



July 31, 2009

Linda Fiack  
Executive Director  
Delta Protection Commission  
Post Office Box 530  
Walnut Grove, CA 95690

Dear Ms. Fiack:

Subject: Department of Fish and Game Comments on the Public Review Draft  
Delta Protection Commission Land Use and Resource Management Plan for  
the Primary Zone of the Delta (May 7, 2009 revisions) (DPC Management Plan)

In response to a request that California Department of Fish and Game (DFG) personnel review and comment on the DPC Management Plan, DFG identifies its primary concerns with this document as follows:

In the Introduction, the DPC Management Plan recognizes the efforts of the Delta Vision Blue Ribbon Task Force and the Delta Risk Management Strategy. Both of these efforts call out the fragility of the Delta's levee system from earthquakes and/or flooding, and the overall unsustainability of the current system of land use (or "business as usual") in the Delta. The Introduction also identifies the CALFED Record of Decision (2000) as a document that was referenced for this update. All of these efforts have culminated in the State's current position that extensive restoration of ecological function in the Delta is required, yet the DPC Management Plan goals and policies are constructed to maintain the status quo, including maintaining all levees and channel configurations (e.g. Natural Resources goal at the top of page 5 and Levees Policy P-2), and discouraging the creation of new habitat areas at the expense of existing agricultural operations (e.g. Natural Resources Policy P-11 and Agriculture Policy P-6). The Management Plan should merge the need to restore ecological function and aquatic habitat in the Delta, in light of the myriad changes that are anticipated with the goals and policies of the Plan.

The DPC Management Plan needs to address in more detail the issue of climate change and its anticipated impacts (including but not limited to rising sea levels) to Delta levees and land use. Sea level rise and changes in the frequency and intensity of storm events could result in flooding of multiple islands due to levee breaches, loss or inundation of wetlands, increased salt water intrusion, and loss of fresh water resources for agriculture, fish and wildlife, and other beneficial uses. Changes to the timing and intensity of freshwater flows into the Delta may also increase contaminated runoff.

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resulting in more water pollution, and shifts in urban growth and development will place increased pressure on existing resources and available habitat.

The Goal for the Natural Resources Section of the Plan on Page 4 should recognize the historic loss and alteration of fish and wildlife habitat in the Delta described earlier in the document. A description of how this goal is supporting Section 29702(a) of the Delta Protection Act which establishes the intent to "protect, maintain and where possible enhance and restore the Delta environment..." and Section 29760(b)(6) that encourages a net increase in acreage and values of wetland and riparian habitat on public lands and through cooperative agreements with private landowners which is not recognized in the Goal should be made either in the earlier description or in the Goal.

Additionally the Goal and the proposed policies should include the recommendations of numerous recent reports and ongoing planning efforts which have recognized the need to restore tidal freshwater habitat as part of the restoration of the Delta ecosystem (Delta Vision, Bay Delta Conservation Plan process, CALFED Ecosystem Restoration Program, and Public Policy Institute of California).

The Natural Resources Agency and its departments recognize the issues that are raised in many of the policies of the plan that relate to loss of county tax base, effects on emergency services, vector control, flood protection and agricultural viability. DFG is working with the five Delta counties to address those concerns as part of ongoing planning for the Bay Delta Conservation Plan, the Central Valley Flood Protection Plan, and future Delta governance.

In light of these concerns, DFG submits the following comments and suggested edits to the DPC Management Plan (*note:* these, and more specific comments/suggested edits, appear in "track changes" in the attached document):

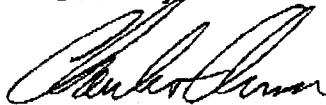
- Page 2, top paragraph: Note that the Draft ERP Stage 2 Conservation Strategy for the Delta/Suisun area, dated August 2008, provides the basis for improvements in ecological functions in the Delta, with implications for many aspects of the DPC Management Plan.
- Top of Page 5 (the Natural Resources goal): Delta Vision, the CALFED Ecosystem Restoration Program (ERP) and the Bay Delta Conservation Plan (BDCP) all advocate looking at ways to change some channel configurations (disconnect existing connections, create dendritic channel systems) to increase residence time and enable growth of aquatic food web species. There are also findings that not all levees should be maintained to the same standard. The inconsistency between those recommendations and the expressed goal of maintaining existing levees and channel configurations should be addressed.
- Page 5, Natural Resources Policy P-3: Per Resources Agency memorandum dated May 4, 2005, State departments are not required to "mitigate" conversions of agricultural land to habitat under CEQA (they are required to avoid and minimize, and evaluate, however). Also, in cases where a State agency holds title to the land,

- offset of local taxes and fees may be accommodated only if the Legislature appropriates such funding in that agency's annual budget.
- Page 5, Natural Resources Policy P-9: The term "accidental inundation" needs to be further defined to resolve if it refers to inundation due to levee breaks or to a potentially enhanced (but not "accidental") flooding regime.
  - Page 6, Natural Resources Policy P-10: The preceding text should explain why a National Heritage Area (NHA) designation is desirable for the Delta; what this means for local governments, nonprofits, and State/federal agencies holding land in the Delta; or how this community-based program focused on natural resource protection and economic development is fundamentally different than that already established (i.e. the existing California Delta Resource Conservation & Development Council, Inc.).
  - Page 10, fourth line of Land Use goal: Add the words, "in accordance with existing General and community plans (e.g. Sacramento County's Delta Area Community Plan)" after the parentheses enclosing the names of the unincorporated Delta towns.
  - Page 14, Agriculture Policy P-2: Note that State agencies pursuing land acquisitions for creation of habitat will pursue, as highest priority, those areas where ecological benefits are expected to be highest.
  - Page 14, Agriculture Policy P-8: See earlier comment on prioritizing what lands/levees would be crucial to achieving co-equal goals of ecological health and water supply reliability.
  - Page 21, Levees goal: See previously expressed concern about protecting all levees and channel/island configurations; this is inconsistent with the recommendations that the Delta's levees be prioritized for permanent protection and that some islands possibly not be reclaimed should the levees fail.

In conclusion, DFG recommends that the DPC Management Plan be amended to reflect more recent investigations and information on the priorities and future of natural resource management in the Delta, including reference to the co-equal goals of ecological health and water supply reliability as well as potential effects of climate change on Delta levees so it can serve as the region-wide policy to preserve, protect, enhance, and restore Delta resources.

Thank you for the opportunity to provide input on the DPC Management Plan; hopefully this feedback will be useful to you as complete your update of this plan.

Sincerely,



Charles Armor  
Regional Manager  
Bay Delta Region

Attachment

Linda Fiack, Executive Director  
July 31, 2009  
Page 4

cc: Department of Fish and Game  
Donald Koch, Director  
John McCamman, Chief Deputy Director  
1416 Ninth Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

Carl Wilcox, Branch Chief  
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Sacramento, CA 95811

# DRAFT Comments Received from the Department of Fish and Game

## **PUBLIC REVIEW DRAFT REVISED MAY 7, 2009**

### **Land Use and Resource Management Plan for the Primary Zone of the Delta**

#### **INTRODUCTION**

The Primary Zone of the Sacramento-San Joaquin Delta (Delta) includes approximately 500,000 acres of waterways, levees and farmed lands extending over portions of five counties: Solano, Yolo, Sacramento, San Joaquin and Contra Costa. The rich peat soil in the central Delta and the mineral soils in the higher elevations support a strong agricultural economy. The Delta lands currently have access to the fresh waters of the 1,000 miles of rivers and sloughs lacing the region. These waterways provide habitat for many aquatic species and the uplands provide year-round and seasonal habitat for amphibians, reptiles, mammals, and birds, including several rare and endangered species. The area is extremely popular for many types of recreation including fishing, boating, hunting, birdwatching, water-skiing, swimming, hiking, and biking.

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Recognizing the threats to the Primary Zone of the Delta from potential urban and suburban encroachment and the need to protect the area for agriculture, wildlife habitat, and recreation uses, the California Legislature passed and the Governor signed into law on September 23, 1992, the Delta Protection Act of 1992 (SB 1866). The Act directs the Delta Protection Commission to prepare a comprehensive resource management plan for land uses within the Primary Zone of the Delta (Plan).

In addition, analyses from various recent planning efforts focused on the Delta recognize that climate change is expected to result in direct impacts to Delta land use and infrastructure. Sea level rise and changes in the frequency and intensity of storm events could impact low-lying coastal areas, including the Delta, and may result in the flooding of multiple islands due to levee breaches, loss or inundation of wetlands, increased salt water intrusion, and loss of fresh water resources for agriculture, fish and wildlife, and other beneficial uses. Changes to the timing and intensity of freshwater flows into the Delta may also increase contaminated runoff, resulting in more water pollution, and shifts in urban growth and development will place new or increased pressure on existing resources and available habitat.

**Comment [L1]:** The rest of the Management Plan's goals and policies should be consistent with this text. If this is accomplished, suggest a final sentence be added to this climate change paragraph: "This Management Plan is largely being updated to account for these anticipated threats and changes to future Delta land uses and infrastructure."

The planning conducted by the Delta Protection Commission involved preparation and public review of nine background reports: Environment; Utilities and Infrastructure; Land Use and Development; Water; Levees; Agriculture; Recreation and Access; Marine Patrol, Boater Education, and Safety Programs; and Implementation. These reports provided the information base for the Plan findings and policies, as well as allowing opportunities for public review and comment through circulation and public hearings before the Commission.

**Comment [L2]:** Note: the title of the background report on which the original Management Plan was based is "Environment"; the title of the Environment chapter of the Management Plan has been changed to "Natural Resources".

The goals of the Plan as set out in the Act are to "protect, maintain, and where possible, enhance and restore the overall quality of the Delta environment, including but not limited to agriculture, wildlife habitat, and recreational activities; assure orderly, balanced conservation and development of Delta land resources and improve flood protection by structural and nonstructural means to ensure an increased level of public health and safety." Also pursuant to the Act, to the extent that any of the requirements specified in this Land Use and Resource Management Plan are in conflict, nothing in this Plan shall deny the right of the landowner to continue the agricultural use of the land.

As a general comment, all of these background reports (dated in the mid-1990s, as available from the DPC website) are outdated. Reference to these background reports should be eliminated, and text describing preparation of this update should be captured here.

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The Plan consists of three sections. Part I, the Introduction, describes the planning program and the Plan objectives. Part II includes the Plan's individual Elements. Part III describes the program for implementing the Plan. A map that shows the boundary of the Primary and Secondary Zones of the Delta is attached to the end of this Plan. This Plan was prepared through a collaborative process with input provided from a broad range of public agencies and dedicated individuals. In addition, a wide variety of reference materials were used in the preparation of this Plan. The primary reference materials used to prepare the introductory sections of the individual elements included the following: *Status and Trends of Delta-Suisun Services* prepared by URS Corporation for the California Department of Water Resources, May 2007; CALFED Bay-Delta Program Programmatic Record of Decision August 28, 2000; Delta Protection Commission Land Use and Resource Management Plan for the Primary Zone of the Delta Update 2008 - Profiles of Ongoing Planning Processes and Planning Documents for Consideration prepared by the Delta Protection Commission staff, July 24, 2008; *Our Vision for the California Delta* prepared by the Governor's Delta Vision Blue Ribbon Task Force, January 29, 2008 (Second Printing); and the Delta Vision Strategic Plan prepared by the Governor's Delta Vision Blue Ribbon Task Force, October 2008.

Each element includes an introductory discussion that provides the context for the element's goals and policies. The introductory discussions provide the framework from which the goals and policies of the individual elements are derived. Policies are the directions for action the local governments must embrace and support through amendments to local General Plans, if necessary. It is important to note, however, that in the implementation of both the goals and policies of this Plan, the Act specifically prohibits the exercise of the power of eminent domain unless requested by the landowner.

**Comment [L3]:** Note that the Ecosystem component of the Delta Vision BRTF's work was largely generated in coordination with development of the Draft ERP Stage 2 Conservation Strategy for the Delta/Suisun area, dated August 2008. This document provides the basis for improvements in ecological functions in the Delta that the ERP will be pursuing in the near term and over the next 20 years, and has implications for many aspects of the DPC plan.

**Comment [L4]:** Somewhere in the Introduction section text should be included that recognizes the Commission does not have jurisdiction over the activities of other State or federal agencies. Refer to DWR's suggested text.

## OVERVIEW

The Delta Protection Act of 1992 (Public Resources Code Section 29760 et. seq.) requires the Commission to prepare and adopt and thereafter review and maintain a comprehensive long-term resource management plan for land uses within the Primary Zone of the Delta (“resource management plan”). The resource management plan is to set forth a description of the needs and goals for the Delta and a statement of the policies, standards, and elements of the resources management plan. Within 180 days of the adoption of the resource management plan or any amendments by the Commission, all local governments, as defined in Public Resources Code Section 29725, shall submit to the Commission proposed amendments. The amendments shall cause the general plans to be consistent with the criteria in Public Resources Code Section 29763.5 with respect to land located within the Primary Zone. That criteria includes a requirement that the general plan be consistent with the resource management plan. This overview, and the following policies of the resource management plan, constitute the regulatory portion of the plan.

The term "shall" in these regulations is mandatory; the terms "may", "should", and "can" are advisory.

Every five (5) years the Commission will consider revising the Plan.

## PLAN ELEMENTS

### NATURAL RESOURCES

The Delta is a unique geographic area in the State of California, a low-lying region of rich mineral and peat soils, composed of islands created largely by humans, as they diked and drained the prehistoric marshes of the region.

The lush wetland habitats surrounded by riparian woodlands have been replaced by agricultural lands, cultivated and irrigated croplands, and irrigated and unirrigated pasture lands. Remnants of natural habitat are located largely along some sloughs and rivers and on small channel islands. Pockets of wooded or wetland habitat exist on some islands.

The aquatic habitats were historically brackish and home to both resident and migratory fish. Modern aquatic habitats are affected by flows released from upstream dams, seasonal drainage from agricultural lands, and year-round drainage from sources outside the Primary Zone. Several large, freshwater lakes are located on the eastern edge of the Delta, providing year-round wetland habitat.

Species indigenous to the Delta evolved within an ecosystem that was much different than today. Many of the indigenous species have declined because of loss of habitat, changes in hydrologic processes, or other changes to the system. Some of these ecosystem changes over the past 150 years include:

- . • Loss of access to upstream habitat for anadromous fish from construction of dams
- . • Diking and draining of Delta lands to convert marshes to farms
- . • Urbanization
- . • Construction of levees that separate rivers from their floodplains and eliminate channel meandering and riparian habitat
- . • Invasion by non-native species
- . • Alterations in hydrology, particularly [the elimination of variability in](#) seasonal flow

patterns

- Reduction in seasonal and annual variability in salinity
- Introduction of numerous toxic substances

Flow patterns in the Delta are governed by inflows, diversions, and tidal flows. The relative importance of these flows varies with season and location. In general, Delta inflows have decreased in winter-spring through impoundment behind dams and increased in summer through flow releases to support export pumping and control salinity in the Delta. That change in seasonal pattern has reduced the large floodflows that used to deliver sediment and rearrange the channel configuration (bathymetry) and has decreased salinity in the summer. A reduction in the frequency, duration and magnitude of high Delta outflows has altered the location of the low-salinity zone (i.e., the zone where freshwater transitions into brackish water), which is a crucial component of some native species' habitat.

**Comment [L5]:** Clarification: "diversions" that govern Delta flow patterns refers to those that divert large quantities of water in relation to the channels they're drawing from, not all diversions. Depending upon size, most diversions in the Delta may affect flow patterns on a localized and likely insignificant scale.

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Net—tidally averaged—flows depend on inflows from the rivers and export flows in the southern Delta. Sometimes the combination of inflows and exports causes "reverse flow," or a situation when flow moves upstream rather than downstream. These flows can cause large numbers of young fish, including eggs and larvae, to be sent to the export facilities. In addition, some entrainment of these young fish, eggs, and larvae occurs even when the net flow is in the downstream direction.

The Delta provides substantial habitat for resident and migratory waterfowl and shorebirds. The abundance of these birds declined precipitously in the Delta because of land reclamation, but changes in cropping patterns have allowed populations of some species to increase.

The Delta supports approximately 55 fish species, about half of which are natives. Many of the native species have declined in abundance and in range, leading to the listing of several species under the California and/or federal Endangered Species Acts. Early species declines were caused by loss or isolation of physical habitat when the Delta islands were drained. Species declines that have occurred since most monitoring began in the 1960s through 1980s have been attributed to a variety of causes including changing climate; effects of toxic substances; alteration of habitat; introduction of species that consume, compete with, or alter the habitat of natives; water diversions/exports; and changes in hydrology.

**Comment [L6]:** Should make this first sentence more general, not limit it to "55 fish species" ... the Delta supports hundreds of fish, plants, mammals, amphibians, reptiles, invertebrates that are either flourishing (non-natives) or declining (natives) due to the reasons listed here.

In the past few years, the abundance of several pelagic (open water) fish species inhabiting the Delta, such as delta smelt and longfin smelt, have declined to record-low levels. The reasons for pelagic organism decline are multiple and are the subject of intense investigation. Pelagic species of the Delta seem to be squeezed between poor conditions for food and water quality, losses to export pumping, and possibly other negative influences, such as toxins. Chinook salmon populations have also experienced d precipitous declines within the Delta.

Long-term trends for the ecosystem depend on the severity of climate change and the future physical structure and salinity of the Delta. Current trends for increasing temperature and a shift to an earlier runoff peak will favor some species over others. Chinook salmon, steelhead, and delta smelt are among those likely to suffer negative impacts of these changes. The planktonic species at the base of the food web are unlikely to be strongly affected by these changes. However, some other species may be strongly affected by the trend toward clearer water in the Delta and by changes in the abundance and distribution of introduced clams and exotic submerged and floating aquatic vegetation.

**Comment [L7]:** This is currently unknown.

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Large mammals, such as bear and elk, which historically lived in and around the Delta have been eliminated. Aquatic mammals including beaver and otter still remain. Both year-round and migratory birds have adapted to the agricultural practices in the Delta, particularly the small grain fields which



are flooded in fall and winter months. Migratory birds include ducks, geese, swans, cranes, and shorebirds. Hawks and eagles forage in the Delta fields. The Primary Zone, with its large open expanses of farmland, mosaic of small grain crop residues and shallow flooded fields, permitting wildlife to feed and rest, provides high quality wildlife habitat.

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The geology of the region created this unique “delta”. Sediments trapped inland of the rocky neck of the Carquinez Straits resulted in the creation of the 1,100 square mile area known as “the Delta”. The Delta exists in a State known for earthquake faults; the probability of seismic activity remains constant. A zone of buried thrust faults is located along the western edge of the Delta.

The peat soils of the central and western Delta have oxidized in great part due to drainage. Losses of soil due primarily to oxidation have resulted in subsidence of land surfaces of up to 20 feet. Original peat soil depths varied substantially from area to area and even within a given island. Current studies show the only effective way to stop subsidence is to reflood the peat soils. Subsidence has slowed to about one-third of an inch a year in many areas, and is negligible in other areas with more mineral soils (e.g. McCormack-Williamson Tract). About 60% of the lands in the Delta are designated prime agricultural lands.

Comment [L8]: Note that USGS has had some success at reversing (not just stopping) subsidence at some experimental ponds on Twitchell Island, through the planting of native vegetation (tules) in conjunction with flooding to ~1' depth of water. Contact is Roger Fujii.

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Comment [L9]: This sentence seems out of place here; probably better placed in the “Agriculture” chapter.

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The low elevations of the Delta, exacerbated by subsidence, result in a constant threat of flooding. Twice in each approximately 25 hour period the tides raise and lower the elevation of the Sacramento River about three feet. The threat of flooding is generally associated with periods of high winter rainfall and periods of rapid spring snow melt in the watersheds draining into the Delta. The most critical conditions occur when upstream dams are full and the resulting high rates of river flow combine with high tides.

Comment [L10]: This paragraph should acknowledge how the threat due to flooding (due to seasonal high flow or to the increasing threat of a large seismic event in the Delta) is increasing over time.

It is recognized that Habitat Conservation Plans and Natural Community Conservation Planning (HCP/NCCP) efforts within the Delta, including the CALFED Ecosystem Restoration Program Plan (ERPP), must be acknowledged in the administration of the policies of the Management Plan as these programs include agreements and/or contracts that have long-term provisions to sustain a durable program.

Comment [L11]: Note that the CALFED ERP was adopted as CALFED'S NCCP as part of ROD certification in 2000, and its implementation is ongoing.

#### Goal

Preserve, protect, and enhance the natural resources of the Delta. Promote protection of remnants of riparian habitat. Promote agriculture practices that are compatible with wildlife use of lands in the Delta. Promote levee maintenance and rehabilitation to preserve the land areas and channel configurations in the Delta.

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Comment [L12]: Delta Vision, ERP and the BDCP advocate looking at ways to change some channel configurations (disconnect existing connections, create dendritic channel systems) to increase residence time and enable growth of food web species. There are also findings from these other planning processes that not all levees need be maintained to the same standard. This inconsistency between those findings and the expressed DPC goal of maintaining existing levees and channel configurations should be acknowledged or addressed here.

#### Policies:

- P-1. With the exception of lands identified as important for restoring habitat and enhancing ecological function in the Delta, the priority land use of areas of prime soil shall be agriculturally oriented. If commercial agriculture is no longer feasible, land uses that protect other beneficial uses of Delta resources and that would not adversely affect agriculture on surrounding lands or the viability or cost of levee maintenance, may be permitted. If temporarily taken out of agriculture production due to lack of adequate water supply or water quality, the land shall remain reinstatable to agriculturally-oriented uses for the future.
- P-2. Encourage agricultural and land management practices that minimize subsidence of peat soils. Local governments should utilize studies of agricultural methods that minimize subsidence and should assist in educating landowners and managers as to the value of utilizing these methods.
- P-3. Lands managed primarily for wildlife habitat should be managed to provide several inter-

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related habitats, when appropriate. Delta-wide habitat needs should be addressed in development of any wildlife habitat plan. Appropriate programs, such as "Coordinated Resource Management and Planning" (Public Resources Code Section 9408(c)) and "Natural Community Conservation Planning" (Fish and Game Code Section 2800 et seq.) should ensure full participation by local government and property owner representatives, ~~and should recognize the rightful responsibility to offset the loss of tax revenue. Encourage the development of additional agricultural lands as a mechanism to offset planned conversions to wildlife habitat.~~

- P-4. Support the non-native invasive species control measures being implemented by the California Department of Fish and Game, the California Department of Boating and Waterways, the California Emergency Management Agency, the California Department of Food and Agriculture, the State Water Resources Control Board, the Central Valley and San Francisco Bay Regional Water Quality Control Boards, and the Agricultural Commissioners for the five Delta Counties (Yolo, Solano, Sacramento, San Joaquin, and Contra Costa), which include controlling the arrival of new species into the Delta.

- ~~P-5. Preserve and protect the viability of agricultural areas by including an adequate financial mechanism as part of a comprehensive natural resource and economic development program for the Delta, in any planned conversion of agricultural lands to wildlife habitat. The financial mechanism shall specifically offset the loss of local government and special district revenues necessary to support public services and infrastructure.~~

- P-6. Implement appropriate buffers within lands converted to wildlife habitat to ensure the ongoing agricultural operations adjacent to the converted lands remain viable.

- P-7. Incorporate, to the maximum extent feasible, suitable and appropriate wildlife protection, restoration and enhancement on existing and future publicly-owned land as part of a Delta-wide plan for habitat management.

- P-8. Encourage the management of suitable agricultural lands to maximize habitat values for migratory birds and other wildlife. Appropriate incentives, such as conservation easements, should be encouraged to protect this seasonal habitat through donation or through purchase.

- ~~P-9. Preserve, protect, and enhance lands currently managed for wildlife habitat, such as private duck clubs or publicly owned wildlife areas, from destruction from accidental inundation.~~

- ~~P-10. Promote ecological, recreational and agricultural tourism in order to preserve the cultural values and economic vitality that reflect the history, natural heritage and human resources of the delta, including the establishment of National Heritage Area designations.~~

- ~~P-11. Preserve, protect, and enhance Delta-dependent fisheries and aquatic habitat to the maximum extent feasible, consistent with balancing other beneficial uses of Delta resources.~~

## UTILITIES AND INFRASTRUCTURE

Due to the Delta's location between major population areas, its unique resources, especially water and natural gas, and its flat terrain and general lack of development, the Delta has high value as a utility and transportation corridor.

Utilities located in the Delta include: radio, cellular phone, and television transmission towers; electrical transmission lines including Pacific Gas and Electric, Sacramento Municipal Utility District, and Western Area Power Administration lines; natural gas pipelines, serving local gas fields

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Comment [L13]: Per Resources Agency memo dated May 4, 2005, State departments are not required to "mitigate" conversions of agricultural land to habitat under CEQA (they are required to avoid and minimize, and evaluate, however). Also, in cases where a State agency holds title to the land, offset of local taxes and fees may be accommodated only if the Legislature appropriates such funding in that agency's annual budget.

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Comment [L14]: Per Resources Agency memo dated May 4, 2005, State departments are not required to "mitigate" conversions of agricultural land to habitat under CEQA (they are required to avoid and minimize, and evaluate, however). In cases where a State agency holds title to the land, offset of local taxes and fees may be accommodated only if the Legislature appropriates such funding in that agency's annual budget.

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Comment [L15]: The term "Accidental inundation" needs to be further defined to resolve if it refers to inundation due to levee breaks or to a potentially enhanced (but not "accidental") flooding regime designed to benefit aquatic species. In the spirit of adaptively managing for numerous resources and species over time, P-9 as written seems particularly limited to terrestrial species and waterfowl and should be expanded to include aquatic species.

Comment [L16]: The preceding text should explain why a National Heritage Area designation is desirable for the Delta; what this means for local governments, nonprofits, and State/federal agencies holding land in the Delta; or how this community-based program is fundamentally different than that established by the existing California Delta Resource Conservation & Development Council, Inc. (or CDRC&D Council, Inc., created utilizing seed funding from the USDA).

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Comment [L17]: The wording on P-11 is awkward - there's no mention of water supply reliability (in accordance with Delta Vision's co-equal goals).

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and regional pipelines; petroleum transportation pipelines; and water transportation canals and pipelines transporting water from the Delta to regional users and transporting water through the Delta to the Bay Area and to State and federal water projects.

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The regional electrical transmission lines carry power within California as well as between regions of the western United States. More than 500 miles of transmission lines and more than 60 substations lie within the Delta boundaries. Several electrical peaking plants surrounding the Delta depend on these transmission lines. Within the larger Delta-Suisun Marsh area are approximately 240 operation gas wells. Natural gas pipelines serve local gas fields and regional pipelines. PG&E's underground natural gas storage area under McDonald Island provides up to one-third of the peak natural gas supply for its service area. Pipelines carry gasoline and aviation fuel across the Delta from Bay Area refineries to depots in Sacramento and Stockton for distribution to Northern California and Nevada. They provide approximately 50 percent of the transportation fuel used in that region. The Mokelumne Aqueduct, consisting of three pipelines, is the main municipal water conveyance facility for 1.3 million people in the East Bay Municipal Utility District. The aqueduct crosses five Delta islands/tracts (Orwood Tract, Woodward Island, Jones Tract, Roberts Island, and Sargent-Barnhart Tract) protected by levees.

Buried pipelines within rights of way appear to generally have lesser impacts on wildlife movements or land uses than aboveground facilities. The aboveground facilities, such as pipelines, canals, and transmission lines do impact wildlife movements, reduce availability of valuable habitat, and result in direct loss of birds killed by striking transmission lines.

Local governments regulate the utilities that serve Delta residents and visitors including potable water, sewage disposal, and solid waste disposal. Most potable water is obtained from groundwater through local wells. Most wastewater from homes and businesses is treated in on-site septic tanks. Some of the larger communities and developments have self-contained wastewater treatment facilities. Communities outside the Primary Zone do and propose to continue to release treated wastewater into Delta waterways, onto constructed wetlands, or onto agricultural lands. Most solid waste generated in the Delta is disposed of at facilities outside the area. Recycling is not readily available for Delta residents; in the Delta, agricultural waste is typically disposed of on site.

Transportation systems traversing around and through the Delta include several railroads and freeways, state highways, and county roads. Three interstate freeways (I-5, I-80, and I-580) are major transportation and trucking routes that pass the periphery of the Delta. The three major state highways in the Delta (SR 4, SR 12, and SR 160) are typically two lanes, sometimes built on top of levees. Originally meant for lower traffic volumes at moderate speeds, the state highways are now heavily used for regional trucking, recreational access, and commuting. County roads generally follow the levees. Five auto ferries in the Delta allow public access, but three of them lead to islands that are private property. There are more than 50 bridges, including approximately 30 drawbridges, spanning the navigable channels in the Delta. Bridges impact vessel traffic on the waterways; some bridges rarely open requiring boats to travel alternate waterways. Some bridges open regularly, impacting surface traffic and creating possible delays in emergency response.

Regional rail traffic between the Bay Area and the Central Valley passes through the Delta. The Amtrak San Joaquin route from Bakersfield to Sacramento/Oakland, which crosses through the Delta, had nearly 800,000 riders in 2006. In addition, companies such as the Sierra Northern Railway use existing short-line tracks for inter-regional freight and passenger services.

Two major ports lie north and east of the Primary Zone, the Ports of Sacramento and Stockton, respectively. The Stockton and Sacramento Deep Water Ship Channels were constructed in 1933 and 1963, respectively. The Stockton channel is 35 feet deep and can handle 55,000-ton class vessels with

full loads. More than 300 ships and barges used the channel in 2005. The Sacramento ship channel is 30 feet deep, with plans underway to increase its depth to 35 feet. Both ports are likely to expand in the future, which would result in an increase in ship and barge traffic through the Delta. Several million tons of diversified products are shipped through the Delta each year.

Airports in the Primary Zone of the Delta are limited to small facilities serving individual land-owners and agriculture-serving businesses.

### Goal

Ensure that the construction of new utility and infrastructure facilities, as permitted under the Delta Protection Act of 1992 in accordance with local General Plans and the Delta Area Community Plan in place as of January 1, 1992, is appropriate and the impacts of such new construction on the integrity of levees, wildlife, recreation and agriculture are minimized.

**Comment [L18]:** How is "appropriate" determined? By local governments' priorities or the State's?

### Policies

- P-1. Utilities should be designed and constructed to minimize any detrimental effect on levee integrity or maintenance, agricultural uses and wildlife within the Delta.
- P-2. Ensure that new houses built in the Delta agricultural areas but outside of the Delta's unincorporated towns continue to be served by independent potable water and wastewater treatment facilities and/or septic systems. Agricultural uses that require waste water treatment shall provide adequate infrastructure improvements or pay to expand existing facilities, and not overburden the existing limited community resources. The appropriate governing body shall ensure that new or expanded construction of agriculturally-oriented wastewater disposal systems meet the appropriate standards/conditions and are not residentially growth inducing. Independent treatment facilities should be monitored to ensure no cumulative adverse impact to groundwater supplies.
- P-3. Ensure that new municipal sewage treatment facilities (including storage ponds) that support development or business outside of the Delta Primary Zone are not located within the Primary Zone. The Rio Vista project, as described in the adopted Final Environmental Impact Report for such project, and the Ironhouse Sanitary District use of Jersey Island for disposal of treated wastewater and biosolids are exempt from this policy.
- P-4. Encourage recycling programs for metals, glass, paper, cardboard, and organic materials in order to minimize waste generation. Recycling facilities for these materials should be suitably located to serve Delta residents, visitors, and businesses. High groundwater tables and subsiding soil make the Delta an inappropriate location for solid waste disposal.
- P-5. Maintain roads within the Delta to serve the existing agricultural uses and supporting commercial uses, recreational users, and Delta residents. Promote the maintenance and enhancement of major thoroughfares already used as cross-Delta corridors, such as Highways 4 and 12, to facilitate emergency services.
- P-6. Allow air transportation in the Delta to continue to serve Delta residents and agriculture-related businesses. Due to subsidence, transmission lines, high winds, fog, and high raptor and waterfowl use, the Primary Zone is not an appropriate location for new or expanded general aviation airports.
- P-7. Encourage the provision of infrastructure for new water, recreational, and scientific

research facilities, as cited in the Land Use Element.

## LAND USE

The patterns of settlement in the Delta reflect the history of immigration into the State in the late 19th century. The settlement pattern was historically, and remains to this day, closely associated with the rivers, sloughs, and waterways, and the agricultural land use. One incorporated city, Isleton and portions of Stockton, Rio Vista, Antioch, Oakley, Sacramento, West Sacramento, Elk Grove, Tracy, Lathrop and Pittsburg, are located within or just outside of the Secondary Zone. Unincorporated towns lying along the Sacramento River in the Primary Zone include Clarksburg, Courtland, Hood, Locke, Walnut Grove, and Ryde. The towns serve as social and service centers for the surrounding farms and historically served as shipping sites for products. These rural communities reflect the diverse heritage of the Delta and the independence of country living.

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The five Delta counties (Solano, Yolo, Sacramento, San Joaquin, and Contra Costa) designate Primary Zone lands for agriculture or special Delta resources in their respective General Plans. The zoning codes allow a variety of uses in the Primary Zone: agriculture and agriculturally-oriented uses; outdoor recreation; wildlife habitat; public facilities; and limited areas for commercial, industrial, and rural residential development. The parcel sizes specified in the General Plans and zoning codes range from 5 to 160 acres, with most of the Primary Zone in 20- to 80-acre minimum parcel sizes.

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The two Delta ports, Sacramento and Stockton, own hundreds of acres of land along their respective shipping channels. Some of these lands are used for dredge materials disposal; some have been or will be used for mitigation sites to create new wetland habitat to offset losses suffered in construction or operation of the shipping channels.

Sherman Island, Twitchell Island, Staten Island, portions of the Yolo Bypass (e.g. Vic Fazio Wildlife Area) and McCormack-Williamson Tract are held as conservation lands, currently operated as farmlands. There are also a number of conservation easements and mitigation banks that are being created under local HCPs and NCCPs (e.g. San Joaquin Multi-Species Conservation Plan). Since 1990, urban and other land uses in the Secondary Zone have gained substantial acreage while agricultural land use has declined. Other land uses include conservation areas, low-density rural developments, natural areas not suitable for livestock grazing, and other non-agricultural areas.

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The periphery of the Delta is undergoing rapid urbanization associated with substantial population growth. Current and future population growth increases the demand for developable land, particularly in areas near the Bay Area, Stockton, and Sacramento. This demand results in the conversion of open space, primarily agricultural land, to residential and commercial uses.

In addition to numerous international, national, and State- and locally-influenced factors affecting the profitability of farming in the Delta, acquisition of farmed land, and subsequent retirement of that land, affects the economic base for farm support industries; the economic base for community businesses that rely on patronage from citizens working in farm or farm support industries; the tax and assessment base for special districts, county, and State; and existing wildlife use patterns which have adapted to agricultural land use patterns.

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### Goal

Protect the unique character and qualities of the Primary Zone by preserving the cultural heritage and strong agricultural base of the Primary Zone. Direct new non-agriculturally oriented

residential, commercial, and industrial development within the existing unincorporated towns (Walnut Grove, Clarksburg, Courtland, Hood, Locke, and Ryde), in accordance with General Plans and community plans (e.g. Sacramento County's Delta Area Community Plan) in place as of January 1, 1992, and where appropriate services are available.

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## Policies

- P-1. The rich cultural heritage and strong agricultural base of the Delta shall be preserved and recognized in public/private facilities, such as museums, recreational trails, community parks, farm stands, community centers, and water access facilities within the Delta.

- P-2. Local government general plans, as defined in Government Code Section 65300 et seq., and zoning codes shall continue to strongly promote and facilitate agriculture and open space uses as the primary land uses in the Primary Zone; recreation land uses shall be supported in appropriate locations and where the recreation uses do not conflict with agricultural land uses or other beneficial uses.

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- P-3. Option 1: New non-agriculturally oriented residential, recreational, commercial, or industrial development shall ensure that appropriate buffer areas are provided by those proposing new development to prevent conflicts between any proposed use and existing adjacent agricultural parcels. Buffers shall adequately protect integrity of land for existing and future agricultural uses and shall not include uses that conflict with existing agricultural operations on adjacent agricultural lands. Appropriate buffer setbacks shall be *a minimum of 500 feet, and beyond that distance, the setback determination shall be based on the expertise of local Agricultural Commissioners based on applicable general plan policies and criteria included in Right-to-Farm Ordinances adopted by local jurisdictions.*

- P-3. Option 2: New non-agriculturally oriented residential, recreational, commercial, or industrial development shall ensure that appropriate buffer areas are provided by those proposing new development to prevent conflicts between any proposed use and existing adjacent agricultural parcels. Buffers shall adequately protect integrity of land for existing and future agricultural uses and shall not include uses that conflict with existing agricultural operations on adjacent agricultural lands. Appropriate buffer setbacks shall be *based on the expertise of local Agricultural Commissioners based on applicable general plan policies and criteria included in Right-to-Farm Ordinances adopted by local jurisdictions.*

- P-4. Option 1: New residential development in the Primary Zone shall be located within the existing unincorporated towns (Walnut Grove, Clarksburg, Courtland, Hood, Locke, and Ryde), in accordance with General Plans and Sacramento County's Delta Area Community Plan in place as of January 1, 1992.

- P-4. Option 2: New residential development shall be located in the Primary Zone *subject to the availability of support infrastructure and flood protection, as required by law.*

- P-4. Option 3: New residential development shall be located in the Primary Zone *where support infrastructure and flood protection are already provided, as required by law.*

- P-4. Option 4: New residential development shall be located in the Primary Zone *where support infrastructure and flood protection will be provided, as required by law, prior to the issuance of building permits.*

- P-5. Local government general plans shall address criteria under which general plan amendments in the Primary Zone will be evaluated under Public Resources Code Section 29763.5. Proposed amendments to local government general plans for areas in the Primary Zone shall be evaluated in terms of consistency of the overall goals and program with the Delta Protection

Commission.

- P-6. Allow water reservoirs and aquatic habitat areas that are consistent with the goals of this Plan.

- P-7. New structures shall be set back from levees and areas that may be needed for future levee expansion consistent with local reclamation district regulations and, upon adoption, with the requirements to be identified in the California Department of Water Resources Central Valley Flood Control Plan.

- P-8. Local government policies regarding mitigation of adverse environmental impacts under the California Environmental Quality Act may allow mitigation beyond county boundaries, if acceptable to reviewing fish and wildlife agencies and in consultation with recipient jurisdiction, for example in approved mitigation banks ~~or in the case of agricultural loss to mitigation. Mitigation in the Primary Zone for loss of agricultural lands in the Secondary Zone may be appropriate if the mitigation program supports continued farming in the Primary Zone.~~ California Government Code Section 51256.3 (Assembly Bill 797) specifically allows an agricultural conservation easement located within the primary or secondary zone of the Delta to be related to Williamson Act contract rescissions in any other portion of the secondary zone without respect to County boundary limitations.

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- P-9. The implementation of the policies contained in the resource management plan shall not be achieved through the exercise of the power of eminent domain unless requested by the landowner.

- P-10. Maintain spoil sites for dredge material from channels within the Delta and discourage the conversion of existing spoil sites to other uses, as appropriate.

- P-11. Local governments may develop programs to cluster residential units or transfer development rights (TDRs) to off-site locations. Clustering would assure the efficient use and conservation of agricultural lands, support open space values in the Primary Zone, and could encourage locating residential zoning entitlements, governed by the Act, adjacent to or within existing urban areas. Clustering can not be used to exceed existing residential zoning entitlements within the Primary Zone. Clustering agriculturally-dependent residential units on a single parcel must preserve agricultural use and open space values on the balance of the property. TDRs may involve transfers out of the Primary Zone.

- P-12. Option 1: Local governments that pursue clustering or transfer of development rights shall proceed with adoption procedures to implement such programs as part of the local government implementation of the resource management plan.

- P-12. Option 2: Local governments that pursue clustering or transfer of development rights shall proceed with adoption procedures to implement such programs as part of the local government implementation of the resource management plan *consistent with zoning in place on January 1, 1992.*

- P-13. Encourage a critical mass of farms, agriculturally-related businesses and supporting infrastructure to ensure the economic vitality of agriculture within the Delta.

- P-14. Support the implementation of appropriately-located agricultural labor camps and housing that are ancillary to agricultural operations and are constructed consistent with the requirements of local building codes.

- P-15. Promote opportunities for establishing National Heritage Areas consistent with other applicable policies included in this Plan.

Comment [L19]: See earlier comment RE lack of description in the text of Natural Heritage Areas – what they entail and why they're needed to achieve the Plan's policies.

- P-16. The conversion of an agricultural parcel, parcels, and/or an agricultural island for water

impoundment shall not result in the seepage of water onto or under the adjacent parcel, parcels, and/or island.

## AGRICULTURE

Delta agricultural lands were “reclaimed” through construction of levees and drainage of the marshy islands of the area. In less than 100 years, from 1850 to 1930, hundreds of thousands of acres of land went into agricultural production. The farmers and landowners represented a cross section of the new Americans--Slavs, Dutch, German, English, and others. Many groups of immigrants first labored in the fields, then went on to become landowners or tenant farmers including Portuguese, Chinese, Japanese, Filipinos, and Hindus.

Early crops were grains, and fruits and vegetables marketed in the nearby cities. Early specialty crops included wheat, barley, beans, and potatoes. Later asparagus, sugar beets, tomatoes, and celery grew in popularity. Currently, the Delta counties raise a variety of crops including grains, fruits, field crops, nuts, seeds, pasture and alfalfa, and vegetables.

In the recent past, thousands of acres of agricultural lands were developed for residential and other urban uses. Between 1990 and 2004, about 40,000 acres of agricultural land was converted to urban and conservation uses in the Delta. However, the loss of steady water supplies for Valley farmers will tend to make Delta lands with riparian water rights more valuable for agriculture. New markets to sell crops and new crops, including the conversion of crops to fuel sources, will continue to keep agriculture an important land use in the Delta and California.

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Agricultural lands within the Delta are highly productive and well suited for ongoing agricultural operations, as evidenced by the well-established wine growing regions, the islands that are mapped out of the 100-year flood zone, the deep well drained soils, the areas where permanent trees and vines are planted, the presence of state of the art reclamation districts that maintain the levees, the maintenance of water quality at the highest levels, the outstanding tomato yields, and the recognized superior quality of alfalfa grown in the Delta.

Local governments have certain limited regulatory authority over agricultural lands, including minimum parcel sizes. While each of the five Delta counties has different minimum parcel sizes, each County clearly delineates the Delta lands for long-term agricultural use. Local governments use "land use tools" such as an agricultural element in the General Plan, adoption of an urban limit line, buffers between agriculture and other approved uses, adoption of a Right to Farm ordinance, controls over subdivisions of agricultural lands, limitations on land uses allowable in the agricultural zone, limitations on changing General Plan designations, acquisition of conservation easements, transfer of development rights, and full support of the Williamson Act programs to protect commercial agriculture and compatible land uses.

Conflicts between agricultural activities and new residential, commercial, industrial, and recreational uses create long-term conflicts, which have a deleterious impact on agriculture. Complaints by non-farmers include: noise, dust, odors, flies, mosquitoes, aerial applications of fertilizer, pesticide and herbicide, night activity, and other aspects of normal agricultural activity. Complaints by farmers include trash, vandalism, increased traffic, loss of agricultural land, and dust.

Some agricultural lands provide seasonal wildlife habitat. Thousands of acres of agricultural lands are flooded after harvest and provide feeding and resting areas for local and migratory birds and other wildlife. Development of a management plan for seasonal flooding helps maximize the

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wildlife values and lessen opportunities for agricultural pests.

Agriculture in the Delta evolves as farming practices, market opportunities, and government programs change. The availability of water makes the Delta a unique geographical region for agriculture. Future agricultural practices may require construction of additional infrastructure to accommodate more intensive agricultural operations.

### Goal

To support long-term viability of commercial agriculture and to discourage inappropriate development of agricultural lands.

### Policies

- P-1. Support and encourage commercial agriculture in the Delta as a key element in the State's economy and in providing the food supply needed to sustain the increasing population of the State, the Nation, and the world. Also, support agricultural tourism and value-added agricultural production as a means of maintaining the commercial agricultural economy of the Delta.

- P-2. With the exception of lands identified as important for restoring habitat and enhancing ecological function in the Delta, conversion of land to non-agriculturally-oriented uses should occur first where productivity and agricultural values are lowest.

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Comment [L20]: Note that State agencies pursuing land acquisitions for creation of habitat will pursue, as highest priority, those areas where ecological benefits are expected to be highest.

- P-3. Promote recognition of the Delta as a place by educating individuals about the rich agricultural heritage and ongoing value of maintaining a healthy agricultural economy in the Delta.

- P-4. Support agricultural programs that maintain economic viability and increase agricultural income in accordance with market demands, including but not limited to wildlife-friendly farming, conservation tillage and non-tillage.

- P-5. Local governments shall encourage implementation of the necessary plans and ordinances to: maximize agricultural parcel size; reduce subdivision of agricultural lands; protect agriculture and related activities; protect agricultural land from conversion to urban uses; and clearly define areas in that jurisdiction where urban land uses are appropriate and where agriculturally-oriented land uses are appropriate. An optimum package of regulatory and incentive programs could include: (1) an urban limit line; (2) minimum parcel size consistent with local agricultural practices and needs; (3) strict subdivision regulations regarding subdivision of agricultural lands to ensure that subdivided lands will continue to contain agriculturally-oriented land uses; (4) require adequate buffers between agricultural and non-agricultural land uses particularly residential development outside but adjacent to the Primary Zone; (5) an agriculture element of the general plan; (6) a right-to-farm ordinance; and (7) a conservation easement program.

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- P-6. Encourage acquisition of agricultural conservation easements as mitigation for projects within each county. Encourage transfer of development rights within land holdings, from parcel to parcel within the Delta, and where appropriate, to sites outside the Delta. Promote use of environmental mitigation in agricultural areas ~~only when it is consistent and compatible with ongoing agricultural operations and~~ when developed in appropriate locations designated on a countywide or Deltawide habitat management plan.

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- P-7. Encourage management of agricultural lands which maximize wildlife habitat seasonally and year-round, through techniques such as fall and winter flooding, leaving crop residue, creation of mosaic of small grains and flooded areas, wildlife friendly farming, controlling predators, controlling

poaching, controlling public access, and others.

- P-8. Encourage the protection ~~and reclamation~~ of agricultural areas from the destruction caused by inundation.

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Comment [L21]: See earlier comment RE prioritizing what lands/levees would be crucial to achieving co-equal goals of ecological health and water supply reliability.

## WATER

In California, rainfall runoff and snowmelt are captured in reservoirs to redistribute to urban and agricultural customers and for environmental uses. About 75% of the State's water originates north of the Delta; and about 75% of the State's water needs occur south of the Delta.

Water bound for distribution through both the State Water Project (SWP) and the federal Central Valley Project (CVP) is taken from the south Delta. In addition, water to serve some Bay Area urban users is taken from the Delta. The SWP has contracts to divert 4.2 million acre feet per year from the Delta, which supplies primarily urban uses but also supplies agricultural use south of the Delta. The CVP has contracts to divert 3.3 million acre feet per year, which supplies primarily agricultural land south of the Delta but also supplies urban areas and wildlife refuges. On average, the projects together export about 5 million acre feet annually.

The federal C.W. "Bill" Jones Pumping Plant (formerly the Tracy Pumping Plant) can export about 4,600 cubic feet per second (cfs). The SWP Banks Pumping Plant has a physical export capacity of 10,300 cfs, but is permitted to divert 6,680 cfs (with higher limits during certain months) from the Delta into the pumping plant's Clifton Court Forebay. The fish protection facilities at these state and federal pumping plants are not state-of-the-art.

About two-thirds of the State's population gets at least a portion of its drinking water from the Delta. In addition, Delta farmers and irrigation districts also have rights to irrigate with water taken directly from Delta sloughs and channels.

Because the Delta drains the Sacramento River and San Joaquin River watersheds, storm runoff and waste discharges from upstream and adjacent areas enter into the Delta waterways and cause water quality problems. Low-flow years generally carry higher concentrations of waste discharges and agricultural runoff and drainage than do wet years.

Some treated municipal and industrial wastewater, untreated urban storm water, and agricultural runoff and drainage enter the Delta directly. Other urban and agricultural discharges from upstream in the watershed enter the Delta along with the river flows. Seepage onto Delta islands from adjacent channels and drainage from the agricultural lands are released back to the Delta channels at hundreds of locations.

The Central Valley Regional Water Quality Control Board has identified the Delta as impaired by a number of pollutants, low dissolved oxygen, electrical conductivity (salinity), and mercury. Delta fish have elevated levels of methylmercury, which poses a risk to humans and wildlife that eat the fish on a regular basis. As of 2009, the board has adopted a threshold called a total maximum daily load (TMDL) for dissolved oxygen and is developing a TMDL for methylmercury in the Delta. The daily tidal cycles and the San Joaquin River contribute most of the salinity to the Delta. During periods of high Delta inflows, salinity is low; during periods of low Delta inflows, the salinity level

risers. Salinity in the Delta is managed by a mix of releases from upstream reservoirs, Cross Channel Gate operations, Delta outflow, and exports from the Delta. The Delta is governed by water quality standards for municipal and industrial uses, agricultural uses, and fish and wildlife, all of which are currently under review by the State Water Resources Control Board. The combination of organic matter (decaying vegetation), bromide in the seawater, and disinfectants used in water treatment plants produce disinfection byproducts that may pose health risks.

The State Water Resources Control Board and the Regional Boards designate beneficial uses of the State's waters. In the Delta, beneficial uses include: municipal and domestic supply; agriculture; industry; groundwater recharge; navigation; recreation; wildlife habitat; fish migration and spawning; and preservation of rare and endangered species.

### Goal

Protect and enhance long-term water quality in the Delta for agriculture, municipal, industrial, water-contact recreation, and fish and wildlife habitat uses, as well as other beneficial uses.

### Policies

- P-1. State and federal agencies shall be strongly encouraged to manage salinity in Delta waters, as well as the timing and quantity of Delta water inflows and outflows, appropriately to allow full agricultural use of Delta irrigated agricultural lands, to ~~provide habitat for aquatic life, and the extent it does not compromise their ability to provide habitat for aquatic species or~~ to meet State water quality requirements for drinking water.

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- P-2. Ensure that design, construction, and management of any flooding program to provide seasonal wildlife and aquatic habitat on agricultural lands, duck club lands and additional seasonal and tidal wetlands, shall incorporate "best management practices" to minimize vectors including mosquito breeding opportunities, shall be coordinated with the local vector control districts, ~~and shall recognize the rightful responsibility to offset the loss of tax revenue.~~ (Each of the four vector control districts in the Delta provides specific wetland/mosquito management criteria to landowners within their district.)

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Comment [L22]: See earlier note RE offset of local taxes and fees being accommodated only if the Legislature appropriates such funding.

- P-3. Water agencies at local, State, and federal levels should work together to ensure that Delta water quality standards are met and that beneficial uses of State waters are protected.

- P-4. Ensure that Delta water rights and water contracts are respected and protected, including area of origin water rights and riparian water rights.

## RECREATION AND ACCESS, INCLUDING MARINE PATROL, BOATER EDUCATION, AND SAFETY PROGRAMS

The Delta is a unique geographic region which provides opportunities for water-oriented recreation, such as boating, and resource-oriented recreation, such as fishing and hunting. Many of the users are residents of communities in the Secondary Zone and beyond; some are local residents. Boaters come from the greater Bay Area and from other parts of the State to visit the Delta. Many visitors come from out of the area and rent houseboats from local marinas.

Navigable waterways in the Delta-Suisun are available for public access and currently make up

the majority of recreational opportunities. Boating use totals more than 6.4 million visitor days annually, composed of 2.13 million annual boat trips in the larger Delta-Suisun area. In 1998, people were estimated to have spent about \$378 million for Delta-oriented boating and fishing recreation. The majority of the land within the Delta is privately owned, which reduces the availability of land-based recreation.

Many value the recreational opportunities in the Delta because the area is so different from the surrounding urbanized areas. Wide expanses of open land, interlaced waterways, historic towns, and the feeling of a slower pace of life make the Delta attractive to many visitors. The area provides unique scenic opportunities. ~~An estimated 7,000 sandhill cranes make Delta agricultural fields their seasonal home.~~

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Comment [L23]: This sentence seems out of place here.

The newly created Aquatic Recreation Component of the Delta Recreation Strategy Plan prepared by the Delta Protection Commission forecasts demand for boating recreation through 2020 and identifies a deficit of facilities based on current inventory and trends in increasing population. The plan predicts a 27 percent increase in annual boating visitor days from 6.4 million to 8.1 million. Current facilities and businesses cannot accommodate this increased demand.

Senate Bill 1556, signed by the Governor in September 2006, creates a California Delta Trail and requires the Delta Protection Commission to create a plan for designing, constructing, and maintaining this trail. The California Delta Trail will be a bike, pedestrian and equine trail system and recreation corridor along more than 1,000 miles of Delta waterfront in Contra Costa, San Joaquin, Sacramento, Yolo, and Solano counties. The trail will connect with the 450-mile San Francisco Bay Trail and will provide more land access to the Delta. The trail could increase demand for Delta-related land-based facilities like campsites, picnic areas, and restrooms.

Most of the recreation facilities within the Delta are provided through private marinas. Several thousand boat berths are located in the Primary Zone, almost equally divided between Contra Costa, Sacramento, and San Joaquin Counties. Private facilities also provide launching facilities, RV and tent camping, picnicking, restaurants, and bait and tackle shops. Waterskiing and riding Personal Water Craft (PWC)\* are popular water-oriented activities.

Public parks are limited in number. There are five fishing access/launching facilities owned by Department of Fish and Game and managed by Sacramento and Yolo Counties. San Joaquin County provides land and water access at Westgate Park. Brannan Island State Recreation Area provides: boat launching; camping; swimming; nature interpretation; and wind surfing.

Hunting occurs mainly on private lands and clubs; some hunting is allowed on State- ~~and federal-~~ owned lands and water areas. Facilities for Delta residents are located in the towns. Locally-sponsored festivals in Isleton, Walnut Grove, and Courtland bring visitors into the Delta during the summer months.

Some recreational users abuse private lands by littering, trespassing, picking fruit or vegetables from the fields, vandalizing pumps or other farm equipment, hunting or fishing in violation of State laws, or by driving on unpaved levee roads not suitable for automobile use.

Bank fishing is a popular Delta activity with few formal support facilities. The fishermen park alongside and on public and private roads, occasionally creating a safety hazard. Virtually no garbage or restroom facilities are available.

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Concerns have been raised that boating activities create vessel wakes that damage levees, and that boating and PWC activity disturbs wildlife living in the sloughs and waterways. There is no regulation

of the number of vessels using the Delta waterways and there is concern that some areas of the Delta have reached maximum capacity for some water-oriented recreational activities. For example, quiet boat fishing may not be compatible with PWC activity or waterskiing.

Protection of public safety and compliance with boating and fish and game laws are carried out by peace officers in a number of agencies including Coast Guard, State Department of Parks and Recreation, State Department of Fish and Game, and County Sheriffs' land and marine patrols. Due to financial cutbacks, most County marine patrol programs have been reduced.

New recreational facilities could be provided at low cost on publicly-owned land where those lands will be supervised. Examples include: pedestrian access on publicly-owned levees adjacent to Brannan Island State Recreation Area; construction of new visitor facilities, interpretive facilities and trails at the Stone Lake National Wildlife Refuge; and pedestrian trails, visitor facilities, and facilities to allow access from the water to the land at ~~Delta Meadows~~.

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As local governments authorize new or remodeled private commercial recreation facilities, use of appropriate design can minimize conflicts between Delta user groups and provide stronger identity for Delta facilities.

\*"Personal Water Craft" (PWC) is the general term for a broad range of small, powered boats that typically carry one or two persons, and are popularly known by registered tradenames such as Jet Ski, Ski Doo, etc.

Comment [L24]: This should be a footnote separate from the rest of the text.

## Goal

To promote continued recreational use of the land and waters of the Delta; to ensure that needed facilities that allow such uses are constructed, maintained, and supervised; to protect landowners from unauthorized recreational uses on private lands; and to maximize dwindling public funds for recreation by promoting public-private partnerships and multiple use of Delta lands.

## Policies

- P-1. Ensure that plans are developed and funds are allocated for ongoing maintenance and supervision of existing public recreation areas.
- P-2. Encourage expansion of existing private water-oriented commercial recreational facilities and ensure any new recreational facilities will be adequately supervised and maintained, appropriate access is provided, and agriculture and wildlife habitat are not adversely affected.
- P-3. Develop funding and siting criteria for establishing new recreation areas.
- P-4. Funding criteria should ensure adequate funding for recreational project development and long-term maintenance and supervision. Siting criteria should ensure adequate public access and minimal adverse impacts on: agricultural land uses, levees, and public drinking water supply intakes, and identified wetlands, habitat and other sensitive areas.
- P-5. Encourage new regional recreational opportunities, such as Delta-wide trails, which take into consideration environmental, agricultural, infrastructure, and law enforcement needs, and private property boundaries. Also, encourage opportunities for water, hiking, and biking trails and related amenities such as picnic tables and restrooms.
- P-6. Encourage provision of publicly funded amenities such as picnic tables and restrooms in

or adjacent to and which complement private facilities, particularly if the private facility will agree to supervise and manage the facility (fishing pier, overlook, picnic area) thus lowering the long-term cost to the public.

- P-7. Support multiple uses of Delta agricultural lands, such as seasonal use for hunting.
- P-8. Support improved access for bank fishing along State highways, county roads, and other appropriate areas where safe and adequate parking, policing, garbage cleanup, sanitation facilities, and fire suppression can be provided and where proper rights-of-access have been acquired.
- P-9. Support programs that include adequate restrooms, pumpout facilities, trash containers, oily waste disposal facilities, and other facilities necessary to meet the needs of marina patrons and tenants for any new, renovated, or expanded marinas.
- P-10. Encourage the development of funding and implementation strategies by appropriate governing bodies for the surrender of vessels and removal of abandoned vessels from waterways to avoid pollution of Delta water and remove hazards to navigation.
- P-11. Promote and encourage Delta-wide communication, coordination, and collaboration on boating and waterway-related programs including but not limited to the removal of abandoned vessels, invasive species, clean boating, maintenance of existing anchorage areas, and emergency response in the Delta.
- P-12. Encourage establishment of Delta-wide law enforcement protocols on local public nuisance and safety issues, such as trespassing, littering, and theft.
- P-13. Support and encourage programs for the regular removal of debris from Delta waterways, including floating and sunken debris, in consultation with State and federal fish and wildlife agencies.
- P-14. In consultation with all law enforcement agencies having jurisdiction in the delta, a strategy shall be developed for the implementation of a coordinated marine patrol system throughout the delta that will improve law enforcement and coordinate the use of resources by all jurisdictions to ensure an adequate level of public safety. The strategic plan shall identify resources to implement that coordination. The commission shall have no authority to abrogate the existing authority of any law enforcement agency.

**Comment [L25]:** Note that what some consider "debris" may provide cover and refugia for some species. If regular removal of debris by local law enforcement agencies is prohibitively expensive, suggest marking these snags with caution flags/signs.

## LEVEES

The Delta is the natural drain for a watershed that includes the Central Valley and the western slope of the Sierra Nevada from Fresno to Mount Shasta. Existing flood management and water supply facilities (dams, levees, and bypasses) throughout the watershed influence floodflows to the Delta. Settlers began to farm the rich lands of the Delta by the 1850s. They built low levees to allow land to be drained for farming. Few of these levees were built using modern engineering techniques, and many rest on peat foundations that have settled with the added weight.

The main flood management facilities in the Delta include the approximately 1,100 miles of levees and the Yolo Bypass. The Yolo Bypass, with about 500,000 cubic feet per second (cfs) capacity, was designed to flood occasionally to relieve high water stages on the Sacramento River. Easements held by the Central Valley Flood Protection Board provide the right to inundate the land, including some islands such as Liberty Island, with floodwaters. The lower Sacramento ship channel and the Stockton ship channel provide some flood-carrying capability. Dredging to enlarge Delta channels

used to be an important element of flood management.

Levees can fail for various reasons, including the burrowing activities of animals, erosion (from high flow events, wind-induced waves, and boat wakes), overtopping, deferred maintenance, seepage through sand layers underlying levee foundations, and other causes not yet well understood.

Delta levees face risk of high water overtopping during the wet season (winter and spring), particularly when large storms coincide with high tides. Storms contribute to the levee overtopping risk by increasing water levels in the rivers and creating wind-induced waves. In addition, the low barometric pressures associated with large storms raise water surface levels in Delta and Suisun Marsh channels. In many cases, the flooding of the islands has been costly to local residents and farmers and to the state as a whole.

The Central Valley Flood Protection Board has primary responsibility for flood management throughout the Central Valley on “project levees” that are part of an authorized federal flood control project. More than 700 miles, or 65 percent, of Delta levees are classified as “non-project” because they are not part of an authorized federal flood control project. These levees have been built and maintained by landowners or reclamation districts to protect agricultural lands.

In general, the levee work by reclamation districts is financed by the owners of the lands within the levees. Over the last 35 years, the State of California has provided supplemental financing for levee maintenance and emergency response through California Department of Water Resources’ (DWR) Delta Levee Subventions Program. State law requires that the levee work be consistent with net long-term habitat improvement with net benefits to habitat in the Delta. In addition, DWR provides technical assistance to reclamation districts and coordinates flood fights when islands are threatened. Funding for these programs has been intermittent and unreliable.

When levees in the Delta fail, there ~~may be a tremendous loss of wildlife habitat within the particular area flooded and the habitat remaining on the levee remnants and in-channel islands is gradually eroded away.~~ In addition to habitat losses, there is generally a significant loss of crops and destruction of farm equipment and farm buildings, and water quality impacts from petroleum products, herbicides, pesticides, and possible methylation of mercury.

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Levee maintenance work is regulated by multiple State and federal agencies. The regulatory authority and mission of the agencies is overlapping and in some situations contradictory. The length of time required and the amount of specialized information needed to obtain permits adds a considerable amount to the per mile cost of levee maintenance. The levee maintenance work is critical to maintain water quality in the Delta, to protect life and property, and to protect upland wildlife habitat.

The maintenance of Delta levees is necessary to protect human life, to provide flood protection, to protect private and public property, to protect historic structures and communities, to protect riparian and upland habitat, to promote interstate and intrastate commerce, to protect water quality in the State and federal water projects, and to protect recreational use of the Delta area. Therefore, Delta levee maintenance and rehabilitation needs to be given priority over other uses of the levee areas.

### Goal

~~Support the improvement, emergency repair, and long-term maintenance of Delta levees. Levee rehabilitation, emergency repair, and long-term maintenance shall have priority over other uses of levee areas.~~ Encourage adaptive prioritization and implementation of cost-effective levee

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improvements in accordance with varying conditions associated with ecological health, water supply reliability, and to address varying conditions associated with climate change. ~~Protect the Delta land form by making cost-effective levee investments in order to preserve the economy and character of the Delta, to the maximum extent feasible.~~

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Comment [L26]: See previously-expressed concern about the perceived desire of the Management Plan to protect all levees and channel/island configurations as the highest and best use of the levees.

## Policies

- P-1. Local governments shall carefully and prudently carry out their responsibilities to regulate new construction within flood hazard areas to protect public health, safety, and welfare. These responsibilities shall be carried out consistent with applicable regulations concerning the Delta, as well as the statutory language contained in the Delta Protection Act of 1992. Increased flood protection shall not result in residential designations or densities beyond those allowed under zoning and general plan designations in place on January 1, 1992, for lands in the Primary Zone.
- P-2. Support programs for emergency levee repairs and better coordination between local, State, and federal governments, in accordance with prioritization of cost-effective levee improvements to achieve the co-equal goals of ecological health and water supply reliability. The programs may include but are not limited to: interagency agreements and coordination; definition of an emergency; designation of emergency funds; emergency contracting procedures; emergency permitting procedures; and other necessary elements.
- P-3. Support efforts to address levee encroachments that are detrimental to levee maintenance.
- P-4. Support funding assistance for existing unincorporated towns within the Delta to attain 200-year levee standards, in accordance with maintaining the density of development in place as of January 1, 1992.
- P-5. Support stockpiling rock in the Delta for levee emergency response.
- P-6. Support a multi-year funding commitment to restore non-project levees and levees outside the State Plan of Flood Control.
- P-7. Encourage the beneficial reuse of dredged material, as appropriate, for levee maintenance and rehabilitation, and the maintenance of instream flows. Support and advocate for the Delta Long-Term Management Strategy (LTMS).
- P-8. Seek funding for and support programs to make cost-effective levee investments in order to preserve the economy and character of the Delta, to the maximum extent feasible.
- P-9. Support a minimum levee design standard as established by state and federal regulations.

## III IMPLEMENTATION

The Delta Protection Act of 1992 established the Delta Protection Commission, a State entity to plan for and to guide the conservation and enhancement of the natural resources of the Delta, while sustaining agriculture and meeting increased recreational demand. The Act defines a Primary Zone, which comprises the principal jurisdiction of the Delta Protection Commission. The Secondary Zone is the area outside the Primary Zone and within the "Legal Delta"; the Secondary Zone is not within



the planning area of the Delta Protection Commission. The Act requires the Commission to prepare and adopt a Land Use and Resource Management Plan for the Delta, which must meet specific goals.

For purposes of implementation issues, the Commission's duties may be characterized as including planning, conservation, and coordinating functions. The Act provides broad authority to the Commission to plan for the stated legislative goals of maintaining agricultural lands and natural resources in the Delta, while increasing recreation opportunities and public access.

In order to achieve these important goals, as measured against current baseline conditions, the Legislature determined that local plans and decisions must be in conformance with the Commission's Plan and local decisions will be subject to appellate review by the Commission. The use of and consistently applied policies, subject to administrative review for conformance with the Act and Plan, will be helpful in achieving the goals of orderly and balanced conservation and development of Delta resources.

Options available to the Commission to achieve the goals set forth in the Delta Protection Act of 1992 include:

- | ■ A regional database with baseline conditions and a resource management plan with sufficiently specific standards and criteria in order to measure change, to evaluate progress, and to prepare the required annual reports to the Legislature.
- | ■ A continuing planning effort, including review of local General Plan proposals, preparation of Plan updates, and consideration of future General Plan amendments in order to assure an effective, accurate, and dynamic resource management plan.
- | ■ Continuing oversight of local development approvals as a means of assuring consistent implementation of the Commission's Plan, a function currently served by the Commission's appellate review duties.
- | ■ An acquisition and management strategy for the voluntary acquisition of appropriate interests (conservation easements) in real property and for efficient management and economical support for related agricultural activities and habitat protection.
- | ■ Coordination of the activities of various State and local agencies and non-profit organizations to provide an integrated stewardship scheme for Delta resources, to coordinate marina patrol activities, and to provide a database to facilitate resource protection, recreational uses, and sustained agricultural activity in the Delta.

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From these many options that are available, numerous combinations are possible. In addition to the various elements of the Commission's Plan, the Commission could create partnerships with existing agencies and organizations, or the formation of new entities, would be helpful in achieving the goals of the Act. The Commission may recommend strengthening its planning and review functions, or emphasizing conservancy functions, or both. The Commission's recommendations can inform legislative consideration and review of the Act.

#### A. Description of Local Government Responsibilities under the Delta Protection Act of 1992.

1. Prepare and Submit Local Plan. Within 180 days of the adoption of the regional plan, all

local governments shall submit to the Commission proposed amendments which will cause their General Plans for the areas in the Primary Zone to be consistent with the criteria in Section 29763.5 (see below)(Section 29763).

The local governments can adopt the language in the Commission adopted Plan as a special area plan for the Delta area of the County, the local governments can identify which policies in their existing General Plans carry out the policies in the Commission adopted plan, or can prepare and submit a special area plan of their own for the Delta area of the County.

The Commission's adopted Plan is intended to be used as a guide to the local governments to ensure that certain policy areas are addressed within each local government General Plan and to ensure that uniform policies are adopted Deltawide for certain policy areas.

The local governments must ensure that when adopted, the General Plans, and any development approved or proposed that is consistent with the General Plan, will be consistent with the regional plan and will not (Section 29763.5):

- result in wetland or riparian loss;
- result in degradation of water quality;
- result in increased nonpoint source pollution;
- result in the degradation or reduction of Pacific Flyway habitat;
- result in reduced public access, provided the access does not infringe on private property rights;
- expose the public to increased flood hazard;
- adversely impact agricultural lands or increase the potential for vandalism, trespass, or the creation of public private nuisance on public or private land;
- result in the degradation or impairment of levee integrity;
- adversely impact navigation;
- result in increased requirements or restrictions upon agricultural practices in the Primary Zone.

These are also the criteria the Commission will use to evaluate the plans submitted by the local governments.

2. Amend Local Government General Plans. Upon approval by the Commission of the proposed General Plan amendments of the local governments, the local governments shall adopt the proposed General Plan amendments within 120 days of that approval. The Delta Protection Act amends Section 21080.22 of the Public Resources Code to exempt the "activities and approvals by a local government necessary for the preparation of General Plan amendments" from the California Environmental Quality Act.

3. Local Government Implementation of the Act. Prior to adoption of the General Plan amendments, local governments that approve developments in the Primary Zone must adopt a

series of findings that the development will not result in:

- wetland or riparian loss;
- degradation of water quality;
- increased nonpoint source pollution or soil erosion, including subsidence or sedimentation;
- degradation or reduction of Pacific Flyway habitat;
- reduced public access, provided that access does not infringe upon private property rights;
- expose the public to increased flood hazards;
- adversely impacts agricultural lands or increase the potential for vandalism, trespass, or the creation of public or private nuisances on private or public lands;
  - degradation or impairment of levee integrity;
  - adversely impact navigation;
  - any increased requirements or restriction upon agricultural practices in the primary zone.

After the General Plan amendments are adopted, the local governments will approve development in the Primary Zone based on the amended General Plans.

**B. Description of Delta Protection Commission Responsibilities under the Delta Protection Act of 1992.**

1. Adopt Regional Plan for the Delta Primary Zone. The Commission must prepare and adopt, and thereafter review and maintain a comprehensive, long-term resource management plan for land uses within the Primary Zone of the Delta by October 1, 1994 (Section 29706(a)).
2. Review and Act on Proposed Local Government General Plan Amendments. The Commission shall act on the proposed General Plan amendments submitted by local governments within 60 days of receiving the proposed amendments. The criteria for approving the proposed General Plan amendments are described in A-1, above. The findings must be written, and based on substantial evidence in the record (Section 29763.5).
3. Meet California Environmental Quality Act (CEQA) Requirements. The Commission must meet CEQA requirements when it approves the General Plan amendments prepared and submitted

by local governments (Section 21080.22).

4. Maintain Appeal Authority. As set out in Section 29770 of the Act, the Commission currently has and will continue for the term of the legislation, to have appeal authority for “any person aggrieved by any action taken by a local government in implementing the regional plan or otherwise taken pursuant to this division”. The Commission has adopted regulations governing such appeals. If an appeal is accepted, the local action is suspended until the Commission completes its review of the appealed matter. Upon remand, the local agency may modify the permit or approval and resubmit the matter for review to the Commission. The permit or approval shall not be effective until the Commission adopts written findings based on substantial evidence in the record that the permit or approval is consistent with the regional plan and the approved local General Plan.

5. Sunset. “Sunset” provision was deleted (2000).

#### C. Development of Long-Term Implementation of Goals of Delta Protection Act of 1992

1. Prepare Goals for New Legislation. If the Commission develops concepts for future legislation, adopt materials to forward to the Governor and the Legislature. Legislation to eliminate the sunset date was chaptered September 19, 2000.

#### D. Recommendations

1. Establish the updated Delta Plan as the statewide policy to preserve, protect, enhance, and restore Delta resources. Because the Delta is a unique and valuable resource area in which all the people of the State have a substantial and continuing interest, and because the wise use, conservation and enhancement of the Delta natural resources are of great concern to the people of California, it should be the policy of the State to recognize, preserve, protect and, where possible, enhance the resources of the Delta for the use and enjoyment of current and future generations.

2. Ensure the actions of the five Delta Counties, and other local governments proposed work in the Primary Zone, are consistent with the updated Delta Plan. The local governments are charged with regulatory authority in the Delta. Those regulatory responsibilities should be carried out in conformity with the updated Delta Plan. Should Cities propose to expand into the Delta Primary Zone, or acquire land in the Primary Zone for utility or infrastructure facility development, those actions should be carried out in conformity with the Delta Protection Act of 1992.

3. Continue to give the local governments with jurisdiction in the Delta Primary Zone responsibility for carrying out the updated Delta Plan through an amended County General Plan. Once the updated Plan has been adopted and the local governments have reviewed their General Plans for consistency with the updated Plan and amended the General Plans, the local governments should have primary responsibility for carrying out the updated Delta Plan.

4. Continue limited State responsibility for carrying out the updated Delta Plan through the appeal authority of the Delta Protection Commission. The Delta Protection Commission should continue to exercise its appeal authority over local government activities as delineated in the Delta Protection Act of 1992.

5. Develop a monitoring data base to review progress in achieving the objectives of the Delta Protection Act of 1992. The data base will provide information needed to evaluate the effectiveness of the regional plan in preserving agricultural lands, restoring Delta habitat, improving levee protection and water quality, and providing increased public access and

**Comment [L27]:** The DPC Management Plan should be amended to reflect more recent investigations and information on the priorities and future of natural resource management in the Delta, including reference to the co-equal goals of ecological health and water supply reliability as well as potential effects of climate change on Delta levees and land uses so it can serve as the “regionwide policy to preserve, protect, enhance, and restore Delta resources.”

recreational opportunities. This information must be provided to the Governor and Legislature as part of the annual reports which have been required to be submitted since January 1, 1995.