the Smart Growth  
6 Incentive Program is occurring as part of the preparation of the Measure K Renewal  
7 Strategic Plan with the assistance of an advisory group comprised of various community  
8 and environmental interest groups as well as the Directors of the Community  
9 Development Departments.

10           *Sacramento.* The Sacramento Area Council of Governments (SACOG) Board of  
11 Directors in 2004 adopted the Sacramento Region Blueprint intended to guide land-use  
12 and transportation choices over the next 50 years as the region's population grows. The  
13 Blueprint adopted is part of SACOG's Metropolitan Transportation Plan update for 2005,  
14 a formal document that serves as a long-range transportation plan for the six-county  
15 region. It also will serve as a framework to guide local government in growth and  
16 transportation planning through 2050. The Blueprint integrates smart growth concepts  
17 such as higher-density, mixed-use developments and reinvestment in existing developed  
18 areas. An analysis of the Blueprint showed that following smart growth principles would  
19 shorten future commute times, reduce traffic congestion, lessen dependence on  
20 automobiles and provide for housing choices that more closely align with the needs of an  
21 aging population.<sup>21</sup>

22           *San Francisco Bay Area.* The ABAG FOCUS Program is a multi-agency, regional  
23 planning program that builds upon regionally adopted smart growth policies and related  
24 programs.<sup>22</sup> Local governments in the nine county San Francisco Bay Area are invited to  
25 apply for regional designation of an area within their community as a priority  
26 development area. In return, designated priority development areas will have the  
27 opportunity to apply for regional incentives and technical assistance. Priority  
28 development areas advance goals of the FOCUS program. One goal of the FOCUS  
29 program is to create compact, healthy communities with a diversity of housing, jobs,  
30 activities, and services to meet the daily needs of residents. Identifying priority  
31 development areas with local governments can help focus the region's growth. Priority  
32 development areas seek to accommodate growth as mixed use, infill development near  
33 transit and job centers, with an emphasis on housing.

34           Unlike most COGs, the Metropolitan Transportation Commission as the Metropolitan  
35 Planning Organization (MPO) is a sister organization to ABAG and has considerable

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<sup>21</sup> [www.sacregionblueprint.org](http://www.sacregionblueprint.org).

<sup>22</sup> [www.bayareavision.org/focus](http://www.bayareavision.org/focus)

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1 power in allocating federal and state funds for transportation projects. ABAG and MTC  
2 are aggressively pursuing transit oriented development in established transportation  
3 corridors.

4 **Long –Term Utility Infrastructure Planning.** The Transmission Corridors effort of  
5 SB 1059<sup>23</sup> focuses transmission utility corridor planning for integration with local  
6 planning. It requires the Energy Commission to work with cities, counties, state and  
7 federal agencies and California Tribes in designating transmission line corridors and for  
8 cities and counties to consider these corridors when making land use decisions. Existing  
9 land use plans such as habitat conservation plans, local general plans and regional  
10 plans should be included when implementing the corridor planning

## 11 **Options to Change Incentives Behind Land Use Decisions.**

12 Land development drives much of the state’s economy and changes in current and  
13 prospective land use in the Delta requires agreement by development interests,  
14 financing institutions and other affiliated enterprises of development. Although the  
15 state’s interest in the housing supply to meet job demands can be met without  
16 development of the Delta, incentives are needed to redirect development that may be at  
17 long term flood risk and costly levee, road and other infrastructure maintenance to more  
18 appropriate areas<sup>24</sup>. Using existing and future incentives for the development  
19 community and providing an economic (or fiscally neutral) safety net for local Delta  
20 communities are essential in redirecting urbanization.

21 **Habitat Conservation Plans and Land Trusts.** Regional Habitat Conservation  
22 Plans (HCPs) establish a coordinated process for permitting and mitigating the incidental  
23 take<sup>25</sup> of endangered species. This process creates an alternative to the current project-  
24 by-project approach. Rather than individually surveying, negotiating, and securing  
25 mitigation, project proponents typically receive an endangered species permit by simply  
26 paying a fee, though some HCP's may contain alternative or additional permit conditions  
27 (dedication of on-site mitigation is one standard alternative to paying a fee). The fees are  
28 collected by an implementation authority defined during development of the HCP, often a  
29 Joint Powers Authority, such as the East Contra Costa Habitat Conservation Plan  
30 Association, which is composed of representatives of local agencies. The  
31 implementation authority uses the fee money, as well as grants and any other funding

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<sup>23</sup> Chapter 638, Division 15, Public Resources Code

<sup>24</sup> DWR, Delta Risk Management Study, Phase I, July 25, 2007

<sup>25</sup> *Take*, as defined by the Endangered Species Act, means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” *Harm* is defined as “any act that kills or injures the species, including significant habitat modification.”

*Take* is defined under the California Fish and Game Code as any action or attempt to “hunt, pursue, catch, capture, or kill.”

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- 1 sources established in the plan, to purchase habitat lands or easements from willing  
2 sellers. Collected funds are also used for monitoring and any habitat enhancement or  
3 management actions. Other noteworthy features of HCPs are listed below:
- 4 • HCPs are typically voluntary. Project proponents can choose to secure permits  
5 through the HCP or to address environmental regulations individually as has  
6 occurred in the past.
  - 7 • Plans can be broadened to provide additional environmental permits, such as  
8 those issued by the US Army Corps of Engineers for wetlands. The East Contra  
9 Costa County HCP would likely try to include as many permits as feasible.
  - 10 • Some HCPs rely heavily on maps to prioritize habitat acquisitions and guide  
11 mitigation assessments. Other HCPs are process-driven, and rely on habitat and  
12 species goals to be met through land acquisition and management, rather than  
13 the acquisition of specific areas on a map.
  - 14 • HCPs enhance local agencies' control of local development and land use  
15 patterns. HCPs provide an alternative mechanism for projects to receive permits  
16 and comply with currently applicable state and federal regulations.

17 The East Contra Costa County Habitat Conservation Plan/Natural Community  
18 Conservation Plan (HCP/NCCP or Plan) is intended to provide an effective framework to  
19 protect natural resources in eastern Contra Costa County, including areas within the  
20 Delta while improving and streamlining the environmental permitting process for impacts  
21 on endangered species. The Plan will allow Contra Costa County (County), the Contra  
22 Costa County Flood Control and Water Conservation District (County Flood Control  
23 District), the East Bay Regional Park District (EBRPD) and the Cities of Brentwood,  
24 Clayton, Oakley, and Pittsburg (collectively, the Permittees) to control endangered  
25 species permitting for activities and projects in the region that they perform or approve.  
26 The Plan will also provide for comprehensive species, wetlands, and ecosystem  
27 conservation and contribute to the recovery of endangered species in northern  
28 California. The Plan will avoid project-by-project permitting that is generally costly and  
29 time consuming for applicants and often results in uncoordinated and biologically  
30 ineffective mitigation.

31 **Land Trusts.** Land trusts protect and manage generally privately owned land  
32 through conservation or agricultural easements. Landowners can permanently protect  
33 the conservation value of their land in several ways. They can donate outright or  
34 bequeath land to a land trust. They can donate a conservation easement - a legal  
35 agreement that permanently protects open space while leaving it in private ownership.

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1 Among other means of protecting land, landowners can sell open space land to land  
2 trusts in a bargain sale, below market value.

3 The Nature Conservancy has purchased easements or fee interests in  
4 approximately 11,000 acres of land within the Delta. These properties are managed as a  
5 part of the *Cosumnes River Preserve*. As part of its strategic plan the Delta Protection  
6 Commission sought and received legislative authorization for an agricultural easement  
7 program in both the Secondary and Primary zone.<sup>26</sup> Other strategies include a proposal  
8 titled "Delta Working Landscapes". The project includes collaborative partnership with  
9 Ducks Unlimited, The Nature Conservancy, Hart Restoration, Inc., and local landowners  
10 and reclamation districts. The goals of this project are 1) to improve the environmental  
11 quality of Delta farmlands through a variety of demonstration projects; 2) to understand,  
12 through a research program, the interplay of social, political and economic factors that  
13 hinder implementing these measures on a wider, regional basis; and, 3) facilitating  
14 information exchange through working landscape educational events. Pilot project level  
15 improvements could include among several projects the levee and bankside  
16 revegetation projects and various incentives and disincentives to wildlife-friendly farming  
17 techniques.

18 **Growth Management.** Growth management is considered a local response to  
19 regional economic and population growth issues. Used within a regional planning effort,  
20 growth management could achieve broad regional goals; avoid risks, costs and long-  
21 term maintenance. For instance, establishing urban growth boundary lines by the legacy  
22 cities would redirect residential development to established urban areas with existing  
23 infrastructure such as roads, flood management and services. Developers would avoid  
24 the cost of new infrastructure and may enhance existing infrastructure. Using  
25 floodplains within or associated with the Delta-Suisun area for flood management avoids  
26 the cost of building urban scale flood control structures and the greater cost of long term  
27 maintenance. The money saved (referred to as "avoided costs") by not building flood  
28 control structures can be used to upgrade existing roads, provide amenities for urban  
29 development and establish a more transit friendly land use. By directing development  
30 toward existing infrastructure and the built community, the state housing needs for  
31 population growth are met at a more affordable level, and transportation costs are  
32 reduced. Since the whole of the region benefits from this growth management,  
33 implementation would include revenue sharing programs.

34 Although since the 1974 requirement for local government to adopt general plans is  
35 rooted in protecting the state's natural resources<sup>27</sup> little actual resource planning

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<sup>26</sup> [http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab\\_0751-0800/ab\\_797\\_bill\\_20060928\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_0751-0800/ab_797_bill_20060928_chaptered.pdf)

<sup>27</sup> Local governments have the primary responsibility for the planning and regulation of land uses. State law requires that each city and county prepare and adopt a "comprehensive, long-term general plan for the

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1 occurred until recently. Resource protection is most often a state and/or federal  
2 responsibility with standards and permits. The Habitat Management, Preservation, and  
3 Restoration Plan for Suisun Marsh planning is an example of federal, state, regional and  
4 local agencies with nongovernmental organizations cooperating in a charter agreement  
5 to prepare the plan and environmental documents. Since land use in the Primary zone of  
6 the Marsh is regulated and permitted by Bay Conservation and Development  
7 Commission (BCDC) <sup>28</sup> the Marsh planning exercise is for stewardship and meeting  
8 resource requirements.

9       **Tax Sharing.** Delta communities could take advantage of tax sharing opportunities  
10 between counties and incorporated jurisdictions. Under tax-base sharing, all of the  
11 municipalities within a metropolitan area agree to share tax proceeds from new  
12 development. This eliminates interregional competition; facilitates other planning goals  
13 such as preserving open space or maintaining a vibrant downtown; encourages suburbs  
14 and central cities to cooperate on regional economic development goals; and leads to a  
15 more equitable distribution of tax burdens and public services. This approach would be  
16 especially useful in the Delta by directing development away from legacy towns and  
17 threatened lands but still provide the necessary increase in revenues to meet the local  
18 communities' needs.

19       **Transfer of Development Rights.** Other planning approaches provided by state  
20 enabling legislation could be used to transfer urban development potential from the Delta  
21 region to outside Delta communities providing payment for such transfer and building  
22 incentives or "bonuses". Outright purchase of development "rights" could be used, such  
23 as was done between Vacaville and Dixon or in the Pine Barrens of New Jersey, to  
24 prevent unsuitable urbanization. Regulatory overlay districts for hazardous conditions  
25 could be used as a planning tool to redirect development and avoid the conflict with  
26 ecosystem restoration, water conveyance, and levee failure risks.

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physical development" of the community. This general plan must cover all incorporated territory and should go beyond the city limits to include "any land outside its boundaries which...bears relation to its planning." (Section 65300)

The way in which a city plans its surrounding area can be an important statement of its future intent. It is one means by which city officials can indicate to state and local governments their concerns for the future of surrounding unincorporated lands. Since the general plan is a policy document with a long-term perspective, a city's general plan may logically include adjacent territory which the city ultimately expects to annex or to serve, as well as that which is of particular interest to the city. The city's "sphere of influence" (which is established by the LAFCO) describes its probable physical boundaries and service area and can therefore be used as a benchmark for the minimum extent of the planning area. The city may choose to plan for land uses beyond its sphere when coordinating plans with those of other jurisdictions. (1990 *General Plan*

*Guidelines*)

<sup>28</sup> see map

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1           Transfer of development rights (TDR)<sup>29</sup> is a tool that can be used to protect open  
2 space, natural resources and farmland by directing development to towns and larger  
3 urban centers. The specifics of how TDR programs work vary greatly, however the  
4 general premise is the same. Development rights are transferred from one property to  
5 another. The owner of the sending site is usually paid the agreed value of the potential  
6 development that is being forgone. The receiving site benefits generally with more  
7 intense use of the site than otherwise allowed. In the process, farmers and other  
8 landowners are paid to permanently protect their land and new development is  
9 encouraged in towns and cities.

10           TDR has now been used across the country. In some places TDR programs are  
11 conducted on a regional or countywide basis. One example is San Luis Obispo County,  
12 California. In this program development rights are sold to the Land Conservancy of San  
13 Luis Obispo County who in turn sells them to receiving site owners for increased density.  
14 The Conservancy acts as a “TDR bank”, which facilitates the buying and selling of  
15 development rights. A TDR bank offers more flexibility since buyers and sellers don’t  
16 have to be available simultaneously. In other programs development rights are bought  
17 and sold privately, directly from property to owner to property owner.

18           In Massachusetts: TDR is allowed by special permit, which allows development  
19 rights to be transferred between districts. These ordinances or by-laws include  
20 incentives such as increases in density or population, intensity of use or amount of floor  
21 space or percentage of lot coverage, that encourage the TDR in a manner that protects  
22 open space, preserves farmland, promotes housing for persons of low and moderate  
23 income or furthers other community interests.<sup>30</sup>

24           **Environmental Goals and Policy Report.** Legislation passed in 2002 addressed  
25 state infrastructure planning and directed priorities and funding<sup>31</sup>. The legislation  
26 clarified the information required to be included in the five-year budget plan for

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<sup>29</sup> “Development Rights” is the right to develop land by a land owner who maintains fee-simple ownership over the land or by a party other than the owner who has obtained the rights to develop. Such rights usually are expressed in terms of density allowed under existing zoning. For example, one development right may equal one unit of housing or may equal a specific number of square feet of gross floor area in one or more specified zone districts. Fee-interest is that interest which entitles a land owner to exercise complete control over use of land, subject only to government land use regulations. (The California General Plan Glossary, \_\_\_\_\_)

<sup>30</sup> For more information see [http://www.mass.gov/envir/smart\\_growth\\_toolkit/bylaws/TDR-Bylaw.pdf](http://www.mass.gov/envir/smart_growth_toolkit/bylaws/TDR-Bylaw.pdf). Additional reading on TDR programs: Kings County Washington: <http://dnr.metrokc.gov/wlr/tdr/index.htm> N.J., Office of Smart Growth <http://www.nj.gov/dca/osg/resources/tdr/index.shtml> Land Use Law Center Pace University <http://www.law.pace.edu/landuse/btdr.html> Saved by Development: Preserving Environmental Areas, Farmland and Historic Landmarks with Transfer of Development Rights, R. Pruetz. Arje Press, Burbank, CA. 1997

<sup>31</sup> AB 857 (Wiggins), Chaptered as 1016

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1 infrastructure prepared by the Governor. The legislation also updated the requirements  
2 for the State Environmental Goals and Policy Report<sup>32</sup>.

3 The governor's budget plan criteria and priorities used to identify and select the  
4 infrastructure proposed in the plan shall be consistent with the legislative infrastructure  
5 planning priorities. The state agencies designated by law are required to specify how  
6 their infrastructure planning is consistent with the legislative planning priorities, including  
7 the following:

- 8 • Promote equity, strengthen the economy, protect the environment, and promote  
9 public health and safety in the state, including in urban, suburban, and rural  
10 communities.
- 11 • To promote infill development and equity by rehabilitating, maintaining, and  
12 improving existing infrastructure that supports infill development and appropriate  
13 reuse and redevelopment of previously developed, underutilized land that is  
14 presently served by transit, streets, water, sewer, and other essential services,  
15 particularly in underserved areas, and to preserving cultural and historic  
16 resources.
- 17 • To protect environmental and agricultural resources by protecting, preserving,  
18 and enhancing the state's most valuable natural resources, including working  
19 landscapes such as farm, range, and forest lands, natural lands such as  
20 wetlands, watersheds, wildlife habitats, and other wildlands, recreation lands . . .  
21 and landscapes with locally unique features and areas identified by the state as  
22 deserving special protection.
- 23 • To encourage efficient development patterns . . . in an area appropriately  
24 planned for growth, served by adequate transportation and other essential  
25 utilities and services, and minimizes ongoing costs to taxpayers.

26 **Financing.** Financing regional planning, resource protection and growth  
27 management is challenging. An oversimplified concept but worth considering is the use  
28 of an assessment district to maintain Delta and Suisun lands for flood management,  
29 wetland protection, restoration, and functional services of these lands. An assessment  
30 district has historically been created to finance improvements when no other source of  
31 money is available. Assessment districts are often formed in undeveloped areas and are  
32 used to build roads and install water and sewer systems so that new homes or  
33 commercial space can be built. But assessment districts also have been used for  
34 regional management. During the 1930s the state legislature adopted statutory policy for

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<sup>32</sup> Environmental Goals and Policy Report (EGPR) <http://www.opr.ca.gov/EnvGoals/PDFs/EGPR--11-10-03.pdf>

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1 the flood management of the California Central Valley creating the Reclamation Board  
2 with powers to assess all the properties within its jurisdiction – essentially the floodplain  
3 and floodways of the Sacramento River. With widespread protest the assessment fee  
4 was never adopted.

5 The assessment district concept could be used in the Delta. Instead of buying  
6 agricultural land, an assessment district could be used to “pay” for the functional uses of  
7 these lands by urban areas. For this approach to be successful, the value to the urban  
8 areas for flood protection and open space, habitat and recreation (where feasible) would  
9 have to be calculated and a benefit share established. Contiguous agricultural property  
10 owners would be willing to agree to these functional uses and the restriction on the use  
11 of their land for future urban development.

12 Riverside County established a Multiple Species Conservation Plan with federal,  
13 state, local special districts, and private parties to acquire manage and restore habitat.  
14 The Assessment District 161 Multiple Species Conservation Plan was established and  
15 various funding mechanisms such as mitigation fees, landfill surcharge and property  
16 assessment.

17 The California Land Conservation Act of 1965—commonly referred to as the  
18 Williamson Act—enables local governments to enter into contracts with private  
19 landowners for the purpose of restricting specific parcels of land to agricultural or related  
20 open space use. In return, landowners receive preferential property tax assessments  
21 which are based upon farming and open space uses as opposed to full market value.  
22 Local governments receive an annual subvention for the partial replacement of forgone  
23 property tax revenues from the state via the Open Space Subvention Act of 1971.

24 The California Farmland Conservancy Program (CFCP) seeks to encourage the  
25 long-term, private stewardship of agricultural lands through the voluntary use of  
26 agricultural conservation easements. The CFCP provides grant funding for projects  
27 which use and support agricultural conservation easements for protection of agricultural  
28 lands.<sup>33</sup> Both CFCP and Farm and Ranch Land Protection Program (FRPP) provide  
29 matching funds to help purchase development rights to keep productive farm and  
30 ranchland in agricultural uses. FRPP provides up to 50 percent of the fair market  
31 easement value of the conservation easement. CFCP provides up to 95 percent.

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<sup>33</sup> [www.ducks.org](http://www.ducks.org). Cress-Sheehy Farm

# Context Memorandum: Land Use in the Delta-Suisun Region

Iteration 2: July 13, 2007

## 1 *Section 4. Staff Conclusions*

- 2
- 3 1. Current trends in land use will change the Delta region and limit the choices for
- 4 future comprehensive strategies for water conveyance, utilities, agriculture,
- 5 transportation and ecosystem restoration.
  
- 6 2. While urbanization is identified as one of the six drivers of change in the Delta in the
- 7 *Status and Trends* report, it is not inevitable as a result of uncontrolled natural forces,
- 8 but one which can be managed through governmental policies for a durable plan for
- 9 a sustainable Delta.
  
- 10 3. Some suggest that levees reconstruction is a driver of urbanization because the
- 11 added value of urban development meets cost benefit analysis for federal and state
- 12 cost sharing.
  
- 13 4. Fiscal policies including the effects of Proposition 13 and 218, state mandates for
- 14 funding schools, and federal capital gains tax policies are drivers of land use type
- 15 and location decisions for needed revenue, but not always aligned with smart growth
- 16 strategies. Local communities compete with one another for businesses that
- 17 generate sales tax. Community housing needs and jobs are rarely balanced with the
- 18 competition for revenue-driven development. These fiscal forces collide across city
- 19 and county boundaries in the Delta.
  
- 20 5. Suisun Marsh Preservation Act as implemented by the San Francisco Bay
- 21 Conservation and Development Commission is more successful in protecting
- 22 regional resources than the Delta Protection Commission. The current array of Delta
- 23 local land use decision making is fragmented and may compound Delta
- 24 management.
  
- 25 6. Statutory Delta Protection Act environmental thresholds would provide a benchmark
- 26 against which projects in the DPC Secondary Zone would be measured for the
- 27 impacts or benefits. It is not too late to pause in urban approvals and establish the
- 28 mandated environmental thresholds for CEQA assessment. Such evaluation would
- 29 be on a regional scale, with a cumulative impact context and may lead to better land
- 30 use decisions for environmental protection and sustainability.
  
- 31 7. Although the state has limited land use authority, it can influence land use decisions
- 32 through infrastructure funding for flood management, transportation and housing.
- 33 Current state policy can motivate collaborative planning at a regional level.

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# Context Memorandum: Land Use in the Delta-Suisun Region

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1

## APPENDIX A

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3

### California Environmental Quality Act

4       The California Environmental Quality Act (CEQA) requires state and local agencies  
5 to identify and reduce, if feasible, the significant, negative environmental impacts of land  
6 use decisions. The documents prepared under CEQA (Environmental Impact Reports, or  
7 EIRs) rarely address energy consequences or greenhouse gas emissions. In late 2006,  
8 the Center for Biological Diversity filed a lawsuit against the City of Banning, seeking to  
9 overturn the approval of a large housing development, because the City did not evaluate  
10 the effect of GHG emissions from the increased vehicle trips on global warming. The  
11 California Attorney General and others sued San Bernardino County in April 2007 for  
12 failing to address the impact of GHG on climate change in the county's new 25 year  
13 General Plan and for violating CEQA.

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      OPR's State Clearinghouse coordinates the state level review of environmental  
documents pursuant to the CEQA and provides technical assistance on land use  
planning and CEQA matters. OPR is responsible for updating CEQA, as appropriate.  
CEQA guidelines do not currently state if and how emissions of CO<sub>2</sub> are to be  
evaluated. The ARB, as the implementing agency for AB 32, has not issued any  
guidance to counties or other agencies on how GHG emissions and AB 32 should be  
evaluated in CEQA documents. The Association of Environmental Professionals (AEP)  
has prepared a draft white paper on how to analyze GHG emissions and global climate  
change in CEQA documents. A range of possible approaches are identified; however,  
critics have stated that it is premature for local governments to define significance  
thresholds, quantify emissions and mandate mitigation measures for GHG emissions  
without guidance from the state.

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### California General Plan Guidelines 2003

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      The *Guidelines* is advisory, not mandatory. Nevertheless, it is the state's only  
official document explaining California's legal requirements for general plans. Planners,  
decision-making bodies, and the public depend upon the *Guidelines* for help when  
preparing local general plans. The courts have periodically referred to the *Guidelines* for  
assistance in determining compliance with planning law. For this reason, the *Guidelines*  
adhere to the letter of statute and case law. It also relies upon commonly accepted  
principles of contemporary planning practice. When the words "shall" or "must" are used  
in the *Guidelines*, they represent a statutory or other legal requirement. "May" and  
"should" are used when there is no such requirement.

# Context Memorandum: Land Use in the Delta-Suisun Region

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## 1 **California Transportation Plan**

2 The California Transportation Plan (CTP) is a statewide, long range transportation  
3 policy plan that provides for the movement of people, goods, services, and information.  
4 The CTP offers a blueprint to guide future transportation decisions and investments that  
5 is intended to ensure California's ability to compete globally, provide safe and effective  
6 mobility for all persons, better link transportation and land use decisions, improve air  
7 quality, and reduce petroleum energy consumption.

8 The CTP provides a vision for California's transportation system and explores major  
9 trends that will likely influence travel behavior and transportation decisions over the next  
10 20 plus years. In the context of these future trends and challenges, it provides goals,  
11 policies, and strategies to reach the vision. To fulfill the CTP's vision of improved mobility  
12 and to reduce congestion, the Schwarzenegger Administration launched a  
13 comprehensive transportation mobility initiative—"GoCalifornia." GoCalifornia is a  
14 mobility action plan designed to decrease congestion, improve travel times, and increase  
15 safety, while accommodating future growth in the population and the economy. It  
16 provides a roadmap to target transportation dollars to those improvements and  
17 investments that yield the greatest benefit for all Californians now and in the future.

## 18 **Housing Element Updates**

19 State law requires each city and county to adopt a general plan containing at least  
20 seven elements including housing. Unlike the other mandatory general plan elements,  
21 the housing element, required to be updated every five years, is subject to detailed  
22 statutory requirements and mandatory review by the state Department of Housing and  
23 Community Development (HCD). HCD is charged with reviewing local housing elements  
24 for compliance with state law and to report its written findings to the local government.  
25 Housing element law requires local governments to adequately plan to meet their  
26 existing and projected housing needs including their share of the regional housing need.

27 HCD must assess a county's Regional Housing Need Plan (RHNP) that is to  
28 promote the following objectives:

- 29 • Increase the housing supply and the mix of housing types, tenure and  
30 affordability in all cities and counties within the region in an equitable manner.
- 31 • Promote infill development and socioeconomic equity, the protection of  
32 environmental and agricultural resources and encourage efficient development  
33 patterns.
- 34 • Promote an improved intraregional relationship between jobs and housing.  
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# Context Memorandum: Land Use in the Delta-Suisun Region

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## 1 **California Water Plan**

2 The California Water Plan is the state's strategic plan for managing water resources  
3 statewide. It is updated every five years, as required by the California Water Code. The  
4 Water Plan is a key element in the Governor's Strategic Growth Plan. The last update,  
5 released in 2005, outlined two key initiatives:

- 6 • Promote integrated regional water management through regional partnerships  
7 and diversified management strategies.
- 8 • Maintain and improve statewide water management systems.

9  
10 California Water Plan Update 2009 will track and report progress on action plan  
11 items and initiatives, and will address the potential impacts of climate change. The  
12 update will be prepared in partnership with 16 other state agencies.

## 13 **Stormwater Plans**

14 In early 2005, the State Water Resources Control Board adopted sustainability as a  
15 core value for all California Water Boards' activities and programs, and directed  
16 California Water Boards' staff to consider sustainability in all future policies, guidelines  
17 and regulatory actions. One of the outcomes of this is Low Impact Development (LID).  
18 Unlike traditional stormwater management, which collects and conveys storm water  
19 runoff through storm drains, pipes, or other conveyances to a centralized storm water  
20 facility, LID takes a different approach by using site design and storm water  
21 management to maintain the site's pre development runoff rates and volumes. The goal  
22 of LID is to mimic a site's predevelopment hydrology by using design techniques that  
23 infiltrate, filter, store, evaporate and detain runoff close to the source of rainfall. LID is  
24 seen as an alternative to conventional storm water management. This can reduce the  
25 amount of stormwater needed to be treated as well as recharging groundwater supplies,  
26 which can reduce the need to import energy intensive water supplies.

27 The Water Boards are advancing LID in California through the following:

- 28 • Regulation through site specific and general permits.
- 29 • Providing advocacy and outreach to local governments through the Water  
30 Board's Training Academy and regional workshops.
- 31 • Researching how to incorporate LID language in to Standard Urban Storm Water  
32 Mitigation Plan (SUSMP) requirements.
- 33 • Funding LID related projects through the consolidated grants program.
- 34 • Funding through CWA 319 funds to provide for further researching applicability of  
35 Impervious Surface Analysis Tool (ISAT) for land use planners and for the  
36 California Water and Land Use partnership (CaWaLUP) Center at U.C. Davis.

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# Context Memorandum: Land Use in the Delta-Suisun Region

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## 1 **Transportation Planning Process**

2 Several mandatory transportation infrastructure, mobility, and funding reports and  
3 air quality management reports affect transportation decision making in California.

4 These reports include:

- 5 • Regional Transportation Plans (RTPs). Produced by MPOs,<sup>34</sup> RTPs meet the  
6 long term (25 year planning horizon) transportation needs of the  
7 metropolitan population. The plans outline the development of mass transit,  
8 highway, airport, port, railroad, bicycle, and pedestrian facilities. RTPs can  
9 promote construction of roads or transit to areas previously less accessible  
10 thereby inducing growth into undeveloped land and/or they can help to  
11 reduce pressure to grow outward by enhancing mobility within and adjacent  
12 to the established urban footprint. RTPs are updated once every seven  
13 years. The level of sophistication of models, quality of data, and planning  
14 that contributes to RTPs varies widely throughout California.
- 15 • Regional Transportation Improvement Plans (RTIPs). Also produced by  
16 MPOs, RTIPs lay out short term projects and funding in priority order.  
17 RTIPs are given to Caltrans to constitute a state plan. RTIPs link funding to  
18 projects and can affect the value of land thereby inducing investment either  
19 within or near the existing urban footprint or in outlying areas. Funding order  
20 rules may provide an incentive for sustainable projects within a region.
- 21 • State Transportation Improvement Plan (STIP).<sup>35</sup> STIPs are the aggregate  
22 of all of the individual RTIPs with the projects identified by Caltrans in its  
23 Inter Regional Transportation Improvement Program (ITIP) into one  
24 document. Projects within the STIP receive 75 percent of the STIP funds  
25 Caltrans controls only 25 percent of the STIP funds through ITIP projects  
26 and MPOs control 75 percent of the funds.
- 27 • State Air Quality Management Plan (AQMP). AQMPs are produced by Air  
28 Quality Management Districts (AQMD) to project future air quality and

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<sup>34</sup> Metropolitan Planning Organizations are often also the Council of Governments. MPO is a federal designation related to responsibility for preparing the RTP and RTIP and receiving and allocating transportation funding. Councils of Government are joint powers agencies established to analyze the relationship between policies in one subject area and its impact upon other regional issues. SACOG, SANDAG and SCAG, for example, are all both the COG and the MPO. ABAG and MTC are separately the COG and the MPO, respectively, serving the Bay Area.

<sup>35</sup> The STIP is funded with both federal (seventy percent) and state (thirty percent) dollars. Although the amount varies each year, about \$1.5–\$2.0 billion total is allocated annually for the projects prioritized in the STIP.

## Context Memorandum: Land Use in the Delta-Suisun Region

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1 address necessary measures to attain or maintain federal and state  
2 health based ambient air quality standards.

3 RTPs and RTIPs integrate the transportation plans of all of the cities and counties  
4 within their jurisdictions. Once the RTIPs are funded and set into motion, transportation  
5 fuel demand is essentially set for many decades. Transportation energy consumption  
6 associated with the actions included in the RTIP can then only be affected by changes in  
7 end use technology or regulatory intervention.

8 Federal air quality regulations also affect the transportation planning process. When  
9 a metropolitan area does not meet National Ambient Air Quality Standards (NAAQS),  
10 federal Clean Air Act Amendments (CAAA) require local AQMDs to work with MPOs to  
11 develop plans that bring RTIPs and the projected air pollution emissions from those  
12 projects into conformity with CAAA. The CAAA allow the US Environmental Protection  
13 Agency to impose sanctions or penalties, such as blocking federal highway funds and  
14 imposing more stringent pollution offsets, when projects do not conform.

15 The urgent need to reduce vehicle emissions to attain conformity drives the effort to  
16 reduce the number and length of vehicle trips, which is the only, albeit de facto, land use  
17 linked transportation energy conservation program in place today.

18 **Natural Community Conservation Planning (NCCP).** The Natural Community  
19 Conservation Planning (NCCP) program of the Department of Fish and Game takes a  
20 broad-based ecosystem approach to planning for the protection and perpetuation of  
21 biological diversity. An NCCP identifies and provides for the regional or area wide  
22 protection of plants, animals, and their habitats, while allowing compatible and  
23 appropriate economic activity.

24 The NCCP program is a cooperative effort to protect habitats and species. The  
25 program, which began in 1991 under the State's Natural Community Conservation  
26 Planning Act, is broader in its orientation and objectives than the California and Federal  
27 Endangered Species Acts. These laws are designed to identify and protect individual  
28 species that have already declined in number significantly. The primary objective of the  
29 NCCP program is to conserve natural communities at the ecosystem scale while  
30 accommodating compatible land use. The program seeks to anticipate and prevent the  
31 controversies and gridlock caused by species' listings by focusing on the long-term  
32 stability of wildlife and plant communities and including key interests in the process.

33 Working with landowners, environmental organizations, and other interested parties,  
34 the local agency oversees the numerous activities that compose the development of a

## Context Memorandum: Land Use in the Delta-Suisun Region

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1 conservation plan. The Department of Fish and Game and the U.S. Fish and Wildlife  
2 Service provide the necessary support, direction, and guidance to NCCP participants.

3 The NCCP approach to conservation is available statewide and planning efforts are  
4 underway in Contra Costa, Placer, Santa Clara, and Yolo Counties, as well as with the  
5 Mendocino Redwood Company. NCCP is being considered in other northern California  
6 areas including Butte, Sutter, and Yuba Counties. There are 32 active NCCPs covering  
7 more than 7 million acres of which 10 have been approved and permitted.